

## **BASIC PRINCIPLES ON THE STATUS OF REFUGEES**

*(RATIFIED BY THE GENERAL ASSEMBLY OF OCTOBER 28, 2016, IN BUDAPEST)*

**The Union Internationale des Avocats (UIA - International Association of Lawyers)**

**In its General Assembly on October 28, 2016:**

### **RECALLING**

- I. The Universal Declaration of Human Rights and the ten principal international human rights instruments<sup>1</sup>, which lay down the principles of universal and inalienable rights for all human beings, regardless of their nationality, place of residence, gender, ethnic or national origin, colour, religion, language or any other characteristic, and place States under an obligation and duty to uphold, protect and establish these rights;
- II. The numerous international and regional binding and non-binding instruments on refugees, asylum-seekers and stateless persons, and, in particular, the 1951 Convention Relating to the Status of Refugees, and the 1967 Protocol Relating to the Status of Refugees, the 1985 Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1984 Cartagena Declaration, the 2001 Bangkok Principles, all the directives and regulations on the common European asylum system, and the guidelines drawn up by the Office of the United Nations High Commissioner for Refugees (HCR);
- III. That these instruments acknowledge the benefit of the aforementioned fundamental rights for refugees and asylum-seekers;
- IV. That the “*non-refoulement*” of refugees is a principle of customary international law and that it applies until a request for asylum has been examined in accordance with applicable law;
- V. That the aforementioned instruments should be interpreted consistently; that this interpretation should support the objective of affording the greatest protection possible, in particular by conforming to definitions, as they are interpreted by the High Commissioner for Refugees, and interpretative guidance and decisions of the relevant international bodies that are competent in this field;

<sup>1</sup> See Appendix 1, “Reference International Legal instruments”

- VI. That the current migrant crisis has made it necessary to rethink migration policy on a more global level, with a view to States sharing responsibility;
- VII. That, in this context, it is vital to reaffirm recognised rights, means to ensure they are upheld and remedies against their violation;
- VIII. That lawyers and bar associations have a vital role to play in this process.

## DECLARES

1. That it is necessary and urgent (a) to grant refugees and asylum-seekers the broadest protection possible in accordance with that afforded by the organisations and courts that have authority in this area, and, (b) to reaffirm recognised rights, means to ensure they are upheld and remedies against their violation;
2. That each contracting State on whose territory a person asks to be admitted in the capacity of a refugee must determine the status of that refugee in accordance with the international or regional instruments on refugees, under conditions that preserve human dignity and fundamental rights;
3. That it is necessary for States to give priority to a *prima facie* approach in the recognition of refugee status in the event of a massive influx of persons who are fleeing objective and obvious circumstances in their country of origin, such as war, occupation or massive human rights violations; that, under such circumstances, States should apply a procedure known as “group determination” of refugee status, whereby, in the absence of evidence to the contrary, each member of the group is regarded at first sight (*prima facie*) as a refugee<sup>2</sup>; that, alternatively, they must be able to implement mechanisms that provide temporary protection or stay arrangements that are designed to respond to these situations<sup>3</sup> and in particular to ensure the benefit of subsidiary protection if the conditions for granting such a status are met;
4. That all persons have the right to an identity and a nationality, and that all steps must be taken to ensure that the children of asylum-seekers and refugees who are born in host States are registered there;
5. That there cannot be genuine access to fundamental rights without effective access to the law and, in particular, without asylum-seekers and refugees being ensured access to qualified lawyers who have received appropriate training in refugee law, so that they are in a position to know their rights and have them enforced;
6. That States, bar associations and professional organisations, and their members, must each, in the areas that concern them, apply the Basic Principles on the Status of Refugees;
7. That the UIA is willing to provide its assistance and its support to bar associations, in particular for the training of lawyers in refugee law, but also in the actions to be taken to combat the criminalisation of national legislation on asylum and the spread of security-based criteria as reasons to deny the benefit of refugees’ recognised rights.

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<sup>2</sup> Cf. [UNHCR Guidelines on International Protection No. 11, Prima Facie Recognition of Refugee Status](#), 24 June 2015.

