

Internal

**Standard Operating Procedures (SOPs) for
Addressing *Refoulement* or Imminent Risk of
*Refoulement***

Division of International Protection
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1. Background

Cases of *refoulement*, or imminent risk of *refoulement*, of persons of concern to UNHCR pose some of the most difficult challenges that UNHCR Offices, including Headquarters, face on a regular basis. Responding to these challenges in an effective and consistent way is necessary to preserve both essential asylum space and UNHCR's institutional standing. In order to provide practical advice and a helpful menu of options to assist Offices in so doing, this document sets out standard operating procedures (SOPs) for internal communication and informed decision-making in such situations. It has been prepared against the background of recent critical protection incidents which revealed gaps in the UNHCR response.

Supporting governments to establish efficient processes and procedures for a full implementation of the principle of *non-refoulement* in practice belongs to UNHCR regular protection activities, as does the support of persons in need of international protection to be protected against *refoulement*. These SOPs are not intended to cover such regular day-to-day protection activities and/or UNHCR's longer-term, focused efforts to strengthen the respective asylum systems and to address systemic problems and weaknesses. They are intended, rather, to enhance the likelihood that UNHCR responds rapidly and in an appropriate and predictable way to serious, outstanding protection incidents.

These SOPs constitute internal procedural guidance. They are based on the understanding that the accountability for addressing *refoulement* rests in the first instance with the Country/Regional Office concerned. Regional Bureaux, the Division of International Protection (DIP), the Assistant High Commissioners (AHCs) and the High Commissioner also have responsibilities to guide and support field office efforts. The SOPs provide general guidance on responsibilities and communication lines to ensure predictable, timely and consistent actions in such situations. They also emphasize the value and necessity of reporting and recording such incidents, analysing trends, identifying gaps and guiding prioritization with respect to protection monitoring and interventions. The SOPs are intended to apply to rapidly evolving situations as well as to imminent threats over a longer period of time.

The SOPs are not meant to constitute a blueprint. They do not define the actual responses to be taken in each instance, as these will necessarily differ depending on the specific situation. The SOPs do require that appropriate and timely action is taken, and offer a menu of suggested actions which may be appropriate to respond to certain critical protection incidents.

Although the current SOPs focus on situations where there is a risk of *refoulement* or where *refoulement* has occurred, their use is potentially broader. Similar actions may also be used to enhance coordination of other critical protection incidents.¹

2. Definitions

2.1. *Refoulement*

The expulsion or return in any manner whatsoever of a refugee or of an asylum-seeker whose claim has not yet been decided to the frontiers of a territory where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership in a particular social group or political opinion or where s/he may face

¹ Such incidents may include, *inter alia*, threats to the life, torture or inhuman and degrading treatment of persons of concern; large-scale sexual or gender-based violence directed against persons of concern; forced return of internally displaced persons (IDPs) to situations where they face irreparable harm.

serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.²

2.2. Asylum-seekers

For the purpose of these SOPs, an “asylum-seeker” is a person who has applied for asylum and/or applied for refugee status and whose claim has not yet been decided in the final instance or a person who is in an asylum-seeking situation but who has not had an opportunity to lodge his/her application for asylum/refugee status. This may include people who do not receive information required to enable them to access the asylum procedure, or people who are unable to gain access to the procedure due to practical or other barriers, such as those which hinder many people held in detention in some countries. In countries which do not have an asylum system in place an asylum-seeker is a person who has applied to UNHCR for mandate recognition.

