



Dirección General de Migración y Extranjería

Protocolo de Actuación para Situaciones Migratorias Especiales



2015



ACRONYMS

UNHCR: United Nations High Commissioner for Refugees. CCSS: Costa

Rican Social Security Fund.

DGME: General Directorate of Migration and Alien

Affairs. CNE: National Emergency Commission

CONATT: National Coalition against the Smuggling of Migrants and Trafficking in

Persons. ERI: Immediate Response Team.

PF: Public Force

INAMU: National Women's Institute

OAPVD: Office for the Attention and Protection of Victims of

Crime. PANI: National Child Welfare Agency.

PME: Person under age.

PPM: Professional Migration Police.

RH: Humanitarian Reasons.

SME: Special Migratory Situation.

ST: Technical Secretariat.

TIM: Smuggling of Migrants.

TdP: Trafficking in Persons.

VAW: Violence against Women.

VTdP: Victim of Trafficking in

Persons.

UEPME: Special Unit for Minors.

DEFINITIONS

Transboundary displacement induced by natural disasters: Occurs when societies are unable to cope with the damage and loss of material, environmental and human lives caused by natural events or phenomena such as earthquakes, tsunamis, floods, deforestation, environmental pollution, land displacements, among others.

Epidemiology is the study of the distribution and determinants of health-related states or events (particularly diseases) and the application of these studies to the control of diseases and other health problems. There are various methods for conducting epidemiological research: surveillance and descriptive studies can be used to analyze distribution, and analytical studies can be used to look at determinants¹.

Best Interest of the Minor: in strict compliance with the provisions of the United Nations Convention on the Rights of the Child and the Code of Childhood and Adolescence, in any public or private action involving a minor, the best interest of the minor must prevail, which guarantees respect for his or her rights with adequate attention and protection. The determination of the best interest is based on the condition of active subject of the rights and responsibilities of the minor, his/her age, degree of maturity, capacity for discernment and other personal conditions, the socioeconomic conditions where he/she lives and the correspondence between individual and social interest. The Patronato Nacional de la Infancia is responsible for the care, protection and assistance of minors, in accordance with its constitutional mandate².

Primary care measures: immediate actions aimed at providing care and protection to a trafficked person and referring specifically to the assistance to be provided in basic needs, safe accommodation, comprehensive health care, legal advice and physical protection measures.³

Castaway: A person, whether military or civilian, who finds himself in distress at sea or in other waters as a result of an accident affecting him or the vessel or aircraft carrying him. He shall continue to be considered a castaway during his salvage, until he acquires another status⁴.

¹ World Health Organization. Epidemiology World Health Organization. Retrieved from www.who.int/topics/epidemiology/es.

² Article 2, paragraph g) of Law No. 9095. Law against Trafficking in Persons and Creation of the National Coalition against the Smuggling of Migrants and Trafficking in Persons.

³ Article 7, paragraph n) of Law No. 9095. Law against Trafficking in Persons and Creation of the National Coalition against the Smuggling of Migrants and Trafficking in Persons.

⁴ United Nations. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). Article 8. At: <http://www2.ohchr.org/spanish/law/protocolo1.htm>. Accessed February 14, 2014.

Smuggling of Migrants: The facilitation of the illegal entry of a person into a State Party of which such person is not a national or permanent resident for the purpose of obtaining, directly or indirectly, a financial or other benefit. ⁵

Refugee (a): (...) persons who: Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, gender, membership of a particular group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of such country. ⁶

Trafficking in Persons: Shall mean the promotion, facilitation or favoring of the entry into or exit from the country or the movement, within the national territory, of persons of any sex to perform one or more acts of prostitution or to subject them to exploitation or servitude, whether sexual or labor, slavery or practices similar to slavery, forced labor or services, servile marriage, forced begging, illicit extraction of organs or irregular adoption⁷.

Victim of Trafficking in Persons: a person who has suffered harm, including physical or mental injury, emotional suffering, financial loss or substantial impairment of fundamental rights, as a result of the crime of trafficking in persons and related activities, whether domestic or foreign. ⁸

Preliminary identification of profiles: ^{9Indicators:} External and internal (emotional and/or health) characteristics and conditions that some people present that show a specific condition of vulnerability and that allow them to be differentiated from other people that make up the migratory populations in the region.

Referral mechanisms: Intra- and inter-institutional referral procedure established or protocolized for the care and protection of the person by the corresponding institution according to his/her specific needs.

Critical Protection and Assistance Pathway: A process that includes screening, addressing immediate needs, preliminary profile identification, referral, comprehensive assistance and protection, including reaching a durable solution.

⁵ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime, Article 3.

⁶ Article 106, end of the first paragraph and paragraph 1) of the General Law of Migration and Foreigners. Law No. 8764.

⁷ Article 5 of Law No. 9095. Law against Trafficking in Persons and Creation of the National Coalition against the Smuggling of Migrants and Trafficking in Persons.

⁸ Article 7 paragraph a) of Law No. 9095. Law against Trafficking in Persons and Creation of the National Coalition against the Smuggling of Migrants and Trafficking in Persons.

⁹ Regional Guidelines for the Preliminary Identification of Profiles and Referral Mechanisms for Migrant Populations in the Americas Condition of Vulnerability. Regional Conference on Regional Migration. (2013).