<sup>3</sup> Cf. [UNHCR Guidelines on Temporary Protection or Stay Arrangements](#), February 2014.

## **ADOPTS THE FOLLOWING BASIC PRINCIPLES ON THE STATUS OF REFUGEES**

### **1. *Scope of protection***

#### **1.1. *The concept of asylum-seeker***

An asylum-seeker is a person who, after being persecuted or fearing persecution in his/her country of origin has requested protection (or asylum) from the relevant authorities, and is awaiting a decision in response to his/her request.

It is the role of national asylum systems to grant asylum-seekers a status that complies with the international principles in this area.

#### **1.2. *The concept of refugee***

For the purposes of these Principles, and in accordance with the interpretation used by the HCR, which has been followed by the case law in an increasing number of States that are parties to the Geneva Convention, the term “refugee” is defined as follows:

A refugee is any person who, owing to 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/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or who, not having a nationality and being outside the country of his/her former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it; but also any person who, due to conflict, occupation, foreign domination, massive human rights violations or other events that seriously disturb public order in part or all of the country of his/her nationality – or, if s/he does not have a nationality in the country of his/her former habitual residence – is compelled to leave that country as s/he believes for the same reasons that s/he is unable to avail himself/herself of the protection of that country.

Such an individual maintains his/her status as a refugee until s/he is willing or able, freely and voluntarily, to return to the country of his/her nationality or the country of his/her last residence.

#### **1.3. *Grounds for exclusion***

A person will not be deemed to be a “refugee” if there are serious grounds to believe that s/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; or, that s/he has committed a serious non-political crime outside the country of refuge prior to his/her admission to that country as a refugee; or, that s/he has been guilty of acts contrary to the purposes and principles of the United Nations.

#### 1.4. *The concept of environmental refugee or displaced person*

According to the United Nations Development Programme (UNDP), environmental refugees are “those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life”.

However, no universally accepted definition of this concept exists at present. It is therefore the role of States to reflect together on the implementation of mechanisms to protect this type of displaced person after jointly defining the concept. It is also their role to enact on an individual basis, as some of them already have, specific national legislation that aims to protect, as necessary via subsidiary protection, persons who have been subjected to serious threats to their life, their safety or their wellbeing, which result from serious natural phenomena, which are catastrophic or gradual, human-induced or natural.

## 2. *Rights and duties of asylum-seekers*

2.1. All asylum-seekers must be granted reception conditions that respect their fundamental rights, in accordance with the obligations that are provided for in the international and regional instruments that are binding on the Receiving State and with the customary standards of international law:

- They must, in particular, benefit from certain material reception conditions, and in particular accommodation, food and clothing, in kind or in the form of a financial allowance. Allowances must be such that they prevent the applicant from becoming destitute;
- Reception measures must preserve family unity and guarantee medical and psychological care;
- Access to the education system for minor children and language courses where necessary must be provided to enable them to attend ordinary school.

2.2. Vulnerable asylum-seekers must be able to benefit from special measures in order to meet their specific needs. This concerns, in particular, minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents accompanied by minor children, victims of human trafficking, persons with mental illness and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. Thus, for example:

- All children who make an application for asylum must be assisted by a qualified legal representative during the procedure; they must be able to apply for asylum in their own right, regardless of whether or not they are accompanied, and must be able to be heard during the procedure that concerns them by qualified persons who take into account their level of development;
- When assessing applications for asylum by persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, the specific vulnerability of the applicant, which is inherent in his/her capacity of asylum-seeker, due to his/her migratory path and possible previous traumatic experiences, should be taken into account.