3. Scope

The SOPs specifically address the following situations:

- The return of a person granted refugee status or a complementary form of protection³ or who has been recognized as a refugee by UNHCR under its mandate to his/her country of origin or to another country where s/he would be at risk of persecution, or irreparable harm.
- The return of an asylum-seeker to his/her country of origin or to another country where s/he would be at risk of persecution, or irreparable harm.
- The return of a refugee or an asylum-seeker to a third country where s/he risks being sent back to his/her country of origin or to another country where s/he would be at risk of persecution, torture or irreparable harm. This situation is known as “chain-*refoulement*” or “indirect *refoulement*”.
- The non-admission of an asylum-seeker or refugee to a territory and the procedure at a point of entry (land, sea, airport) which may jeopardize his/her life or freedom. Non-admission may result from a general closure of borders for asylum-seekers. It also includes situations where asylum-seekers are sent back without having been provided any opportunity to have a refugee claim considered, or following a summary and inadequate procedure at a border entry point.
- Interception/push backs at sea, including on the high seas, which may jeopardize the life or freedom of persons of concern to UNHCR.
- Situations of *refoulement* of persons whose asylum applications were rejected or whose refugee or complementary protection status has been revoked or canceled are only included in the scope of the SOPs where it is apparent that the decision has not been taken in a fair procedure in line with international standards or is contrary to UNHCR’s advice.

These situations may involve an individual or a larger number of persons of concern. Where large numbers are involved, or if there are other or particular aggravating circumstances, the need to respond definitively may become more urgent and/or sensitive.

² The principle of *non-refoulement* under international refugee law is complemented by the *refoulement* prohibitions under international human rights law which prohibit the returning of a person to a territory where there is a real risk that s/he may face torture, cruel, inhuman or degrading treatment or punishment or other irreparable harm (article 3 of the Convention against Torture (CAT) and articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR)). In such situations, the SOPs would only apply to persons of concern to UNHCR.

³ The term ‘complementary forms of protection’ includes forms of protection provided by States on the basis of their national laws to persons who may not necessarily be 1951 Convention refugee but who nevertheless need international protection and who are commonly referred to as persons under UNHCR’s wider mandate.

Especially in situations of mixed movements, it may not be self-evident who is a person of concern to UNHCR. The SOPs may be usefully applied even if it has not yet been conclusively determined whether the persons affected are of concern to UNHCR, if there are indications, or it is likely that, some of them may be of concern to the Office.

The SOPs are meant to be used in situations where an incident of *refoulement* has occurred as well as in situations where there is an *imminent risk* that a *refoulement* may occur. Notwithstanding this, offices will, as part of their regular protection activities, also take action in situations where such a risk is not imminent. Depending on the circumstances of the case, offices may find the contents of the SOPs useful in these latter situations as well.

4. Basic Principles Governing UNHCR Interventions

- The prevention of *refoulement* is a core protection activity which requires the priority attention of all UNHCR offices. Each Country/Regional Office has the responsibility to take all reasonable and feasible measures to prevent *refoulement* and, in the event it occurs, to respond appropriately. The focus of UNHCR's activities is normally on the prevention of *refoulement* rather than on reacting to it (see following sections). Offices are responsible for collecting and verifying information and for properly documenting interventions made to prevent or respond to incidents of *refoulement*.
- UNHCR never, under any circumstances, supports, assists or facilitates actions by others that would lead to *refoulement* or would compromise the Office's ability to uphold the principle of *non-refoulement*.
- In pursuing responses and solutions, UNHCR acts on the basis that the primary responsibility for protection of the affected persons is that of the concerned State/s. UNHCR does not assume functions that are more appropriately performed by States and resists attempts by States to inappropriately transfer their responsibilities to UNHCR. Interventions by UNHCR are always made in a way that encourages States to assume their responsibilities.
- Where *refoulement* is a possibility, Country/Regional Offices aim to establish with States concerned a clear understanding of protection needs at stake and the respective roles and commitments of all parties as soon as possible. Whenever possible, such understandings are confirmed through a written exchange. If a State does not wish to confirm in writing verbal agreements reached, other possibilities are routinely sought to document them, for example, by sending to the parties a written communication documenting UNHCR's understanding of what has been agreed and any areas requiring further discussion. If a State does not wish to reach a solution consistent with its obligations, UNHCR clarifies in writing its position and related requests.
- In appropriate circumstances the media is mobilized as an additional protection tool to avoid or respond to *refoulement*.