Risk assessment: A process to measure the probability of the occurrence of harm to the person's integrity (life, health, safety and/or exercise of rights). The appropriate process will ensure that she receives adequate protection and helps her to develop a plan to preserve her safety and integrity in the future and that of any relatives or other dependents (sons and daughters, extended family, etc.).

Conditions of vulnerability: Refers to those social, cultural, economic, political and personal situations that place people in conditions of greater risk of violation of their human rights.

For the purposes of this Protocol, the following populations are considered particularly vulnerable (this list is not exhaustive):

- Unaccompanied and/or separated foreign children and adolescents.
- Foreign children and adolescents with other conditions of vulnerability (victims of sexual violence, teenage pregnancy, in conditions of exploitation).
- Victims of human trafficking.
- Refugees and applicants for refugee status.
- Victims of violence and crimes during migratory transit.
- Women victims of sexual or gender-based violence, pregnant women traveling alone, especially adolescents.





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1. FRAME OF REFERENCE

BACKGROUND

Since the entry into force of the new General Law on Migration and Aliens, Law No. 8764, the General Directorate of Migration and Aliens has been concerned with the regularization, stay and departure of foreigners in the country and especially to ensure respect for the human rights of migrants regardless of their immigration status.

In order to provide a timely and comprehensive approach, this Protocol establishes the general guidelines regarding the institutional operation mechanisms to be followed by the General Directorate of Immigration and Alien Affairs on special migratory situations that require immediate intervention by the various specialized Units.

The first step towards an effective protection of special migratory situations is the identification of those persons or groups of persons who, due to their characteristics and/or conditions, are considered vulnerable. Once identified, it is possible to activate protection and assistance procedures. However, it is common that people with special conditions of vulnerability are not identified as such and therefore do not receive differentiated treatment. On the contrary, they are often re-victimized through the indiscriminate application of procedures such as detention, rejection, refoulement or deportation.

For such purposes, the General Directorate of Immigration and Foreigners created its specialized coordination and advisory team called the Special Migration Situations Team (ESME).

Among the situations to be addressed in this Protocol are: Refuge, Smuggling of Migrants, Trafficking in Persons, Minors, Shipwrecked Persons, Natural Disasters, Violence against Women, Epidemiology, referrals of cases by the Office for the Attention and Protection of Victims of Crime, the National Institute for Women or the Ombudsman's Office, or any special migratory situation of an urgent or humanitarian nature.

Immediate intervention by the various specialized units should be understood as the generation of coordinated actions according to their mandate and competence, in accordance with the application of the national and international regulations in force, basing their actions on the guiding approach to human rights, attending to and referring cases immediately.



Scope of Application

The ESME Protocol will be applied, without exception, by all officials working in the various offices of the Directorate General of Immigration and Aliens throughout the country, for the assessment of special immigration situations, for this, the ESME Team may assess, request assistance and coordinate with any other unit of the DGME, as well as perform interagency coordination.

Through the corresponding processes, institutional capacities will be strengthened to detect situations in which immediate humanitarian intervention, detection and referral of special migratory situations are appropriate. Any other migratory situation outside the scope of this ESME Action Protocol will be directed to the corresponding institutional entity in accordance with the mandate of the General Directorate through the provisions of Law No. 8764.

2. OBJECTIVE OF THE ESME PROTOCOL

- Define the procedures and mechanisms for the identification of profiles and provide an assertive resolution, referral and follow-up of the different migratory situations involving the migrant population in situations of vulnerability in cases such as: Refuge, Smuggling of Migrants, Trafficking in Persons, Minors, Shipwrecked Persons, Natural Disasters, Violence against Women, Epidemiology, Referrals from the Office of Attention and Protection to the Victims of Crime or from the Ombudsman's Office, any related humanitarian matter or of an urgent nature.

3. INTEGRATION.

The ESME shall be composed of one representative and two alternates from each of the following Units of the Directorate General for Migration and Aliens:

- Operational and Regional Technical Directorate: Specifically, Migration Management, Alien Management and Regional Coordination.
- Professional Police Directorate for Migration and Foreigners: Specifically, Management of Investigation, Analysis and Police Intelligence, Management of Apprehension Centers, Regional Police Management, Operational Management.
- Directorate of Integration and Human Development
- Management of Smuggling of Migrants and Trafficking in Persons (which in turn serves as the Technical Secretariat of ESME).
- Shelter Subprocess.



The ESME will be directed by the Director of the DGME, from where the necessary operational and administrative coordination will be carried out to guarantee the effective functioning of the Team.

As a preliminary mechanism for profile identification and reference, the ESME Interview Guide (Annex N° 1) has been created, which must be applied by any official who deals with a special migratory situation mentioned above in the Objective, as well as any other situation that is considered relevant to analyze. The report of the analyzed case must be sent to the ESME Technical Secretariat with a copy of the applied interview and the necessary documentation for the conformation of the file, for this purpose the e-mail esme@migracion.go.cr is made available.

The ESME will reinforce procedures through systematic training, supervision, follow-up and coordination processes, and may issue necessary recommendations on any specific situation as long as it is in line with the mandate and nature of this Protocol.

The ESME shall coordinate with the Patronato Nacional de la Infancia to address all cases involving minors, as well as inform the Commission for Children and Adolescents. The accompaniment of minors in their preference will be provided by the Specialized Unit for Minors (UEPME) of the General Directorate of Migration and Foreigners.

