



Resettlement Learning Programme

Revised October 2010



10 of 100

**Of every 100 refugees in need of resettlement,
only 10 are resettled each year**

UNHCR estimates the global resettlement needs at about 800,000 persons, including populations where resettlement is envisioned over a period of several years. In 2010, resettlement countries provide less than 80,000 places for UNHCR resettlement submissions. While the number of refugees in need of resettlement is growing, available resettlement places are not keeping pace.

The "10 of 100" project was jointly coordinated by the Swedish Chair (Migrationsverket) of the 2010 Annual Tripartite Consultations on Resettlement together with Caritas Sweden and the UNHCR Resettlement Service. The project was assisted by NGOs, local municipalities, UNHCR Offices, and more than 100 resettled refugees in various countries around the world. Refugees about to depart for resettlement contributed from Kenya, Nepal and Syria. Appreciation is extended by the Swedish Chair to the organizations and individuals who participated in the project from Australia, Kenya, Nepal, Sweden, Syria and the United Kingdom.

Introduction

The **Resettlement Learning Programme (RLP)** is a six month thematic programme that complements the Protection Learning Programme (PLP) by offering distance self-study, coached modules and a workshop that deal specifically with resettlement. The RLP aims at enhancing the knowledge and skills of resettlement practitioners and helping to ensure effective delivery of international protection. Following the successful completion of the pilot RLP with participants from East and the Horn of Africa, the second session of the RLP will begin in November 2010.

The RLP is an important component of UNHCR's learning strategy towards harmonizing enhanced quality of resettlement activities and in ensuring the effective delivery of international protection in general. To this effect, it is envisaged for the RLP to become an essential, mandatory component of the training requirements for UNHCR staff with functional competencies related to resettlement.

The Programme Objectives

In line with the principles of the Agenda for Protection and the Code of Conduct, the **Resettlement Learning Programme** broadly aims at:

- fostering a common understanding on protection and international legal standards;
- enhancing protection knowledge and skills;
- promoting a team-based and partnership approach;
- soliciting feedback and opinions on operational concerns in the field and on how problems can be addressed collectively;
- examining ways in which resettlement capacities can be enhanced;
- enhancing the more strategic use of resettlement, including within regions affected by refugee movements;
- promoting the more efficient use of resettlement both as a protection tool and as a durable solution.

Upon completion of the Resettlement Learning Programme, participants are expected to contribute to a more coherent and predictable resettlement delivery that addresses refugees' needs with diligence, integrity, transparency and accountability. In particular, they are expected to:

- self-assess their knowledge and expertise to perform resettlement and identify key areas for individual improvement;
- understand policy, global issues and key challenges relating to resettlement including the concept of comprehensive durable solutions strategy and strategic use of resettlement;
- identify refugees in need of resettlement and assess their cases in conformity with UNHCR's established criteria;

- understand the various phases / methods of the resettlement process and improve the quality of the resettlement submissions;
- understand the basics of Refugee Status Determination (RSD) and identify areas that need to be clarified during the resettlement interview;
- examine issues such as the reception of refugees and handling enquiries, file management and confidentiality;
- contribute to upgrading the efficiency, quality and transparency of resettlement procedures in their Offices.

The Programme Methodology

The methodology adopted for the RLP assists in enhancing a knowledge base and the development of skills, and reinforces good practices by combining a number of learning techniques including self-study, practical exercises, and a workshop. It also aims at encouraging participants to operationalize resettlement activities or strategies in their Offices. The RLP will be carried out in three phases: a period of self-study (three months), a workshop, and implementation of resettlement projects.

PHASE I: SELF-STUDY (NOVEMBER 2010 – FEBRUARY 2011)

Throughout this period, participants will have the opportunity to review and reflect more deeply upon resettlement principles. The six Chapters of the Programme will take participants through the key resettlement policies and the fundamental steps of the resettlement process. In addition, the Programme will introduce participants to a number of important tools such as the “Heightened Risk Identification Tool (HRIT)” and the “Baseline Standard Operating Procedures on Resettlement”. The exercises included in each Chapter of the Programme intend to enhance participants’ understanding and assist in the implementation of the techniques proposed.

PHASE II: WORKSHOP (MARCH 2011)

The workshop is strictly limited to those participants having completed all exercises on time. During the workshop participants are able to discuss and develop the ideas reflected upon in the self-study period, whilst learning new skills.

PHASE III: IMPLEMENTATION OF RESETTLEMENT-RELATED PROJECT (APRIL 2011)

The last phase of the Programme includes the implementation of the project prepared in phase I, using the skills developed during the phase II workshop. The participant is expected to present a report on the implementation of the project by the end of April 2011.

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Resettlement in context: International protection and durable solutions

Learning Objectives

Resettlement is often described as a tool for international protection as well as a durable solution, and an international responsibility and burden-sharing tool. It is therefore useful to be aware of what each of these concepts mean. As the following units show, it is also important to understand the protection situation in the country of origin and in the host country in order to assess whether resettlement should be pursued in a given case.

A number of tools have been introduced by UNHCR to ensure that all staff members have a basic understanding of international protection and durable solutions, including *“UNHCR and International Protection: A Protection Induction Programme.”*¹ This Unit should thus in large part serve as a review and help set the context for understanding resettlement. In addition to outlining the mandate of UNHCR and providing a basic overview of international protection and the three durable solutions, this Unit looks at some current challenges to the international protection regime.

At the end of this Unit, you should be able to:

- explain UNHCR’s mandate;
- review international protection in general terms;
- describe the three durable solutions and some general principles applicable to them;
- outline some current key challenges to the international protection regime.

The designated Learning Programme administrator will recommend the time allotment for completion of this Unit.

¹ First edition, 2006. It is one of the mandatory training programmes in UNHCR and consists of a handbook and an interactive e-learning programme. The handbook is available at <http://www.unhcr.org/refworld/docid/466e71c32.html>, and UNHCR staff can access the interactive programme from the "Learn & Connect" training platform

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International Protection

Establishment of UNHCR

UNHCR was established on 1 January 1951 by UN General Assembly Resolution 319 (IV)², initially for a three-year period. Although organizations and agencies had been established earlier to assist refugees, UNHCR represented the first organization with a global mandate to help refugees. Although its mandate was globally defined, the three-year time limit was a reflection of the fact that the consequences of World War II heavily impacted States. Its mandate was, however, extended on a temporary basis through successive General Assembly Resolutions until 2003, when its existence was secured until such time as the refugee problem is resolved.