5. Options for Intervention

The following chapter canvasses a variety of options for interventions which could usefully be taken by UNHCR. The list is not exhaustive and may well be complemented by additional activities. The suggested steps may be used in parallel, or sequentially as a progressive ladder of options, depending on the circumstances of the case. However, whichever strategy is adopted, the question of how best to use and manage the media will be an essential consideration.

The level within Headquarters at which additional action needs to be taken and the kind of intervention at the Headquarters level will depend on the situation in each case. Such action is based on an analysis of who is best placed to make these interventions; which interventions are likely to be the most effective; whether there are precedents of such interventions in the past and with what outcomes; and whether these interventions should be formal or informal, public or non-public ones. Due consideration is always given to the appropriate nature and timing of any intervention by the High Commissioner, in order to ensure its maximum effectiveness.

5.1. Working with the authorities

For the **prevention of *refoulement***, some or all of the following actions may be appropriate:

- Find out the reasons behind the government's concern and, together with the government, seek ways/measures to address those concerns while avoiding *refoulement*;
- request formal, written assurances that incidents of *refoulement* will not take place; where assurances are given only informally, communicate to the authorities in writing the Office's understanding of the informal assurances received;
- request that specific preventive administrative/executive action be taken;
- explore possible remedies;
- request that competent authorities reiterate publicly their commitment to protection principles;
- offer operational protection support to prevent incidents of *refoulement*;
- offer the possibility of emergency resettlement;
- express concern to the authorities and stress the potential consequences of *refoulement* of the persons of concern, and forewarn of reactions to be expected from UNHCR/other stakeholders.

Where ***refoulement* has occurred**, the following actions may be considered:

- express regret and/or protest the *refoulement* to the authorities;
- request assurances that similar incidents will not take place in future;
- request that competent authorities reiterate publicly their commitment to protection principles;
- request a joint or independent inquiry to determine the causes of the *refoulement*, the sequence of events and actions/communications which could have prevented it, and share/discuss the conclusions with the competent authorities;
- request a high-level, official mission to follow up on the incident.

Depending on the urgency and seriousness of the case, the communication with the government normally takes one of the following forms:

- letter from Country/Regional Representative;
- letter from Bureau Director and/or DIP Director;
- Note Verbale issued at Field or Headquarters level;
- call or letter from AHC (P);
- call or letter from the High Commissioner (at PM level in Geneva or in host country).

5.2. Court interventions⁴

- explore the availability of effective interim measures or appeal possibilities at national, regional or international level (relevant to the prevention of or redress for *refoulement*);
- initiate a court intervention either through a formal UNHCR intervention as a party to legal proceedings, or informal support or input to the court or other body, lawyer or applicant, associated with an action to prevent or seek redress for removal.⁵

5.3. Working with partners

- request support from other protection actors (e.g. OHCHR, Special Rapporteurs) or external stakeholders (e.g. third countries, international and national NGOs, etc.).

5.4. Consequences on UNHCR operation

- suspend the operation or, at least, suspend some services;
- recall UNHCR Country Representative.

5.5. Media Interventions

In all situations, analyzing and balancing the risks and benefits of publicly taking positions on *refoulement*-related incidents form an important part of the response. Possible activities in this regard include the following:

- issue a public statement aimed at preventing *refoulement*;
- express regret or protest the *refoulement* in the media when it has occurred (where possible the government is informed beforehand about UNHCR's intention to go public);
- anticipate the different issues and questions that may come up in the media and develop an 'if-asked' media line;
- monitor the media, including local language media, to gather information on the incident and on the national agenda as well as on how UNHCR is portrayed;
- react objectively to criticism of UNHCR.

Depending on the case, local, regional or international media could be addressed sequentially or simultaneously by UNHCR at different levels (Representative, Regional Representative, UNHCR spokesperson in Geneva, DIP Director, AHC (Protection), High Commissioner).

⁴ Legal action or proceeding in a national, regional or international judicial (or, where relevant and for the purposes of this document only, administrative) body to prevent, challenge or seek redress for a decision or planned decision to remove or other steps in connection with removal of a person which could amount to *refoulement*.