When necessary, it may coordinate with governmental and non-governmental institutions, with the Immediate Response Team, as well as any other instance that allows guaranteeing the rights of the persons intervened by the Team.

The ESME's member units must be present in every process in accordance with their competencies and responsibilities. Likewise, the General Directorate of Migration and Aliens will provide the necessary resources and acknowledgements for availability to carry out the actions entrusted.

4. ETHICAL PERFORMANCE OF ESME MEMBERS.

ESME representatives shall conduct their actions at all times in consideration of the following ethical principles.

- Promote and respect the protection of human rights and ensure that we are not complicit in any form of human rights abuse.



- Respect all people equally without any distinction of ethnicity, gender, religion, nationality, language, marital status, sexual orientation, diverse abilities, political conviction or any other distinction.
- Safeguard and make responsible use of the information to which they have access in the performance of their duties, always respecting the principle of confidentiality. This includes contacts with the media, among others.
- Prevent, counteract and combat any exploitation and abuse of people.
- To ensure the protection of the life, physical and sexual integrity, freedom and safety of the persons served.
- Take into account the best interests of SMEs, as well as all their fundamental rights as set forth in international and national regulations.
- Respect the principle of proportionality and necessity.
- Always respect the principle of non-revictimization.
- Always provide clear, accurate information in understandable language.
- To ensure the physical and emotional safety of persons to whom services are provided, persons close to them who may be at risk, as well as service providers and service providers themselves.

5. GENERAL FUNCTIONS OF THE ESME.

The following will be the general functions of the ESME:

- Define the institutional referral mechanisms on the care of special migratory situations such as: Refuge, Smuggling of Migrants, Trafficking in Persons, Minors, Shipwrecked, Natural Disasters, Violence against Women, Epidemiology, Referrals from the Office of Care and Protection of Victims of Crime or the Ombudsman, as well as any other situation that at the discretion of the ESME should be assessed, according to the mandate of the specialized units that comprise it.
- Attend each of the meetings held.
- Generate the different assessment tools (interview guides, lists of indicators, informative and preventive material, statistics, among others) for special situations.
- Implement through training the proper application of detection and referral mechanisms, as well as their follow-up.
- Activate national and regional protection systems when necessary.
- Receive and respond in a coordinated manner to all special migratory situations alerted, in accordance with the mandate and competence of each of the agencies that make up the group.



- Assess possible special migratory situations, through a process of applying indicators.
- Follow up on the cases dealt with by ESME.
- Issue the necessary recommendations to the head of the DGME on the cases assessed.
- Create and follow up on the Annual Operating Plan.
- The ESME will coordinate the corresponding comprehensive protection measures with the due support of the General Directorate of Migration and Aliens, in accordance with the regulations in force and in full consideration of the Human Rights approach and according to the particular case.
- Execute any other action corresponding to the mandate of the ESME Units.

6. AVAILABILITY OF THE MEMBERS OF THE ESME.

The Directorate of Immigration and Alien Affairs shall provide the ESME with the necessary mobile devices to allow immediate communication by its representatives, who when absent, will be their deputies who will be responsible for the mobile device, as well as a vehicle with its respective driver to generate the necessary travel according to the needs of the persons involved in the alleged situations established in this Protocol, for which it will also be necessary the company of the Directorate of the PPM to provide custody and security to officials who deal with the case.

According to their institutional possibilities, the ESME member units shall organize their own roles of availability to respond to all possible special migratory situations. For such purposes, the General Directorate of Immigration and Aliens through the appropriate bodies will be responsible for conducting the relevant studies in order to provide the necessary resources as well as recognition in terms of availability.

The availability roles must be made known to the General Directorate as the entity responsible for the Team, who, through the TS, will make the official communications via e-mail to the units that make up the ESME so that they can generate the corresponding coordination.

The persons who are within the availability role must respond within a maximum period of one hour to the alert that may be triggered by any of the ESME's component entities, or by any of the institution's Regional Offices. In the event that the presence of any of the ESME members is required in any regional office, they must report within a maximum period of 24 hours.



The ESME will meet at least once a month to follow up and monitor general actions and strategies, when the Directorate General so decides, or when a special approach is required at the request of any of its member units.

7. ESME HEADQUARTERS.

The ESME will be headquartered at the central offices of the General Directorate of Migration and Foreigners, and its TS will be located in the Management of Smuggling of Migrants and Trafficking in Persons.

The General Directorate of Migration and Aliens will provide the physical space and logistical support necessary for the corresponding sessions, as well as for the application of interviews. Eventually the ESME will have to travel to the different regions requiring the corresponding support from the Directorate of the Professional Migration Police.

The DGME will be responsible for updating the members of the ESME Team on special migratory situations, so that it can carry out the approaches with the necessary knowledge and experience, in compliance with national and international regulations.

The highest authority of the DGME will be the liaison with the heads of other governmental and non-governmental institutions for the creation of articulation mechanisms to adequately address EMS.

8. ESME TECHNICAL SECRETARIAT

The ESME Technical Secretariat shall be responsible for administrative and secretarial coordination, with the following functions:

- Document in minutes the details of the ordinary and extraordinary sessions of the ESME.
- Collect, record and update information, in files, on each event reported using the corresponding instruments and database, for which the different offices must immediately send the corresponding information.
- Follow up on the activation of immediate protection measures.
- To carry out the calls and activation of the Team.
- Coordinate with other national and regional governmental and non-governmental agencies when necessary.
- Coordinate with the Communication Sub-process for official communications.