UNHCR's core functions, as defined by its Statute are the provision of international protection to refugees and finding durable solutions for them

UNHCR's work is humanitarian, social and non-political. Its Statute, which was adopted in 1950³, defines UNHCR's functions as providing international protection to refugees, and assisting Governments in finding durable solutions for them. These two functions, international protection and the identification of durable solutions, can be considered UNHCR's core functions, although its mandate has been expanded through subsequent UN General Assembly Resolutions. Such expansions of mandate have related in particular to whom it considers persons of concern.

UNHCR's Executive Committee (ExCom) serves as advisory committee; it is supported by a Standing Committee

The High Commissioner is elected every five years by the UN General Assembly. S/he reports annually to the General Assembly and the Economic and Social Committee (ECOSOC) and follows their policy directives. S/he is additionally assisted by an Executive Committee to the High Commissioner's Programme (ExCom), which was created in 1958 and consists of UN Member States with an interest in refugee issues.⁴ The ExCom meets once annually to advise the High Commissioner on policy issues, *inter alia* by adopting Conclusions on International Protection, and to issue decisions on budget matters. It is supported by a Standing Committee which usually meets three times a year.

International protection begins with securing the admission of refugees to a country of asylum and ensuring respect of their rights as set out in international law until a durable solution has been found.

² UN General Assembly, *Refugees and stateless persons*, 3 December 1949, A/RES/319, available at: <http://www.unhcr.org/refworld/docid/3b00f1ed34.html>

³ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <http://www.unhcr.org/refworld/docid/3b00f0715c.html>

⁴ There were 79 States members of ExCom as of 2010.

Defining international protection

International protection can be defined as:

*'all actions aimed at ensuring the equal access and enjoyment of the rights of women, men, girls and boys of concern to UNHCR, in accordance with the relevant bodies of law (including international humanitarian, human rights and refugee law.)'*⁵

THE INTERNATIONAL LEGAL FRAMEWORK

International refugee law

The 1951 Convention Relating to the Status of Refugees⁶ (hereafter the 1951 Convention) represents the core instrument of international refugee law. It sets out who is a refugee and standards for their treatment. The 1951 Convention represented the first time that States agreed on a universal definition of a refugee. Until that time, refugees had primarily been defined by ethnic or national group or origin.

The 1951 Convention as the core instrument of international refugee law together with its 1967 Protocol

Still, unlike UNHCR's Statute, the 1951 Convention initially was limited to persons who became refugees as a result of events occurring before 1 January 1951, reflecting the primary focus of States on dealing with the aftermath of World War II. It also permitted States to apply a geographic restriction, limiting its reach to European refugees. It is important to note that despite the restrictions in the 1951 Convention, given UNHCR's global mandate, UNHCR was nonetheless able to intervene in the years prior to the 1967 Protocol⁷ to provide international protection to Hungarian refugees following the uprising in 1956, Chinese refugees in Hong Kong and refugees who fled as a result of the war for Algerian independence.

In line with changes in the global focus, particularly new challenges linked to refugee flows arising as a result of African decolonialization, the 1967 Protocol was adopted to lift the restrictions in application of the 1951 Conventions.

A number of "soft-law" instruments supplement the 1951 Convention and its 1967 Protocol

In addition to these "hard law" instruments, there are a number of "soft law" sources of international refugee law. While not binding, they indicate how refugee law is evolving and reflect a certain political commitment to addressing refugee issues. These include *inter alia* the *Declaration on Territorial Asylum* adopted by the UN General Assembly in 1967, other General Assembly and ECOSOC Resolutions, and the Conclusions on International Protection adopted by the ExCom.

Regional refugee law instruments

Additional regional legal instruments reflect further evolution in refugee law. These instruments have in part extended the definition and the rights accorded to refugees in the 1951 Convention and its 1967 Protocol. Following consultations with UNHCR, the Organization of

⁵ UN High Commissioner for Refugees, *Self-Study Module 1: An Introduction to International Protection. Protecting Persons of Concern to UNHCR*, 1 August 2005, p.157. available at: <http://www.unhcr.org/refworld/docid/4214cb4f2.html>

⁶ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>.

⁷ UN General Assembly, *Protocol Relating to the Status of Refugees*, 30 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>

African Unity (OAU, now the African Union) adopted a regional Convention Governing the Specific Aspects of the Refugee Problems in Africa (hereafter 1969 OAU Convention). The 1984 Cartagena Declaration on Refugees is also a significant regional refugee protection instrument, as are the 1966 Bangkok Principles on the Status and Treatment of Refugees, which were updated in 2001.

Persons of Concern to UNHCR

REFUGEES

The definition of a refugee has evolved somewhat over time, and the definitions in some regional refugee law instruments are broader than that of the 1951 Convention. The definition of a refugee, according to the 1951 Convention, is as follows:

1951 Convention
definition of a refugee

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 nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.⁸

In line with developments in some of the regional instruments which were adopted subsequently, UNHCR’s own mandate definition of a refugee has evolved through General Assembly Resolutions, going beyond the definition provided in its Statute:

UNHCR’s definition of a
refugee under its
mandate

A refugee is any person who is outside his or her country or origin or habitual residence and is unable or unwilling to return there owing to either:

- a well-founded fear of persecution for one of the reasons set out in the 1951 Convention; or
- serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.⁹

Complementary forms
of protection

UNHCR’s definition of a mandate refugee is thus broader than the one set out in the 1951 Convention, and is more in line with definitions set out *inter alia* in the 1969 OAU Convention and the 1984 Cartagena Declaration. Where States have not agreed to this broader definition of a refugee, and are thus not bound to it, they have often nonetheless given permission for persons fleeing from, for example, generalized conflict to

⁸ 1951 Convention Relating to the Status of Refugees, Article 1(A)(2), 1967 Protocol Relating to the Status of Refugees (*supra* notes 6 and 7); 1969 OAU Convention, Article 1(1) (available at: <http://www.unhcr.org/refworld/docid/3ae6b36018.html>); 1984 Cartagena Declaration (available at: <http://www.unhcr.org/refworld/docid/3ae6b36ec.html>)

⁹ *Self-Study Module 1: An Introduction to International Protection. Protecting Persons of Concern to UNHCR*, *supra* note 5.

stay on their territory, albeit with a different status. Whatever the particular name given to the status by a State, UNHCR has referred to this as a “complementary” form of protection, in that it is complementary to the protection granted under the 1951 Convention.