⁵ See also IOM/49-FOM/52/2002 where a formal UNHCR court intervention is considered.

5.6. Follow up in country of origin or transit if refoulement has occurred⁶

- immediately inform UNHCR in the country of origin or transit of the *refoulement*;
- explore potential follow-up actions to be taken in the country of origin, including but not limited to
 - monitoring ports and border areas for arrivals;
 - visiting detention centres to speak with those *refouled* who may have been detained;
 - alerting sister agencies and partners for monitoring purposes;
 - offering emergency resettlement;
- seek support of other countries (via capitals, Embassies or Missions) to intervene with the country of origin.

6. Factors relevant to the level and kind of intervention

UNHCR's responses to such incidents vary depending on a number of factors, including the following:

- where the incident takes place (on the high seas, at the border, within the territory) and the status of the person(s) of concern (recognized refugees, asylum-seekers, immigration status);
- whether the Office is trying to prevent the *refoulement* of persons of concern or whether it is reacting to an incident which has already occurred;
- the perceived seriousness of the consequences for the *refouled* persons;
- the quality of the information received; for example, UNHCR will not normally intervene regarding situations which are not clear or with respect to incidents which are unconfirmed, beyond seeking clarification about what has happened or what is happening;
- the existence of previous similar or comparable protection incidents in the country;
- whether the government in question has been informed in advance about the potential protection consequences of the protection incident;
- whether the incident has been caused by government action or failure to act;
- whether the protection incident has been directly caused by a decision taken by authorities or whether it may be the result of the action or non-action of an individual official which is not endorsed by the government as such;
- the availability of legal and other forms of advice, support and representation to the person and/or of legal remedies, and/or any obstacles to their exercise;
- existing mitigating or aggravating circumstances;
- whether the situation is known to the media;
- whether the incident occurred in a State party to the Convention, or in a non-State party;
- whether UNHCR has a presence in the country.

7. In-house information sharing, responsibilities and record-keeping

Keeping careful and complete records of the actions taken and the developments which occur during these often fast-moving events is crucial, not only for later analysis and development of more effective responses in future, but also for reporting on such incidents and explaining the rationale behind UNHCR's actions. The head of the

⁶ Despite their *refoulement*, persons who have been recognized as refugees remain persons of UNHCR's concern. *Refoulement* cannot trigger the cessation of their refugee status. See EC/47/SC/CRP.30 of 30 May 1997, [Note on the Cessation Clauses](#), paragraph 12.

Country/Regional Office assigns a responsible staff member to keep a chronological record of the events as they unfold.

Annex I outlines the lines of communication and responsibilities of UNHCR Country Offices and Headquarters. It is structured around the following three steps:

- Step 1: The primary role and responsibility of a Country/Regional Office to undertake all possible actions to prevent *refoulement* or to respond to acts of *refoulement*;
- Step 2: The role and responsibility of Headquarters to provide timely guidance and support to the Country/Regional Office;
- Step 3: Record-keeping and follow up actions.

Division of International Protection (DIP)
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Annex I - Procedure

Step 1: The primary responsibility of a Country/Regional Office to undertake all possible actions to prevent refoulement or to respond to acts of refoulement

Country/Regional Offices report without delay to Headquarters all instances of *refoulement* or risks thereof and continue to keep Headquarters informed about developments throughout the incident. The communication is normally sent simultaneously to both the responsible Bureau Director and the DIP Director. The responsible Desk Officer, the Bureau's Regional Legal Advisors as well as the Executive Assistants of the competent Bureau Director and of the DIP Director are copied on such messages.

The Representative of the Country/Regional Office ensures that all relevant staff in the operation, including the national and regional PI officers, and partners, as appropriate, are kept continuously informed about the incident as developments evolve.

Communication with respect to such incidents usually includes information on:

- the reporting office;
- the type of protection incident;
- date and source of the information received by the office;
- details of the affected persons of concern (age, gender, family composition, etc);
- the facts related to the incident, including actions already taken and their results;
- additional contextual information;
- relevant actions taken or proposed by others (e.g. lawyers, NGOs, IGOs);
- recommended additional actions;
- details of the focal points handling the incident; and
- the relevant attachments.