- Custody and updating of ESME case files.
- Inform by means of the respective special communiqués the roles of availability, as well as the means by which the contacts between the ESME instances may be made.
- Keep the highest authority of the DGME informed of the different EMS attended.
- Maintain the information centralized in its TS, under the respective principle of confidentiality.

9. OF THE RESPONSIBILITIES OF EACH OF THE UNITS THAT MAKE UP THE ESME.

9.1 MANAGEMENT OF FOREIGNERS.

- Report of Special Migratory Situations detected.
- Apply the ESME Interview Guide and send a copy to the TS.
- To provide technical advice on the Alien Regulations.
- Create agile routes for the documentation of urgent or special cases.
- Expedited verification of the judicial record.
- Submit information to the TS for the ESME case database.
- Train their personnel in the proper use of this Protocol, as well as the ESME Interview Guide and the ESME Case Database Template.

9.2 MIGRATION MANAGEMENT:

- Special Migratory Situations Report.
- Coordination with consulates.
- Apply the ESME Interview Guide and send a copy to the TS.
- Submit information to the TS for the ESME case database.
- Liaise with the Commission for Children and Adolescents, or with the Tripartite Commission when necessary.
- Train their personnel in the proper use of this Protocol, as well as the ESME Interview Guide and the ESME Case Database Template.

9.3 MANAGEMENT OF MIGRANT SMUGGLING AND HUMAN TRAFFICKING.

- In the area of TIM and Human Trafficking, there will be active coordination with the Directorate of the Professional Migration Police.
- Apply the ESME Interview Guide and send a copy to the TS.



- Apply the care and protection measures agreed upon within the Model of Comprehensive Care for Survivors and Victims of Trafficking in Persons.
- Activate the Immediate Response Team (ERI) if appropriate.
- Provide support in the various operations for the detection, prevention and rescue of persons involved in special migratory situations.
- Detection and referral of cases of ToP or EMS.
- Coordinate with DGME agencies, national and international governmental and non-governmental organizations and the corresponding judicial authorities.
- To be responsible for the ESME's TS.
- Custody of ESME case files.
- Train their personnel in the proper use of this Protocol, as well as the ESME Interview Guide and the ESME Case Database Template.

9.4 DIRECTION OF THE PROFESSIONAL MIGRATION POLICE:

- Carry out intelligence work in any special migratory situation, safeguarding at all times the integrity of the person and in full compliance with the Human Rights approach.
- Apply the ESME Interview Guide and send a copy to the TS.
- To develop the pertinent actions regarding the care and protection of persons referred for special migratory situations in accordance with its mandate.
- Coordinate with the relevant DGME agencies or the corresponding judicial authorities.
- To be liaison of the UEPME for the approach of PME.
- Coordinate and participate in control, prevention and rescue operations of possible victims of any of the special migratory situations.
- To guide actions regarding the dismantling of human trafficking and migrant smuggling networks in coordination with the corresponding judicial and immigration units and authorities.
- Prepare reports and send them to the ESME TS as well as the Interview Guides, necessary documentation for the ESME case file.
- Coordinate with governmental and non-governmental institutions for the adequate attention of cases.
- Apply in its different units the appropriate assessment of indicators when a possible special migratory situation is suspected.



- Provide primary care measures for any special migratory situation.
- Actively participate in each of the activities related to the ESME's mandate.
- Train police officers in the proper use of this Protocol, as well as the ESME Interview Guide and the ESME Case Database Template.

9.4.1 TEMPORARY HOLDING CENTERS FOR ALIENS IN IRREGULAR STATUS:

- To provide, to the extent possible, food to people who are considered ESME cases.
- Detection and referral of Special Migratory Situations.
- Provide humanitarian stay when required, but not as detainees.
- Medical assistance.
- Conduct interviews using the ESME Interview Guide and send a copy to the TS.
- Perform reports for referral of cases.
- Coordinate with consulates when necessary.
- Submit information to the TS for the ESME case database.
- Train your staff in the proper use of this Protocol, as well as the ESME Interview Guide and the ESME Case Database Template.
- Actively participate in each of the activities related to the ESME's mandate.
- Immediately notify the TS when the entry of apprehended persons in vulnerable conditions occurs.

9.5 SHELTER SUB-PROCESS:

- Provide due attention to any special migratory situation referred by the ESME or any other instance of the DGME, especially in matters of refuge.
- Apply the ESME Interview Guide and send a copy to the TS.
- Submit information to the TS for the ESME case database.
- Actively participate in each of the activities related to the ESME's mandate.
- Participate when requested by the Directorate of the PPM in the various operations to initiate the processes of assessment for refugee status.
- Case detection and referral.
- Train your staff in the proper use of this Protocol, as well as the ESME Interview Guide and the ESME Case Database Template.

10. Detection of Special Migratory Situations



It starts from the moment the officer has the first contact with the person.