Important: When we speak of refugees in this learning programme, we will refer to UNHCR’s mandate definition unless specified otherwise.

Temporary protection

The lack of a universally-accepted definition of ‘complementary protection’ can lead to its confusion with the concept of temporary protection. Temporary protection is generally used to describe a short-term emergency response to a significant influx of asylum-seekers, and was initially developed by several European states as a response to the large-scale movement of people fleeing the conflict in the former Yugoslavia in the 1990’s. By contrast, complementary protection is not an emergency or provisional device. It is, rather, a basis for states to provide protection from return as an alternative to refugee recognition under the 1951 Convention/1967 Protocol.

Thus, persons eligible for complementary protection may in an emergency situation receive temporary protection instead alongside Convention refugees. However, persons granted temporary protection should still be able to pursue individualized status determination procedures during or subsequent to lifting of temporary protection.¹⁰

The above refugee definitions refer to the so-called “inclusion clauses”; they define *positively* who is a refugee. Certain persons are, however, excluded from refugee status. These include persons who could be considered persecutors, having committed one or more of the following:¹¹

Exclusion from refugee protection

- a crime against peace, a war crime or a crime against humanity;
- a serious, non-political crime prior to admission in the asylum country;
- acts contrary to the purposes and principles of the United Nations.

These criteria are called “exclusion clauses”. People who meet these criteria are “excludable” and will not benefit from the rights of refugees, even if they meet the inclusion requirements. The importance of careful application of the exclusion clauses will be covered in Unit 3.

Cessation clauses

Additionally, both the 1951 Convention and the Statute provide for so-called “cessation clauses”, or situations where refugee status ceases, generally because the refugees have found a durable solution.

¹⁰ The distinction between complementary and temporary protection was highlighted by states participating in the Global Consultations meeting on complementary protection: see UN High Commissioner for Refugees, *Global Consultations on International Protection: Report of the Third Meeting in the Third Track*, (EC/GC/02/2), 16 April 2003 at para 15, available at: <http://www.unhcr.org/refworld/docid/3d6264e54.html>.

¹¹ 1951 Convention, Article 1(F) (a)-(c) (supra note 6). We will be looking in greater detail at both the inclusion and exclusion provisions in Unit 3.

The situation of asylum-seekers	Regardless of the formal procedure, recognition as a refugee is declaratory and not constitutive; that is, it does not “make” asylum-seekers refugees. Thus, asylum-seekers benefit from a number of “refugee” rights before being formally recognized as such.
Procedures to recognize refugees: - individual refugee status determination (RSD) procedures - <i>prima facie</i> group determination	Refugees may be recognized through individualized determination procedures or, in the absence of evidence to the contrary, through group-determination procedures on a <i>prima facie</i> basis. The latter approach is often relied upon in mass influx situations, where the reasons for flight are generally known and the number of arrivals would overwhelm capacities to determine refugee status individually; but since these often relate to indiscriminate or generalized violence, the <i>prima facie</i> group determination is more easily applied in States which accept a wider definition of a refugee that includes indiscriminate or generalized violence.
Definition of <i>prima facie</i>	<i>Prima facie</i> (“in absence of evidence to the contrary”) refers to the process of group determination of refugee status, as opposed to individual determination, which is usually conducted in situations where a need to provide urgent assistance or other practical difficulties preclude individual determination, and where the circumstances of the flight indicate that members of the group could be considered individually as refugees. ¹²
Asylum-seekers included amongst populations of concern	While UNHCR’s Statute focuses primarily on refugees as persons of concern, it also provides for interventions on behalf of additional persons, e.g. stateless persons, or groups on a “good offices” basis. ¹³ Furthermore, successive General Assembly Resolutions have expanded UNHCR’s mandate, in particular by recognizing additional populations of concern to UNHCR in specific situations.

ASYLUM-SEEKERS

Asylum-seekers, as possible refugees, are people of concern to UNHCR and should be granted protection until such stage as their claims for refugee status are determined.

RETURNEES

As described above, voluntary repatriation may take place under less than ideal conditions, particularly in a post-conflict situation. Though UNHCR’s mandate was traditionally thought to end once refugees crossed the border into their countries of origin, subsequent ExCom Conclusions have confirmed UNHCR’s legitimate interest in the

¹² UN High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, January 1992, available at: <http://www.unhcr.org/refworld/docid/3ae6b3314.html>

¹³ The term “good offices” refers to the efforts of a third party to bring the disputing parties in an international dispute to the negotiating table, without interceding in the negotiation itself.

Types of activities in which UNHCR engages

consequences of return and in returnee monitoring.¹⁴ Additionally, peace agreements between States may give UNHCR a specific role in monitoring returns.¹⁵

UNHCR has established returnee monitoring operations in a number of countries, including Afghanistan, Iraq, Sudan, and Burundi. In addition to monitoring repatriation, UNHCR must often liaise with the national police and military or international forces deployed in peacekeeping operations to ensure a safe return environment. It is vital to clearly delineate between military and humanitarian actors while maintaining open information exchange and liaison arrangements. The neutral and non-political character of humanitarian actors such as UNHCR is essential to maintaining confidence and trust in monitoring efforts.

As the basic administrative and judicial infrastructure of a country of origin may need to be rebuilt or reformed, UNHCR can have an important capacity-building role through training programmes, development of infrastructure and material support. UNHCR often also supports the drafting of new legislation relevant to return, including in areas such as amnesties and property restitution. UNHCR legal aid centres can play an important role in ensuring that returnees have access to legal assistance and effective recourse in case of problems upon their return.

UNHCR can also act to support reconciliation efforts in post-conflict situations; by ensuring equity in its operations and programmes, and by ensuring that all persons benefit equally, including persons who did not leave previously as refugees. Additionally, confidence-building measures are increasingly becoming part of UNHCR's activities in returnee operations.

UNHCR's maintenance of a returnee monitoring operation also ensures distinct benefits for operations elsewhere, since detailed information about the country of origin is then more available for informed decisions on refugee status, voluntary repatriation and resettlement.