### 2.3. *Specific guarantees for processing asylum applications*

- All asylum-seekers have the right to a quick, flexible and fair procedure, which takes into account the difficulties in providing individual proof of persecution. Minimal procedural guarantees must be provided when processing an asylum-seeker's application; asylum-seekers must be informed of their rights and duties as soon as possible, as well as of the status of their application, by persons with authority, in a language and in terms that they can understand;
- Under all circumstances, asylum-seekers must be entitled to and have the possibility in practice of contacting the HCR and the non-governmental organisations that work with the HCR in the field of assisting asylum-seekers and the beneficiaries of international refugee protection;
- Asylum-seekers must be able to receive legal assistance that provides them with counsel and representation by a lawyer of their choice and assisted by an interpreter at all stages of the procedure concerning the recognition of their status until the final decision to grant or refuse recognition. This legal assistance must be provided to them free of charge;
- All asylum-seekers must have the benefit of the guarantee of "non-refoulement";
- All recourse (including appeals) within the asylum procedure must immediately suspend any extradition or deportation procedures in order to ensure that the asylum seeker will not be forced to leave the country in which s/he applies for asylum pending a final decision on his or her application for asylum;
- No asylum-seeker may be detained for the sole reason that s/he has applied for asylum. Such a measure must be necessary for legitimate reasons of public order, public health or national security, must never be applied automatically but undertaken under the supervision of a judge, and must be the subject of independent monitoring and inspection, including by the HCR<sup>4</sup>. It must not be used for unaccompanied minors.

2.4. All asylum-seekers must comply with the laws and regulations of the host State, as well as with the measures that are adopted to maintain public order. In particular, they must comply with the obligations provided for the asylum procedure in the receiving State and cooperate with the competent authorities to the extent that such cooperation is necessary in order to process their application.

## 3. ***Rights and obligations of refugees***

- 3.1. Refugees must have the benefit of the rights provided for by international texts under conditions that are no less favourable than those provided for by these texts, and in particular the following rights:
- Absence of discrimination on the basis of race, religion, country of origin, belonging to a certain social group, sexual orientation or political opinions;

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<sup>4</sup> Cf. [UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention](#), 2012

- Freedom to practice religion and freedom to provide children with religious instruction;
- Exemption from special measures based solely on the nationality of origin;
- The right to respect for the refugee's personal status, as acquired by him/her in the country of origin;
- Respect for the right of ownership;
- The right of association;
- The right to have access to judicial proceedings and the right to be assisted by a lawyer and an interpreter;
- Ease of access to a professional activity, at least under the same conditions as those that the host State grants to nationals of foreign countries that have the most favourable status;
- The right to education;
- The right to health;
- The right to benefit from a certain amount of administrative assistance for the issuance of documents that are the responsibility of the authorities of their State of origin;
- The right not to be expelled or turned away other than for reasons of national defence or public security and, in this case, under the control of the judicial authority.

3.2. Refugees must, in particular, be afforded the following guarantees:

- **The right to an identity:** host States must register the refugees who are on their territory and provide a provisional identity document to those refugees who do not have one, after carrying out such verifications as are reasonably possible;
- **Registration of births:** in accordance with Article 24 of the International Covenant on Civil and Political Rights and Article 7 of the Convention on the Rights of the Child, all children of refugees who are born outside their country of origin, and in particular in a refugee centre, must be immediately registered, whether by the authority of the country in which the child is born, or by a supranational body, such as the HCR, in order to establish the child's identity, name and parentage. The purpose of this registration of the child is not to establish the child's nationality, which will still be defined by the applicable laws, and will not create a presumption of nationality;
- **Right to have access to minimum living conditions:** the receiving States, in liaison with international institutions, must provide refugees with reasonable means to access living conditions that ensure their basic needs are met, in particular in terms of food, accommodation, and access to drinking water and electricity, and provide a minimum standard of hygiene and ensure protection from the elements;

- 3.3. All refugees shall comply with the laws and regulations of the host State, as well as with the measures adopted to maintain public order. This must not, however, be used as a basis to make an improper application of the provisions concerning the grounds for denying the status of refugee.