It is important to pay special attention to all persons evidencing one or more of the following conditions:

- ✓ Expressly requesting assistance or protection.
- ✓ Foreign children and adolescents (NNA), especially those unaccompanied or separated.
- ✓ Who have a physical or mental disability and are unaccompanied.
- ✓ With evident signs of damage to their physical health (dehydration, malnutrition, extreme weakness, bruises, blows, fractures, mutilations, etc.).
- ✓ Evidencing altered emotional states or shock: disorientation, fear, extreme anxiety, crying.
- ✓ Suspected of being under the influence of any drug or medication.
- ✓ People of extra-continental origin in conditions of evident vulnerability or with whom it is not possible to communicate fluently.
- ✓ Suspected of being controlled or monitored by the escort, including situations where communication is mediated by a third party.
- ✓ Show signs or express that you do not know what country you are in.
- ✓ They do not have their documents and indicate that someone else has them.

Special migratory situations will be dealt with according to the mandate of each of the Units within the DGME and in consideration of the present protocol.

10.1. Application of an identification interview to determine the profile:

In order to determine the existence of a vulnerability profile, the next step is to conduct an individual interview for which the ESME Interview Guide can be used.

When determining the profiles it is necessary to take into account that they are not mutually exclusive. Individuals may qualify for several profiles simultaneously and therefore have multiple needs.

a. Profile of victim or possible victim of human trafficking.

To determine the profile of a victim or possible victim of the crime of trafficking in persons, consider the following basic indicators:



- ✓ She received a job or study offer but does not know where she is going to work or study or the people who hired her or made her the offer.
- ✓ The person who made the offer provided him with the means of transport, including travel documents.
- ✓ The person transporting or sheltering her took her identification and travel documents.
- ✓ Has been subject to control and/or surveillance.
- ✓ She has been kept under constant threats against her and/or her family members.
- ✓ She has been forced to work in an activity different from the one she was promised or under conditions different from those promised and against her will.
- ✓ You are forced to work to pay off a debt.
- ✓ It has been subjected to an exploitative situation.
- ✓ She has been coerced to participate in illicit activities.
- ✓ She has been physically, sexually and/or psychologically abused for the purpose of maintaining her subjection and coercing her freedom.
- ✓ She was abducted from her place of origin and then transferred and exploited.
- ✓ There was exploitation of a situation of vulnerability by a third party (poverty, marginalization, lack of opportunities or unemployment).
- ✓ He has undergone surgery to remove some of his organs.

b. Profile of unaccompanied and/or separated migrant children and adolescents.

To determine the profile of unaccompanied and/or separated migrant children and adolescents, take into account the following basic indicators:

- ✓ Travel alone or separately.
- ✓ Travels or meets an adult person to whom he/she is not responsible for the care or guardianship and/or does not know.
- ✓ Has been a victim of rights violations (robbery, rape, mistreatment, exploitation or other).

c. Profile of potential refugee / asylum seeker

To determine the profile of a potential refugee or refugee claimant, consider the following basic indicators:

- ✓ Forced to leave their place of origin due to persecution for reasons of race, religion, nationality, membership in a particular social group or political and gender opinions.
- ✓ Apply for refugee status.



- ✓ They express fear of returning to their country or of being persecuted.

d. Profile of migrant at risk

To define the profile of a migrant at risk take into account the following basic indicators:

- ✓ Their migratory transit has been long and risky for their physical and emotional integrity.
- ✓ She has suffered assaults, robberies, sexual violence, mistreatment, kidnappings, extortion, among others.
- ✓ He/she is stranded, uprooted, unable to communicate and without resources.
- ✓ You have been forcibly displaced due to natural disasters or climatic factors.
- ✓ Pregnant woman with no support resources.
- ✓ He suffers from malnutrition, heat stroke, serious injuries due to the hazardous conditions of the trip.
- ✓ It has been at the expense of a migrant smuggling network.
- ✓ Is ill or injured, is a person with a disability or an elderly person traveling unaccompanied who requires protection.

11. ACTIVATION OF THE SME

The ESME may be activated directly by any of the offices of the DGME, or by the General Directorate, informing the Technical Secretariat to send the respective summons by e-mail. The alert that activates the ESME will be addressed according to any of the following scenarios:

Activation due to a possible refugee situation: upon reporting a situation involving a refugee request, the person in charge of the Refugee Subprocess will be alerted as a first step, from where the corresponding actions in this matter will be coordinated. This Unit may coordinate directly with the Directorate of the Professional Immigration Police what is determined necessary in terms of the mandate of timely and immediate assistance for those situations that warrant it, or with the Management of Smuggling of Migrants and Trafficking in Persons in the event that in addition to that particularity may be detected elements of a possible situation of trafficking in persons. Likewise, the Shelter Subprocess may activate the ESME when deemed necessary.



Activation due to a possible situation of smuggling of migrants: if there is a well-founded suspicion of a situation of TIM, the Directorate of the Professional Migration Police will be alerted as the first responder, which will be responsible for conducting the corresponding investigation, applying the ESME Interview Guide aimed at gathering intelligence information for subsequent analysis, and taking the necessary measures to safeguard the integrity of third parties. In the event that special humanitarian needs are detected, immediate actions will be coordinated with the Management of Smuggling of Migrants and Trafficking in Persons, in the latter case, the TWG will request a report of the needs required with the basic information of the person, a copy of the passport or identity documents, the ESME Interview Guide, to form the respective file and manage the necessary coordination. In case of not having identity documents, coordinate with the respective Consulate. When the Directorate of the Professional Migration Police and/or the Management of Smuggling of Migrants and Trafficking in Persons deem it necessary, they may activate the ESME.