This information is routinely gathered from all accessible sources, including media reports. The Country/Regional Offices do their best to ensure that, to the extent possible, the information relayed is accurate and has been verified. The sources of the information, whether it has been confirmed by another source, and/or if it could not be verified, is also communicated at the same time.

Step 2: The responsibility of Headquarters to provide timely guidance and support to the Country/Regional Office

Upon being informed by the Country/Regional Office, the relevant Bureau Director (or any person designated by him/her to this effect)⁷ and the DIP Director (or any person designated by him/her to this effect)⁸ confer immediately, or at the latest within a period of 24 hours following the receipt of the news of the *refoulement* or risk thereof, and discuss, also with the involvement of DER/Communication Service, appropriate additional responses and strategies for addressing the incident.

The involvement of the Executive Office in protection incidents varies, depending on the complexity of the incident. Where there are strategic geo-political considerations, or where national security issues are at stake, the incidents are almost always to be considered complex. Other examples of complex incidents include those where several States are involved, where State responsibilities are unclear, or the profile of the person/s of concern is particularly sensitive or complicated. The relevant Bureau Director and the DIP Director jointly determine whether the situation is complex and therefore Executive Office participation in the response is necessary.

Non-Complex Incidents

The relevant Bureau Director and the DIP Director agree quickly on the appropriate additional measures to be taken. The Bureau Director informs the Country/Regional Office accordingly. The Bureau Director also informs both Assistant High Commissioners (AHCs) about the incident and the action taken.

The relevant Bureau and DIP support the Country/Regional Office in the development of a strategy which is endorsed by both. Any press communiqué, Question & Answer (Q&A) or other media activity on the incident is jointly reviewed by the relevant Bureau Director and DIP. The AHC (Protection) will inform the High Commissioner where necessary.

Complex Incidents

Complex incidents, or situations where an agreement cannot be reached between the relevant Bureau Director and the DIP Director, are jointly reported orally or in writing to both AHCs (with a copy to their respective Executive Assistants).

The AHCs will consult with the HC. Ideally the recommended course of action is determined and communicated within 24 hours, unless additional information is required by the relevant Country/Regional Office, the relevant Bureau Director or the DIP Director.

Following the decision taken by the AHCs/HC, the relevant Bureau Director communicates it without delay to the competent Country/Regional Office. Any press communiqué, Q & A or other media support activity on the incident is first cleared by the relevant Bureau Director and DIP.

The Bureau Director ensures that proper advice, guidance and support is provided to the field throughout the incident. S/he will also be responsible to take decisions which cannot await a response by the Executive Office. The Bureau will act in close coordination with DIP and other Bureaux, should the incident involve more than one Bureau.

⁷ Hereafter "the Bureau Director" shall mean the Director or his or her designate.

⁸ Hereafter "the DIP Director" shall mean the Director or his or her designate.

Step 3: Record-keeping and Follow-Up Actions

It is the responsibility of the relevant Bureau Director to collect the relevant information and to maintain an electronic log of the chronology of events for each incident in close collaboration with DIP. This log will be fed by the focal point in the operation concerned, who sends timely reports to the Bureau for collation. The Bureau incorporates information on the final impact of UNHCR protection interventions and draws lessons from each incident to determine what subsequent protection interventions/activities might be required to prevent repetition. For this purpose, lessons learned discussions allowing for internal review as well as exchange with the Government and other partners may be convened by the Country or the Regional Office. For complex incidents involving participation of the Executive Office, the AHCs will convene a lessons learned discussion with all relevant units.

DIP (Pillar I) keeps track of all incidents in a designated part of the internal version of Refworld and records the impacts/outcomes of UNHCR interventions for external reporting purposes and protection analysis. Information can be sent to refworld@unhcr.org, with "*refoulement* intervention" in the topic line of the message.