STATELESS PERSONS

Definition

A stateless person is someone who is not a national or citizen of any State. In principle, States are responsible for ensuring protection to their citizens, but stateless persons cannot claim the protection of any State. They may thus be denied political rights or access to housing and education, though they may have been born and lived their entire lives in their country of 'habitual residence'. In some situations, statelessness may be *de jure*, that is by law, while in other situations, statelessness may be *de facto*, in that the persons concerned may, for example, be

De facto and de jure statelessness

¹⁴ See ExCom Conclusions 18 (XXXI) 1980, 40 (XXXVI) 1985, 74 (XLV) 1994, 85 (XLIX) 1998, and 101 (LV) 2004 (These can be found in the: UN High Commissioner for Refugees, *Thematic Compilation of Executive Committee Conclusions*, August 2009, 4th edition, available at: <http://www.unhcr.org/refworld/docid/4a7c4b882.html>).

¹⁵ See for example Annex 7 of the *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina*, 21 November 1995, available at: <http://www.unhcr.org/refworld/docid/3de495c34.html>

unable to obtain a passport or return from abroad because they are unable to prove their nationality.

Statelessness may arise with children of parents of mixed origin, or children who were born outside the country of their parents' citizenship. This is because, depending on the State, citizenship may be passed on either through the parents (by *jus sanguinis*), or by birth in the territory of the State (the principle of *jus soli*). Statelessness may also occur because of:

- the break-up of States into smaller countries;
- governments arbitrarily depriving people of their nationality;
- a person voluntarily renouncing her/his nationality without acquiring another one first;
- marriage, or its dissolution, in situations where this automatically affects one party's nationality (often the woman's);
- failure or inability to register children at birth so that the child has no means of proving her/his entitlement to nationality;
- being the child of a stateless person;
- discriminatory practices based on ethnicity, religion or race in determining nationality status.

Stateless persons may be, but are not necessarily, refugees

International legal framework if not:
 - 1954 Convention Relating to the Status of Stateless Persons
 - 1961 Convention on the Reduction of Statelessness

Stateless persons may be refugees, and thus the standards of treatment set out *inter alia* in the 1951 Convention would extend to them. Not all stateless persons are refugees, however. Two international instruments aim to reduce the occurrence of statelessness and set standards of treatment for stateless persons generally. They include the 1954 Convention Relating to the Status of Stateless Persons (hereafter the 1954 Convention)¹⁶ and the 1961 Convention on the Reduction of Statelessness (hereafter the 1961 Convention)¹⁷. Unfortunately, unlike the 1951 Convention, relatively few States have ratified these conventions to date, although they still provide valuable guidance in terms of standards to be applied and in UNHCR's work with stateless people.¹⁸

As with refugees, international human rights law is relevant to setting additional standards of treatment for stateless people. The right to a nationality as a fundamental right is set out in the Universal Declaration of Human Rights.¹⁹ Regional instruments, including *inter alia* the 1997 European Convention on Nationality adopted by the Council of Europe,

¹⁶ UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <http://www.unhcr.org/refworld/docid/3ae6b3840.html>

¹⁷ UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <http://www.unhcr.org/refworld/docid/3ae6b39620.html>

¹⁸ Attaining greater support for the Statelessness Conventions and identifying more effective ways to respond to the statelessness problem are among the key goals of the 60th Anniversary Commemorations. These will be described later in this Unit.

¹⁹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>. See Article 15.

UNHCR's mandate and types of activities UNHCR engages in

may also be relevant, particularly with respect to reducing the incidence of statelessness.

UNHCR has had a mandate for stateless refugees from its inception. UNHCR was subsequently entrusted with specific duties relating to the 1961 Convention and then given a global mandate for stateless persons through successive UN General Assembly Resolutions. ExCom Conclusion 78 (XLVI) of 1995 also reinforces this mandate. Types of activities which UNHCR may engage in include:

- promoting accession to the 1954 and 1961 Conventions;
- providing legal advice to all interested States on the preparation and implementation of nationality laws;
- cooperating with States and other partners to facilitate speedy identification and resolution of statelessness problems;
- training government officials and UNHCR staff on statelessness issues;
- gathering and sharing information on the problem of statelessness worldwide;
- reporting regularly to ExCom on its activities in this field;
- In specific cases, resettlement of non-refugee stateless persons can be explored by UNHCR; however this can be challenging given the restrictive criteria of resettlement States.²⁰

Currently there are an estimated 12 million stateless people worldwide, compared to a global refugee population of around 15.2 million (10.4 million of whom fall under UNHCR's mandate).²¹

INTERNALLY DISPLACED PERSONS

The number of internally displaced persons exceeds by far those of refugees

Persons may be displaced internally within their country of origin for a variety of reasons, including natural catastrophes or human-made disasters. Many, however, flee for reasons similar to those of refugees; the only difference between the two being that internally displaced persons have not crossed an international boundary, but remain within their own State. At present, the number of internally displaced persons far exceeds the number of refugees. Although they should enjoy the protection of their State, internally displaced persons are often without protection and assistance. For this reason, there has been an increased understanding that international action is required.

²⁰ For more information see UN High Commissioner for Refugees, *UNHCR Action to Address Statelessness: A Strategy Note*, March 2010, available at: <http://www.unhcr.org/refworld/docid/4b9e0c3d2.html>

²¹ *ExCom: UNHCR says faster state accessions needed for statelessness conventions* UNHCR, News Stories, 6 October 2010

Special Representative of the UN Secretary-General on Internally Displaced Persons	A Special Representative of the UN Secretary-General on Internally Displaced Persons was first appointed in the early 1990s in order to develop a normative framework, promote institutional frameworks to support the internally displaced, undertake missions to assess specific situations and research issues relevant to the internally displaced. ²²
International legal framework: - no specific international treaty, but - <i>Guiding Principles on Internal Displacement</i>	Internally displaced persons remain, in principle, the responsibility of their State. There is thus no international treaty that specifically deals with internally displaced persons. The <i>Guiding Principles on Internal Displacement</i> , developed under the aegis of the first UN Representative on the Internally Displaced, and finalized in 1998, provide important guidance to all actors involved with internally displaced persons. It draws on relevant principles of international human rights, humanitarian and refugee law to set out standards of treatment for the internally displaced. As it draws on existing law, States often are bound to the Principles under international treaties they have signed, and under customary international law.
UNHCR's role with internally displaced persons	UNHCR has been involved with different populations of internally displaced persons since the early 1970s. Initially the Office engaged with IDPs, mostly in the context of refugees and returnees, in conflict related situations. At the end of 2008, there were an estimated 26 million IDPs around the world, of whom UNHCR was assisting about 14.4 million in 22 countries, including the three with the largest IDP populations - Sudan, Colombia and Iraq. In addition to contributing to the development of further standards for the protection of the internally displaced, activities which UNHCR might undertake on behalf of internally displaced persons include:
Types of activities in which UNHCR may engage	<ul style="list-style-type: none"> • monitoring and direct intervention to protect people at risk and those with specific needs, particularly women and children; • projects to enhance coping skills, promote integration with host communities, and strengthen livelihood and self reliance skills (particularly of women) as well as projects to provide psycho-social support and strengthen the availability of education opportunities; • interventions and support to the national government to ensure respect for standards that should be accorded to the internally displaced; • support for a durable solutions framework, whether that means helping the internally displaced return voluntarily to their place of origin, giving them the means to settle and rebuild their lives in the place of displacement or relocate to a third location.
Cluster approach	International efforts at assistance and protection do not aim to replace national protection, but rather to reinforce it. Thus, no organization has been given a global mandate to protect internally displaced persons. In September 2005, responding to a call by the General Assembly for a more predictable, effective and accountable system, the Inter-Agency