Activation due to a possible human trafficking situation: it should be coordinated jointly with the Migrant Smuggling and Human Trafficking Management and the Directorate of Professional Migration Police. A report should be submitted with the indicators of the possible crime of human trafficking and a copy of the ESME interview guide. The GTT will assess the case and will be responsible for activating the respective Immediate Response Team Protocol, as well as the application of Law No. 9095 and its Regulations. This Management may coordinate directly with the Directorate of Professional Immigration Police, which will coordinate with the corresponding Prosecutors for protection and assistance. It may also coordinate the necessary actions with the Shelter Unit for those cases that may qualify as situations in this area. Similarly, it may activate the ESME when deemed necessary.

Activation by the PME approach: the General Directorate of Migration and Alien Affairs has different intervention instruments to provide comprehensive protection to children and adolescents detected in the exercise of migration control, these documents indicate the procedures to be followed by migration officials, in order to guarantee their fundamental rights, protected by the Convention on the Rights of the Child.

The following is a description of the action protocols that have been developed to address the different situations in which minors find themselves, as well as their scope of application.

- i. **Action Protocol for officials of the Directorate General of Immigration in relation to minors in situations of vulnerability.**



The purpose of this Protocol is to present/provide/facilitate to officials of the General Directorate of Migration and Aliens the intervention mechanisms for the protection of minors, based on legal instruments from the national and international framework; also, through the systematization of rules and procedures to strengthen the approach to national and foreign minors in any circumstance they may find themselves in.

ii. **Protocol for the Regularization of the Permanence of Foreign Minors under the protection of the National Child Welfare Agency (Patronato Nacional de la Infancia).**

It is addressed to officials of the DGME and PANI, who will be in charge of its immediate implementation. However, in the case of foreign WEPS, it is possible that in order to make the relevant coordination, the corresponding diplomatic representations of Costa Rica in the country of origin of the WEP or the representation of that country in Costa Rica may be involved in the process. The provisions of the Protocol will be governed by the best interests of the PME, will be applied to all PME that are placed in alternative protection, whether public or private, institutional or family, under the supervision of PANI, whether or not they have been judicially declared in a state of abandonment and whose immigration status is irregular.

iii. **Protocol for the care of foreign minors whose fathers, mothers, relatives or responsible persons are subject to deportation proceedings.**

Establishes the procedure to be followed by the DGME and PANI, to address the situation of an accompanied foreign PME, in those cases in which the parents, mothers, relatives or responsible persons are subject to a deportation process before the DGME, in order to ensure their comprehensive protection and the application of the principle of the best interest of migrant children and adolescents.

iv. **Protocol for the care and protection of foreign minors, unaccompanied or separated from their families outside their country of origin.**

This Protocol establishes the procedure to be followed by the General Directorate of Migration and Foreigners (DGME) and the National Children's Board (PANI) to regulate the situation of unaccompanied or separated foreign PME, in order to identify and seek a lasting solution that resolves all their comprehensive and due care and protection needs through inter-institutional intervention, that considers their views and leads to resolving their situation, in light of the legal context represented by the Convention on the Rights of the Child and General Comment # 6 (2005) of the Committee on the Rights of the Child, the Code on Childhood and Adolescence, the National Policy on Childhood and Adolescence, and the Regulation on Persons of Childhood and Adolescence, the National Policy on Children and Adolescents, and the Regulation on Persons of Childhood and Adolescence.



Minors of the General Directorate of Migration and Foreigners and other related international instruments.

v. Protocol for the detection, care and comprehensive protection of minors in need of international protection, whether they are seeking refugee, refugee or stateless status.

This Protocol is intended to orient and guide the joint work of the different State agencies, non-governmental organizations and international organizations to provide comprehensive protection to minors in need of international protection, as refugees, refugees or stateless persons.

It shall also apply to SMEs in the following conditions: migrants in need of international protection, applicants for refugee, refugee or stateless status, whether accompanied, unaccompanied, separated, victims of human trafficking or affected by migrant smuggling.

It is important to note that any other Protocol on Minors that may be developed in the future will be taken into account.

Activation due to a shipwreck situation: the National Coast Guard Service informs the Directorate of the Professional Migration Police that a shipwrecked person has been found both in the territorial sea and in our patrimonial sea. Additionally, a report of the circumstances surrounding the case is sent.

Once the communication from the National Coast Guard is received, the following procedure is carried out:

- The Professional Migration Police officer coordinates the verification of the castaway's physical and mental health condition. In the case of PME, the corresponding coordination with PANI is carried out.
- The officer of the Professional Migration Police informs the Consulate of the respective country (except in refugee cases).
- The Professional Migration Police reviews the documentation submitted by the National Coast Guard Service to detect possible cases of human trafficking, smuggling of migrants, applicants for refugee status or various crimes. In case of suspicion of such a situation, the corresponding protocol is activated.
- In the specific case of a shipwreck, a resolution is issued in which, for humanitarian reasons, a legal stay in the country is granted for a period of time sufficient for the respective Consulate to carry out the procedures for repatriation. This resolution is signed by the person acting as Director General of Migration and Alien Affairs and must be personally notified to the castaway.



- While in Costa Rica, the castaway will be monitored by the Consulate of his/her country in coordination with the Directorate of the Professional Migration Police.

Activation due to Internal and Cross-border Displacement ESME: the response to a situation of displacement caused by a natural disaster involves two possibilities, whether it is internal to the State or whether it crosses borders and therefore people are forced to cross national borders. In both situations, in the case of foreigners, the absence of identification documents is present, especially in cross-border displacement.

