

Resolution 5/2002

REFUGEE PROCEDURES

GUIDELINES ON TEMPORARY PROTECTION

The 70th Conference of the International Law Association held in New Delhi, India, 2-6 April 2002:

RECALLING the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the 1948 Universal Declaration of Human Rights, the 1966 International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights as well as other relevant universal human rights instruments;

ALSO RECALLING that instruments for the protection of refugees such as the 1969 OAU Convention Governing Specific Aspects of the Refugee Problem in Africa and the 1984 Cartagena Declaration on Refugees as well as relevant regional human rights conventions provide guidance on a regional level;

TAKING NOTE of the Directive on minimum standards for giving temporary protection in the event of mass influx adopted by the Council of the European Union on 20 July 2001,

RECOGNIZING that in the case of large-scale influxes, not only refugees within the meaning of the 1951 Convention and 1967 Protocol Relating to the Status of Refugees but also other persons fleeing the indiscriminate effects of armed conflict or situations of generalized violence are in need of international protection as long as the dangers stemming from such situations last;

CONSIDERING that in cases of mass influx of persons in need of international protection individual refugee status determination may often not be possible or practical and that, therefore, temporary protection offers a pragmatic response to specific protection needs by enhancing the effectiveness of the principle of non-refoulement as well as the protection of those who, whether or not they are refugees within the meaning of the 1951 Convention and 1967 Protocol relating to the Status of Refugees, are forced to flee across international borders;

NOTING that beneficiaries of temporary protection may be refugees within the meaning of the 1951 Convention and 1967 Protocol relating to the Status of Refugees and that, therefore, the granting of temporary protection must not prejudice their entitlements under that Convention;

DESIRING to provide guidance for States and groups of States which, on an ad hoc basis or in a general manner, choose to resort to temporary protection as a measure to respond to exceptional situations of mass influx of persons in need of international protection;

Adopts the following guidelines:

Section I: General Provisions:

1. States shall implement temporary protection in a manner consistent with the framework of international refugee and human rights law preserving the institution of asylum, respecting their obligations regarding non-refoulement and ensuring that persons in need of international protection can enjoy such protection with full respect for their fundamental human rights. Temporary protection is without prejudice to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees.
2. Temporary protection as envisaged in these guidelines is only appropriate in situations of mass influx of persons seeking refuge abroad, whether or not these persons are refugees within the meaning of the 1951 Convention and 1967 Protocol Relating to the Status of

Refugees or persons who are not persecuted but flee the indiscriminate effects of armed conflict or situations of generalized violence. Temporary protection should be understood as an element within the framework of a more comprehensive approach to situations of mass influx, involving concerted efforts on the part of the international community (i) to assist States particularly affected by such an influx in a spirit of international solidarity and burden-sharing, and (ii) to achieve a solution to the conflict or strife in order to enable those who have fled to return in safety and dignity.

3. States shall, within the framework of international solidarity and burden-sharing, endeavor to take all necessary measures to assist, at their request, States which have temporarily admitted persons in search of international protection in large-scale influx situations, either by financial contributions or by accepting some of the temporarily admitted persons to their own territory. Within regional organizations such as the European Union, burden-sharing could include institutionalized mechanisms for the distribution of temporarily admitted persons among the member States.

Section II: Beneficiaries

4. Beneficiaries of temporary protection are persons who may or may not be refugees within the meaning of the 1951 Convention and 1967 Protocol Relating to the Status of Refugees. These include, in particular
 - (a) persons who have fled the indiscriminate effects of armed conflict and generalized violence;
 - (b) persons whose life, personal integrity or freedom is at risk as a result of systematic or widespread human rights violations.
5. States deciding to grant temporary protection in a particular situation of mass-influx shall, when making such decision, designate the specific groups of persons to whom such protection will apply. In such cases, consultation with UNHCR would be appropriate.

Section III: Access to Temporary Protection:

6. If States resort to the instrument of temporary protection, beneficiaries should be given access to their territory without discrimination. Beneficiaries shall be protected against refoulement.
7. States may suspend the examination of requests by temporarily protected persons for refugee status determination. They may coordinate temporary protection with refugee status determination procedures in one of the following ways: (i) granting temporary protection after a request for refugee status determination has been rejected; (ii) free choice between temporary protection or refugee status determination procedure; (iii) automatic determination of refugee status after a certain period of suspension (e.g. 2-3 years); or (iv) refugee status determination procedures at the end of the stay for those who claim to have a well-founded fear of persecution in case of return to the country of origin, or who are able to invoke compelling reasons arising out of previous persecution for refusing to avail themselves of the protection of the country of nationality. Total exclusion from an individual status determination procedure even at the end of temporary protection would contradict basic principles of international refugee law.
8. If it is apparent that the majority of people seeking protection or a specific category among them fall under the 1951 Convention and 1967 Protocol Relating to the Status of Refugees, group determination under that instrument should be considered.

Section IV: Standards for the Treatment of Temporarily Protected Persons

9. Beneficiaries of temporary protection should be provided with a legal status that authorizes them to remain in the country of refuge during the duration of such protection and receive the necessary documentation.
10. Beneficiaries of temporary protection shall be treated in accordance with human rights standards and, where applicable, the guarantees of the 1951 Convention Relating to the Status of Refugees. States should have due regard to the minimal guarantees set out in ExCom Conclusion No. 22(XXXII). In cases of prolonged stay, the rights of temporarily protected persons should be gradually improved.

In particular, every receiving State should respect and ensure the following rights of all persons to whom it chooses to accord temporary protection:

- a) the right to be protected against discrimination;
- b) the right to an adequate standard of living including adequate food, clothing and housing;
- c) the right to adequate health care,
- d) the right to adequate education,
- e) freedom of movement which, to the extent possible, should not be restricted;
- f) family reunification, in cases where families already existed in the country of origin and were separated due to circumstances surrounding the mass-influx;
- g) access to employment in cases of prolonged stay.

Section V: Ending Temporary Protection

11. States should, in coordination with UNHCR and other relevant international organizations and bodies, withdraw temporary protection when the situation in the country of origin has changed so fundamentally that it allows for the durable return of beneficiaries to their country of origin in safety and with due respect for their dignity.
12. States shall take the measures necessary to facilitate the voluntary return of persons enjoying temporary protection or whose temporary protection has ended, and to ensure that the decision of such persons is taken in full knowledge of the facts. Exploratory visits shall be allowed. In cases of enforced return after the end of temporary protection, compelling humanitarian reasons which may make return impossible or unreasonable shall be taken into account. The principle of non-refoulement as embodied in international law must be scrupulously observed in all circumstances.
13. As regards return in safety and with due respect for dignity of the persons concerned, the following elements should be taken into account:
 - possibility to return to the country of origin;
 - existence of conditions ensuring the physical and legal safety of returnees;
 - availability of an adequate infrastructure or of assistance guaranteeing the basic necessities of life, including food, shelter and basic sanitary and health facilities;
 - non-discrimination and respect for other fundamental human rights of returnees.
 - international monitoring of the safety of return.
14. If return to the former habitual place of residence is not possible, temporarily protected persons can only be reasonably expected to return to another part of the country if they will enjoy safety and dignity there.

15. If return remains impossible after a prolonged stay of several but not more than three years, States shall review the situation of temporarily protected persons with a view to identifying durable solutions such as resettlement or regular admission to the country of refuge.
16. States of origin shall cooperate in the repatriation and reintegration of beneficiaries of temporary protection.

Section V: Final Clause

17. The provisions of the present Resolution are without prejudice to the provisions enunciated in any relevant international or national instrument, and shall not be construed as restricting or derogating from any of those provisions.