²² The first representative appointed was Dr. Francis Deng, who stepped down in 2004. He was replaced by Walter Kälin.

UNHCR has lead role within cluster system for protection, emergency shelter and camp coordination and management

Standing Committee (IASC) agreed in the establishment of the “Cluster approach”. The Cluster approach is part of a wider UN humanitarian reform which aims at ensuring greater predictability, accountability and partnership in response to humanitarian crises. The Cluster approach provides more predictable and accountable leadership in nine areas of response, and two service areas. In line with its expertise and experience UNHCR agreed to assume the lead role in three areas: protection, emergency shelter, and camp coordination and management for conflict-induced IDPs. Note that Clusters are not implemented for refugee situations, as UNHCR has the overall mandate for coordination.

UNHCR’s lead role in the above three areas is limited to situations where the causes of internal displacement are similar to those of refugees. UNHCR may, however, become involved in cases of environmental or natural disasters, as it did in the wake of the December 2004 tsunami, the January 2010 Haiti earthquake, and the 2010 flooding in Pakistan. At the Global Cluster level, which reunites all Agencies involved including major NGOs and inter-governmental organizations at Headquarters level, UNHCR is responsible for leading the development of standards and policies for protection of the internally displaced, helping to build capacities among participating agencies, and coordinating operational support for new and ongoing emergencies. It is also responsible for ensuring that activities carried out under other clusters will be executed with protection in mind and that protection issues are mainstreamed in all operations, at all levels and in every sector.

At present, UNHCR is engaged in some twenty IDP operations related to conflict situations as Lead of the Protection Cluster and in eight of these it exercises the Lead Role for Emergency Shelter and in five a similar role for Camp Coordination and Camp Management (CCCM).²³

Other relevant branches of international law

Refugee rights set out in refugee-specific instruments are supplemented by other relevant branches of international law, including human rights law, humanitarian law and international criminal law.

International human rights law is a particularly important complement to international refugee law. The right to seek asylum is recognized as a basic human right and is indeed set out in the Universal Declaration on Human Rights.²⁴ While human rights law otherwise generally does not specifically target refugees, it outlines and elaborates additional rights

²³ UN High Commissioner for Refugees, *Earth, wind and fire: a review of UNHCR's role in recent natural disasters*, June 2010, PDES/2010/06, available at: <http://www.unhcr.org/refworld/docid/4c21ae7f2.html>.

²⁴ See Article 14, supra note 19.

Other relevant branches of international law include:

- international human rights law
- international humanitarian law
- international criminal law

The principle of *non-refoulement*

Responsibility for providing international protection

Types of activities UNHCR engages in

which should be enjoyed by refugees along with others. It thus supplements international refugee law and defines additional standards. International human rights law is also important in defining UNHCR policy on a number of relevant issues not necessarily set out in international refugee law, such as standards of due process in the asylum procedure, conditions of detention, reception conditions more generally, and children's and women's rights.

KEY PRINCIPLES

Key to refugee protection is the right not to be returned in any manner whatsoever to a country or territory where one's life or freedom may be threatened on one of the 1951 Convention grounds.²⁵ This is known as the principle of *non-refoulement* and is the cornerstone of international refugee law. The principle is also part of international human rights law, according to which no person may be returned to a country or territory where they are at risk of torture, or cruel, inhuman or degrading treatment or punishment.²⁶ Moreover, *non-refoulement* is generally considered a principle of customary international law, and is thus binding on States even if they have not signed the relevant refugee or human rights law conventions.

States that have ratified the relevant refugee law and human rights law instruments, both international and regional, have, in doing so, accepted specific obligations. States in principle retain primary responsibility for providing protection to their citizens and international human rights law is relevant in determining rights and standards of treatment. Refugees are, however, by definition persons who are not able to enjoy such national protection and thus have a greater need for international protection. Once such a need arises, the primary responsibility for providing international protection passes to the State where a refugee has sought asylum.

UNHCR has a mandate to provide international protection at the global level. As we have seen already, this mandate may exceed responsibilities undertaken by States in this regard. Particularly where States are unable or unwilling to provide international protection, UNHCR may provide protection directly through presence, monitoring and through extensive

²⁵ 1951 Convention Relating to the Status of Refugees, Article 33.

²⁶ See *inter alia*, the UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment : resolution / adopted by the General Assembly*, 10 December 1984, A/RES/39/46, Article 3, available at: <http://www.unhcr.org/refworld/docid/3b00f2224.html>. The Human Rights Committee has also interpreted the 1966 International Covenant on Civil and Political Rights to reflect the principle of *non-refoulement*, as has the European Court of Human Rights with respect to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR). See UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html> ; and Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, ETS 5, available at: <http://www.unhcr.org/refworld/docid/3ae6b3b04.html>.

humanitarian assistance programmes. Some activities that UNHCR also undertakes to ensure international protection include:

- promoting ratification and supervising the application of international conventions for the protection of refugees at global, regional and national levels to ensure refugees are identified and accorded appropriate status and standards of treatment in their country of asylum;
- ensuring, with and through national authorities, the safety and well-being of refugees in countries of asylum;
- ensuring the needs of refugee children, women and men are met, particularly the specific needs of, for example, survivors of violence, women who are single heads of household, elderly refugees, and refugee children who have been forcibly recruited as child soldiers and/or separated from their families;
- promoting, with governments and with other United Nations and international bodies, measures to remove the causes of refugee flight so as to establish conditions that permit refugees to return safely to their homes;
- facilitating, assisting and monitoring the safety and dignity of voluntary repatriation, when it becomes feasible;
- when voluntary repatriation is not feasible, promoting other durable solutions, such as local integration or resettlement, where possible and appropriate.

Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol

Under the 1951 Convention, States are obliged to cooperate with UNHCR

In line with its mandate, UNHCR has *inter alia* issued a *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*,²⁷ as well as additional guidelines on topics related to international protection. These may concern legal matters related to the interpretation of provisions in the 1951 Convention, or policy and operational concerns, such as on the special protection needs of refugee children. They are often referred to in courts and other national bodies that adjudicate asylum issues and carry considerable weight. In line with the 1951 Convention, States are obliged to cooperate with UNHCR in the implementation of the Convention.²⁸ In addition to States, other UN agencies and intergovernmental and non-governmental organizations (IGOs and NGOs) provide support and reinforce the international protection framework.

²⁷ Issued in 1979 at the request of States; reedited version issued in January 1992. UN High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, *supra* note 12.

²⁸ See Article 35 of the 1951 Convention Relating to the Status of Refugees

Durable solutions²⁹

The three durable solutions are:

- voluntary repatriation
- local integration
- resettlement

The three durable solutions are complementary and all three may be applied at any given time

Voluntary repatriation is based *inter alia* on Statute, as well as General Assembly Resolutions and ExCom Conclusions

Seeking and providing durable solutions to the problems of refugees constitutes an essential element of international protection. The search for durable solutions has been a central part of UNHCR's mandate since its inception. The durable solutions available include voluntary repatriation, local integration in the country of asylum and resettlement in third countries of asylum.

There is no formal hierarchy among the durable solutions. While in the early years of UNHCR's existence, resettlement and local integration appeared to be the most viable durable solutions for many refugees, over time, most refugees have sought and attained voluntary repatriation. The three solutions are, however, complementary in nature and, when applied together, can form a viable and comprehensive strategy for resolving a refugee situation.

Whichever solution is identified, its success will depend on the various parties concerned working in partnership.

VOLUNTARY REPATRIATION

Voluntary repatriation is the return in safety and dignity to the refugees' country of origin, based on their free and informed decision. When prevailing conditions allow such a return, repatriation is considered the most beneficial solution. It enables the refugees to resume their lives in a familiar setting under the protection and care of their home country. Where these conditions are not met, however, returns may not be sustainable and refugees could seek to return to the country of asylum.

UNHCR's responsibilities to facilitate or promote voluntary repatriation derive from its Statute. Though the 1951 Convention does not speak directly to voluntary repatriation, its provisions on cessation are relevant.³⁰ General Assembly Resolutions have reaffirmed UNHCR's role in this respect and ExCom Conclusions have further articulated international principles and standards relating to voluntary repatriation. UNHCR has developed a *Handbook on Voluntary Repatriation: International Protection*³¹ that sets out basic principles in this regard. During a particular voluntary repatriation operation, UNHCR often signs specific agreements with the States concerned that set out the principles and standards of treatment in that operation.

²⁹ For a more detailed introduction to international protection and durable solutions, you may also wish to look more closely at the *Self-study module 1, An Introduction to International Protection: Protecting Persons of Concern to UNHCR*, *supra* note 5.

³⁰ See in particular Articles 1C (4), 1C (5) and 1C (6) of the 1951 Convention. The 1969 OAU Convention does refer explicitly to voluntary repatriation.

³¹ UN High Commissioner for Refugees, *Handbook - Voluntary Repatriation: International Protection*, January 1996, Section 2.4, available at: <http://www.unhcr.org/refworld/docid/3ae6b3510.html>. Issued in 1996 and is in the process of being updated.

Ensuring that conditions for return are met is often a major challenge, particularly in post-conflict situations. Even where a peace agreement has been signed, the full halting of violence, the re-establishment of normal political, economic and social life, the rehabilitation of the legal and judicial system, respect for human rights, and long-term stability may still take considerable time. Absorption capacity in the country of origin is another important consideration. It is important to prevent internal displacement, particularly where the security situation has improved only in parts of the country.

As a general rule, UNHCR should be satisfied that the refugee has been counselled and has based his or her decision to repatriate on objective information as to the situation in the country of origin. The refugee's decision to repatriate should not be coerced by factors such as the asylum situation in the host country, lack of or reduction in assistance, or threats to family or property in his or her country of origin.

In line with the international legal framework, UNHCR understands return 'in safety and with dignity' to mean return in and to conditions of physical, legal and material safety with full restoration of national protection. Refugees should ideally be able to return to their place of residence.

Return in safety and with dignity

Return in safety: Return which takes place under conditions of legal safety (such as amnesties or public assurances of personal safety, integrity, non-discrimination and freedom from fear of persecution or punishment upon return), physical security (including protection from armed attacks, and mine-free routes or at least demarcated settlement sites), and material security (access to land or means of livelihood).

Return with dignity: The concept of dignity is less self-evident than that of safety. The dictionary definition of "dignity" is the quality of being "worthy of honour and respect." In practice, dignity means that refugees are not mistreated, are able to return unconditionally or spontaneously at their own pace, are not arbitrarily separated from family members, are treated with respect and full acceptance by their national authorities, and that they have full restoration of their rights.³²

Physical safety must be assured by the national authorities who may need to be supported by the international community. General threats may arise from overall insecurity, but may also be specifically targeted at returnees, making the capacity of the national authorities to provide security and uphold law and order an important consideration. Furthermore, even where the overall security situation has improved, there may be pockets where physical security cannot be assured. The presence of landmines, for example, may also pose particular threats.

Physical safety

Particularly in post-conflict situations, **legal** and judicial systems often need to be instituted or reformed in order to remove legal and administrative barriers to return. An example of this is to ensure recognition of personal and civil status (including citizenship), as well as the return of property, or adequate compensation where these are

Legal safety

³² *Ibid.*

possible. Another type of legal safety measure for returning refugees is amnesty against prosecution for having fled or, for example, avoiding military conscription. Amnesties may cover different crimes, but perpetrators of war crimes or crimes against humanity should not be amnestied.

Material safety

Material safety implies non-discriminatory access to means of survival and basic services, such as food, water, health care and education. These services must be accompanied by means of self-reliance to ensure that reintegration is sustainable. As noted earlier, absorption capacity in the country of origin may be an important factor to consider (particularly in a post-conflict situation).