The General Directorate of Migration and Aliens will be responsible for the mobilization of personnel trained in migration control, with a humanitarian approach, immediately contacting and making themselves available to local or national emergency committees. In situ, a list of all persons entering as a result of displacement due to the disaster must be drawn up, being essential to identify family groups, individuals traveling individually, separated or unaccompanied PME and other vulnerable populations. Once the respective survey and identification has been carried out, coordination should be made with the respective national authorities of the displaced persons for their full identification and documentation.

Subsequently, the particular situation must be assessed in view of the displacement in question, to determine the type of solution (lasting or temporary) to individual or group cases and take measures to ensure from the migration perspective the application of migration legislation and that people can be subject to rights in immediate assistance, for it may make use of the prerogatives conferred by the General Immigration Law No. 8764 to the Director or Director, specifically in accordance with the provisions of Article 18, paragraphs 19, 23 and 26; and in guarantee of international humanitarian law. In the event that the assessment requires a lasting solution, the provisions of the General Law on Migration and Aliens shall apply.

No less important in the face of the immediate assistance required is the control of the migratory flow and the containment before the entry must be given in a specific place, always in coordination with the local emergency authorities, so that other action protocols must be activated, specifically those related to sanitary and phytosanitary control, typical of emergency situations.

Activation due to Epidemiology situation: the General Law of Migration and Foreigners N°8764 in articles 61, paragraph 2) and 63 indicates the requirements for entry to the country, for people in case of being detected with any disease. Upon detecting a person with an infectious disease, the official must isolate him/her from the rest of the users and immediately contact the Ministry of Health's Governing Area, and register the call through 9-1-1. It is important to point out that DGME staff members should not



have the ability to detect if a person has an infectious condition. This will be activated if there is prior warning or if the condition is very evident.

The Ministry of Health will be in charge of transferring the person in case it is required, so there must be adequate communication with the Ministry in order to have alerts, inspections, follow-ups, among others.

Activation by referrals from the Office for the Care and Protection of Victims of Crime. Due to the nature of the actions of the Office for the Care and Protection of Victims, all cases are strictly confidential, and require prompt attention, in view of the fact that they are under the protection and care system.

Therefore, the General Directorate of Migration and Alien Affairs should provide a prompt response to their requests.

The ESME will provide a response to the request, by means of a resolution or report, to the attention of the Director of Migration and Alien Affairs.

Activation by referrals from the Ombudsman's Office: due to the nature of its actions, the Ombudsman's Office is a body that stands out in helping people in different areas, which in many cases consists of liaising between the affected person and the institution that should provide the solution to the need that afflicts him.

Therefore, the General Directorate of Migration and Aliens must consider the complaints or other information sent by the Ombudsman's Office of possible special migratory situations. The Directorate General of Immigration will assess whether it should be analyzed by the ESME, categorizing it as an SME, being the ESME who will provide recommendation to the request, through a resolution or report, to the knowledge of the Director of Immigration and Aliens.

Activation by referral from the National Women's Institute: ESME will assess situations involving violence against women that are referred to it and require updating their immigration status in the country, providing a response to INAMU on the immigration status of the file and following up on them.

Likewise, during the exercise of its function of authorizing, denying or supervising the entry or exit of persons, as well as during the reception of applications for legal stay in the country, the DGME official who detects that a person may be subject to gender-based violence must activate the ESME.



Activation for Reasons of Humanity: according to the provisions of Article No. 134 of the Alien Regulations of the General Directorate of Immigration and Alien Affairs, it is established: "...under extraordinary conditions, the General Directorate may hear and resolve on an individual basis, for reasons of humanity, a case that due to its particular conditions, involves a special situation of vulnerability of the foreigner derived from his age, gender, disability, among others, being his migratory regularization a necessary condition to address such situation".¹⁰ Taking into consideration the above, the ESME will submit the case to the General Directorate with a report on the situation, for its respective resolution.

12. PROCEDURE FOR ACTION IN THE EVENT OF A WELL-FOUNDED SUSPICION OF A SPECIAL MIGRATORY SITUATION OTHER THAN THOSE ALREADY MENTIONED.

Each of the different offices of the DGME must guarantee the Human Rights of all persons who are assessed and, once their EMS has been defined, provide immediate assistance during the process of receiving the special situation by any ESME unit, activating the ESME Team through its Technical Secretariat.

Each of the ESME Units must inform the Technical Secretariat of the special situations detected in their respective workplaces for the respective activation of the Team, informing the Technical Secretariat for the respective summons.

In the event of a special migratory situation different from those already mentioned in this Protocol, the corresponding ESME Unit alerted of the situation, shall proceed as follows and shall also send the information to the Technical Secretariat in order to maintain the respective control of the files and their follow-up:

- It will record the information related to the alerted special migratory situation.
- Coordinate with the PPM Directorate to assess and contact the competent judicial authority as required to activate the corresponding information verification and investigation process.
- It shall send a copy of the ESME-Interview Guidelines to the Technical Secretariat and all binding information, safeguarding confidential information in accordance with national and international regulations in force.
- It will proceed according to the particularity of each situation in full compliance with the Human Rights approach.

¹⁰ Alien Regulation. General Directorate of Migration and Aliens.



- Act expeditiously (according to institutional possibilities) on the reported situation.
- Report and refer to PANI those situations involving minors.