#### 4. *Obligations of the States*

- 4.1. It shall be the responsibility of the States to ratify all the international and regional instruments concerning refugees, asylum-seekers, stateless and internally displaced persons and to adopt, if necessary, national legislation for their implementation; in all cases, the States should grant these persons all the rights conferred on them by said instruments, regardless of any ratification.
- 4.2. States shall guarantee an asylum system which allows anyone to apply for international protection; there shall be no limitation to this right, in particular, no system of quotas for admission or recognition of international protection.
- 4.3. It shall be the responsibility of the States and of the HCR to ensure that asylum seekers have the benefit of minimum living conditions, in particular in terms of food, housing, access to drinking water and electricity, minimum hygiene standards, and protection from the elements.
- 4.4. It shall also be the responsibility of the States to ensure that families are not separated and that the family unit is preserved.
- 4.5. Access to rights and to justice is a vital condition for the recognition of the aforementioned rights and must, as a result, be provided under all circumstances to asylum-seekers, refugees, stateless persons, and the beneficiaries of complementary protection systems; similarly, States must support and encourage lawyers, bar associations and professional lawyers' organisations as regards legal assistance to refugees and asylum seekers.
- 4.6. In accordance with the right to an effective remedy and the right to a fair hearing, asylum-seekers, if need be assisted by a lawyer, must be able to exercise the remedies provided for by national laws and, as necessary, be able to go before international courts and tribunals regarding all decisions that concern them. States must facilitate the implementation of systems of duty lawyers to enable asylum-seekers to have access to specially-trained lawyers at any time, including in refugee centres.
- 4.7. In accordance with the rules laid down by the United Nations Basic Principles on the Role of Lawyers adopted in 1990, known as the "Havana Principles", it is the responsibility of the States to set up financing mechanisms that make it possible to ensure allowances to be provided for legal aid to people without means. Consequently, these provisions must also be applied to asylum-seekers and refugees. The amounts allocated by the national authorities in the form of legal aid must, to the extent possible, cover all the needs of the persons who meet the eligibility conditions for this aid.

- 4.8. States must, under all circumstances seek by all means never to derogate from the application of international provisions when they provide for the possibility of such derogations. In the event of derogations, they must submit to control mechanisms and limit these derogations to what is strictly necessary, given the reasons for which they were applied.
- 4.9. Given the nature of the migratory crisis and the high density of migrant populations in certain States, the international community must implement solidarity mechanisms that make it possible to share equitably the pressure that results from the crisis, in order to assist the States that are the most affected in the management of that crisis; to this end, the States must honour the commitments made, in particular, in the New York Declaration, which was adopted in September 2016, and continue to work together in order to reflect on long-term solutions to the issue of refugees and migrants.

## 5. ***The responsibility of professional lawyers' organisations***

*It shall be the responsibility of bar associations and professional organisations:*

- 5.1. To take action with regard to their national authorities, with a view to the ratification of international instruments that have not yet been ratified and the adoption of national measures necessary for their implementation, when necessary;
- 5.2. To take all necessary actions with regard to the public authorities and international bodies to ensure that there are appropriate living conditions in refugee centres according to the above-mentioned criteria;
- 5.3. To take action with regard to their national and supranational authorities for the implementation of the above-mentioned legal aid, the assistance of an interpreter and legal assistance;
- 5.4. To actively participate in political debates on legislative initiatives concerning the status of refugees and asylum-seekers or the regulations on asylum and in so doing to act as the guardian of international standards;
- 5.5. To the extent possible, to ensure that lawyers are trained in refugee law;
- 5.6. To ensure that legal aid is managed transparently and does not generate excessive formalities for lawyers who provide legal aid;
- 5.7. To ensure compliance with ethics rules in the services to be provided to refugees;
- 5.8. To ensure the defence and protection of "front line" lawyers who may be subject to intimidation or retaliation by hostile or unfriendly regimes, in the areas where they act to defend refugee rights;
- 5.9. To cooperate with each other in the performance of these assignments, and to set up a global structure for consultation and cooperation.

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<sup>5</sup> See "[New York Declaration on Refugees and Migrants](#)" adopted by UN Member States on September 19, 2016.

## 6. **Adherence**

This affirmation of the Basic Principles on the Status of Refugees, known as the “Budapest Principles”, was adopted by the General Assembly of the Union Internationale des Avocats (UIA - International Association of Lawyers) held in Budapest on October 28, 2016. Being mindful of the need for as broad a consensus as possible among the legal profession throughout the world, the UIA proposes that all national and international lawyers’ organisations adhere thereto via a declaration. The list of the adherent organisations will be stated at the head of the Budapest Principles.