Facilitation versus promotion of voluntary repatriation

Even if not all safety conditions are met, UNHCR may assist or facilitate voluntary repatriation, if there is a strong, informed desire on the part of the refugee population to return, or if returns are taking place anyway. UNHCR will not, however, *promote* such returns, unless the conditions outlined above are met.

UNHCR carefully evaluates whether and to what extent UNHCR may facilitate or promote voluntary repatriation, taking into account a number of indicators including verification of objective factors, such as the existence or possibility of peace talks and the security conditions and safeguards against ill treatment in the country of origin. There should also be assessments of voluntariness, which include examining whether the refugees based their decision on objective information about conditions in their country of origin, or were compelled in any way (including through the reduction of assistance in the country of asylum).

UNHCR may undertake the following activities to facilitate or promote voluntary repatriation:

- disseminating information about the conditions in the country of origin;
- verifying the voluntary nature of returns;
- providing documentation and transport, as necessary;
- providing immediate material and financial support as necessary;
- monitoring and participating in efforts to ensure sustainable reintegration.³³

The 4Rs: Repatriation, Reintegration, Rehabilitation and Reconstruction

UNHCR generally works toward ensuring sustainable reintegration through short-term emergency or humanitarian relief. The connection between humanitarian assistance and longer-term development work has been an important one. UNHCR has therefore sought to coordinate its work with other UN agencies and State development actors to create a smoother transition between relief efforts and development, in part through the “4Rs” approach: repatriation, reintegration, rehabilitation and reconstruction. While UNHCR takes the lead on repatriation-related activities, other UN agencies and the World Bank are closely involved with the initial stages of return. This helps ensure that early efforts are

³³ See also UN High Commissioner for Refugees, *Handbook for Repatriation and Reintegration Activities*, May 2004, available at: <http://www.unhcr.org/refworld/docid/416bd1194.html>.

integrated into development agendas, and the needs of returnees reflected in longer-term plans.

Even if voluntary repatriation is found generally feasible, it may not be appropriate for the entire refugee population. One or both of the other two durable solutions may thus still be more appropriate.

LOCAL INTEGRATION

Local integration is based on Statute

Local integration, another durable solution available to refugees, is also recognized in UNHCR's Statute. It involves the permanent settlement of refugees in the country in which they sought asylum.

The 1951 Convention and local integration

The 1951 Convention envisages a framework for refugee protection that is conducive to local integration in countries of asylum. The logic of the Convention framework is that, with the passage of time, refugees should be able to enjoy a wider range of rights, as their ties with the hosting State grow stronger. In this sense, the 1951 Convention gives refugees a solid basis on which they can progressively reclaim their social and economic independence in order to proceed with their lives. These include *inter alia* the right to freedom of movement, access to the labour market, education, health care and other social services. Not least, the 1951 Convention provides for facilitated naturalization procedures in the country of asylum.

The process of local integration

If local integration is to be a viable solution, it requires (i) agreement by the host country concerned; and (ii) an enabling environment that builds on the resources refugees bring with them, both of which implicitly contribute to the prevention of further displacement. Local integration should be seen as a gradual process that takes place on three levels:

- **legal:** refugees are granted a progressively wider range of rights (similar to those enjoyed by citizens) leading eventually to permanent residence and perhaps citizenship;
- **economic:** refugees gradually become less dependent on aid from the country of asylum or on humanitarian assistance and become increasingly self-reliant to support themselves and contribute to the local economy;
- **social and cultural:** the interaction between refugees and the local community allows refugees to participate in the social life of their new country without fear of discrimination or hostility.

Challenges to local integration

The integration process may be more challenging for refugees than for migrants who chose to migrate to the host State, because medical problems, trauma, and a potentially more difficult socio-economic and cultural environment may disproportionately burden refugees. As such, special efforts may be necessary to facilitate refugee integration.

States with developed asylum systems have utilized local integration as the predominant durable solution for recognized refugees and have thereby avoided protracted situations. There is, nevertheless, an increasing trend in many countries to focus more on cessation of refugee status and repatriation by granting more limited and temporary forms of asylum. This process often delays or forgoes the achievement of local integration.

Refugees for whom local integration may be particularly appropriate

In States without developed asylum systems, general socio-economic conditions, the desire to protect scarce resources, the risk of security problems, concerns about migration, and potential antagonism towards refugees have prevented the local integration of refugees. These issues are particularly relevant because the majority of countries hosting large refugee populations are developing and poor countries.

Despite the challenges, local integration is an important facet of comprehensive durable solution strategies for refugee situations, particularly those of a protracted nature. While many refugees may voluntarily repatriate, some may benefit from resettlement, and local integration may be the preferred durable solution for others. Refugees who are unwilling to voluntarily repatriate might include those who have experienced acute trauma in the country of origin or who have attained a considerable degree of socio-economic integration by establishing, for example, close family, social, cultural and economic links in their country of asylum. Local integration may, for example, be appropriate for refugees who are born in countries of asylum, who have no ties with their parents' country of origin and who may in the long run risk becoming *de facto*, if not *de jure*, stateless. This concern has been recognized in ExCom Conclusions.

The conditions for local integration that must be present in order for it to be a viable durable solution include: legal status; increasingly longer-term residence permits; access to civil, cultural and economic rights as well as increasing political rights; a viable economic situation; and receptive attitudes in the host community.

Local integration can also provide benefits to the host country as well as to refugees. Countries benefit because:

Benefits of local integration for host countries

- refugees may bring with them skills and cultural diversity that can assist and enrich the host country;
- refugees' presence may attract resources from the international community that might not otherwise be available to the local population;
- ethnic, cultural, or linguistic links with the local community can increase the chances of successful local integration;

An international burden and responsibility-sharing framework to increase the capacities of host States to help refugees achieve integration is very important. UNHCR can help facilitate the process and bring together relevant actors to design and implement coordinated programmes for assisting the integration of refugees. Similar to the 4Rs in the area of voluntary repatriation, UNHCR has developed the "Development for Local Integration" (DLI) initiative which brings together development actors to ensure a comprehensive approach and funding to support the host State with the local integration of refugees.

Both DLI and the 4Rs have been integrated as part of an overall *Framework for Durable Solutions for Refugees and Persons of Concern*.³⁴

SELF-RELIANCE

Self-reliance is not a durable solution in and of itself, but rather an important precursor to all three durable solutions. Self-reliance plays a crucial role in the success of local integration, but does not presuppose that refugees will be able to find a suitable durable solution in the country of asylum.