13. INFORMATION MANAGEMENT AND REGISTRATION.

Information regarding special migratory situations is considered confidential and to be handled exclusively by the ESME Units. The ESME Team will assess, upon request of any other DGME instance, what type of information may be provided.

The DGME will create, through the possible institutional resources and mechanisms, a centralized statistical database, located and guarded by the TS. The TS will provide statistical data to the rest of the institutional or inter-institutional units, as long as there is adequate data management.

14. SUPERVISION MECHANISMS.

The Director General of Immigration and Alien Affairs shall monitor and follow up on the situations attended to, and may therefore make the appropriate calls with any of the Units that make up the Team, prioritizing the work of immediate assistance and protection.

15. ADMINISTRATIVE SANCTIONS.

In the event that an official of any of the Units or Offices circumscribed to this Protocol fails to comply with his or her duties as established, the Director General of Immigration and Alien Affairs shall take the corresponding administrative measures in accordance with the provisions of the Public Administration Law and the internal institutional regulations.



ANNEX

SCREENING GUIDE



SCREENING GUIDE

TEAM FOR SPECIAL MIGRATORY SITUATIONS

RESTRICTED INFORMATION

QUESTIONNAIRE ADMINISTRATION DATA

Date: _____ Place: _____

Name of person interviewing: _____

Position and Unit of Person Interviewing: _____

Means by which you can be contacted _____

Translator: _____

Signature: _____

GENERAL DATA OF THE INTERVIEWEE

Name: _____

Identity Card: _____ Sex: H () M ()

Date of birth: _____ Age: _

Nationality: _____ Language. _____

Address: _____

Marital status: _____

Children or minor dependents: (If there are minor dependents, investigate: where and with whom they are, nationality, time of residence in the country).

Has documents accrediting him/her as the legal representative of the underage person



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Yes ☐ No ☐ Specify: _____

Time of prevalence in the country: _____

Migratory status

PHYSICAL AND EMOTIONAL STATE AT THE TIME OF THE INTERVIEW:

PHYSICAL: Dehydration, burns, bruises, wounds, pregnancy, disability, clothing, grooming, other, any visible symptoms that indicate that the patient may have a complicated health condition and require transfer to a medical center for better observation).

Specify: _____

EMOTIONAL: Nervous, crying, looking forward to the interview.

Specify: _____

Are you traveling alone or accompanied? Explain with whom (relatives, acquaintances, among others): _____

If you are accompanied by a minor. Specify:

Name of the minor: _____

Age: _____ *Date of birth:* _____

Nationality: _____

Schooling: _____



Identification documents: _____

Address: _____

PHYSICAL AND EMOTIONAL STATE OF THE MINOR AT THE TIME OF THE INTERVIEW:

PHYSICAL: Dehydration, burns, bruises, wounds, pregnancy, disability, clothing, grooming, other).

Specify: _____

EMOTIONAL: Nervous, crying, looking forward to the interview.

Specify: _____

Do you know in which country you are located? () yes () no _____

Is the person being watched by a person or group? Explain

Who covered the cost of the transfer? _____

Did you make any extra payments to obtain travel documents outside of the normal government procedures?

Did you pay someone to help you cross the borders? (what was his or her name, how did you contact him or her, did you contact him or her in your country or already on the way?)



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What was

the traced card (in order of the countries and days that it remained in each country)?

What were the means of transportation used?

On foot () Private vehicle () Taxi () Rail ()
() Train () Airplane () Boat or yacht () Other _____ NS/NR

()

Did the person cross the border at an authorized

border crossing point? Yes () No ()

Where and how was the border crossed? _____

Is the person accompanied by whom? _____

Does the person carry his/her identity documents? () Yes () No

If not, who carries them? _____

Type of document: True () False () _____

What is the destination country? _____

What activities do you intend to carry out?

Were you recruited by any person, company or group to carry out any particular activity? Do you remember any name or special characteristics?

If you were held incommunicado, do you remember any characteristics of the place where you were held?

Was it the person's own decision to take the trip? () Yes () No



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What was the reason that motivated you to leave your country? _____

Can the person return safely to his/her country? () Yes () No Why?

If the person could return to his country, who would wait for him and help him? _____

Were you subjected to any violence, abuse or exploitation?

No () Yes () _____

Specify the type of violence: physical () emotional () sexual () threat () threatening ()

Comments: _____

Was the person's life in danger at any time. Explore: _____

Was there any natural disaster that forced people to leave the country? Which one?

Have you suffered any abuse or mistreatment by any Costa Rican authority?

Do you want to return to your home country?

What do you think might happen to you if you returned to your home country?

GENERAL OBSERVATIONS:

IMMEDIATE NEEDS ASSESSMENT

() Health requirements: _____



General Directorate of Migration and Aliens

() Food and/or beverage requirements:_____

() Dress requirements:_____

() Secure accommodation requirements:_____

() Police protection requirements:_____

() Requests for legal and/or immigration advice:_____

() Communication requirements with other people:_____

() Miscellaneous requirements:_____

Based on the data obtained in the previous questions, refer this case as appropriate. ()

Possible TIM situation:

() Possible TP situation:

() Possible situation REF:

() Minor Person:

() Other ME situation:_____

() No ME situation:_____

REFER:

() PM

() UTT

() UR

() Apprehension Center (

) PANI

() CCSS

() Other instance:_____



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