Defining self-reliance

Self-reliance can be defined as the ‘*social and economic ability of an individual, a household or a community to meet essential needs (including protection, food, water, shelter, personal safety, health and education) in a sustainable manner and with dignity*’. As a programme approach, self-reliance refers to developing and strengthening livelihoods of persons of concern in an effort to reduce their vulnerability and long-term reliance on humanitarian and external assistance.³⁵

Self-reliance among refugees thus:

- reduces the burden on the country of asylum by decreasing refugees' dependence on its assistance;
- boosts refugees' dignity and confidence by giving them more control over their daily lives and hope for the future;
- helps make any long-term solution more sustainable as refugees who actively support themselves are better equipped to take on the challenges of voluntary repatriation, resettlement, or local integration.

Development Assistance for Refugees (DAR)

UNHCR, together with NGOs, has sought to help increase the self-reliance of refugees through various means, including income-generating, agricultural or community development projects.

Development for Local Integration (DLI)

Self-reliance projects often benefit local communities as well, allowing refugees to become agents of development. UNHCR has sought to reinforce this development by engaging in partnerships with State and non-State actors to increase the host State's capacity to provide for refugees pending realization of a durable solution. It has formulated this approach through Development Assistance for Refugees (DAR), which also forms part of the *UNHCR Framework for Durable Solutions for Refugees and Persons of Concern*.³⁶ By providing funding and resources, UNHCR supports an international burden-sharing framework to assist hosting States.

Framework for Durable Solutions for Refugees and Persons of Concern

³⁴ UN High Commissioner for Refugees, *Framework for Durable Solutions for Refugees and Persons of Concern*, 16 September 2003, EC/53/SC/INF.3, available at: <http://www.unhcr.org/refworld/docid/4ae9ac93d.html>.

³⁵ See also UN High Commissioner for Refugees, *Handbook for Self-Reliance*, August 2005, available at: <http://www.unhcr.org/refworld/docid/4a54bbf40.html>

³⁶ UN High Commissioner for Refugees, *Handbook for Planning and Implementing Development Assistance for Refugees (DAR) Programmes*, January 2005, available at: <http://www.unhcr.org/refworld/docid/428076704.html>

RESETTLEMENT

Resettlement is the transfer of refugees from the country in which they have sought asylum to another State that has agreed to admit them as refugees and to grant them permanent settlement and the opportunity for eventual citizenship. Resettlement is the third durable solution UNHCR is mandated to implement, in cooperation with States, as derived from its Statute and set out in subsequent UN General Assembly Resolutions.

Resettlement is not a right, and there is no obligation for a third State to accept a refugee on resettlement

Resettlement is *not* a right, and there is no obligation on States to accept refugees through resettlement. Even if their case is submitted to a resettlement State by UNHCR, whether individual refugees will ultimately be resettled depends on the admission criteria of the resettlement State as well as the willingness of the country of asylum to allow them to leave.

The evolution of resettlement

Resettlement has been undertaken in one form or another from the outset of the system of international protection for refugees, but the use and importance of resettlement has evolved over the decades. Below we will give a very short overview of the policy shifts and changes of emphasis in durable solutions. As we will explore further in the following units, resettlement is now recognized as a vital instrument of international protection, and an integral part of a comprehensive protection and durable solutions strategy.

1950's- 1980's

Following the work of the International Refugee Organization (IRO), UNHCR made extensive use of resettlement as a means of clearing the European refugee camps after World War II. For the next three decades voluntary repatriation, local integration and resettlement enjoyed equal status as durable solutions depending on circumstances. The largest and most dramatic example of resettlement occurred in the aftermath of the Indo-Chinese conflict, when the mass exodus of “boat people” by 1979 caused a major protection crisis in the region. Adopting blanket resettlement safeguarded the concept of first asylum by ensuring that refuge continued to be granted in neighbouring countries. More than 700,000 Indochinese were resettled in the years that followed, averting the immediate threat of massive loss of life. However, the situation changed in 1986 with the sudden and massive increase in departures from Vietnam, driven increasingly by economic factors. The adoption of a Comprehensive Plan of Action (CPA) in 1989 to address the issue in a global and systematic way, ended blanket resettlement processing.

1990's

After this large-scale processing of Indochinese ended with the Comprehensive Plan of Action (CPA) in 1989, the use of resettlement as a solution waned. In retrospect, the decision in 1979 to adopt blanket resettlement was seen as a chief “pull-factor” in a mass migration movement of people leaving Vietnam primarily for economic and social reasons, rather than for protection reasons. This led to a widespread sense of disenchantment with resettlement as a solution for large numbers of refugees. During the 90's, with the end of the Cold War and evolving political realities, voluntary repatriation became the preferred durable solution and resettlement became increasingly focused on individual protection cases.

PUSH AND PULL FACTORS

All migration involves *push* and *pull* factors. When examining forced migration we look at root causes of flight, or *push* factors. However, there are also *pull* factors that influence refugees' flight patterns when seeking asylum, and impact the implementation and success of durable solutions.

When assessing repatriation, UNHCR should be convinced that the overriding element in the refugees' decision to return are positive *pull* factors in the country of origin, rather than possible *push* factors in the host country or negative *pull* factors, such as threats to property, in the home country.

When planning resettlement operations, the challenge for UNHCR is to ensure access of those in need of protection and resettlement, while at the same time avoiding the impression that resettlement might be an alternative migration route. With proper management and oversight, resettlement has been expanded in concert with other durable solutions to benefit greater numbers of refugees, without creating economic migration *pull* factors. The development of efficient and effective systems to register refugees, protect data integrity and prevent fraud has enhanced the scope and flexibility of resettlement. Also critical are active and timely case identification based on a fair, consistent and transparent application of the UNHCR resettlement criteria.

21st Century

After the turn of the century, the reality that the majority of refugees were in protracted refugee situations with no prospect of timely and safe solutions, the proliferation of conflict-driven displacement and the increasing pressures of mixed migratory flows, compelled UNHCR and the international community to reconsider the use of resettlement as a durable solution.

Global Consultations

In 2000 UNHCR initiated the Global Consultations on International Protection to launch broad-based discussion on reinvigorating international protection in the 21st century. The Consultations took a broad-based approach that focused not only on the 1951 Convention and its interpretation, but also on issues of relevance to asylum and to the protection of refugees as a whole.

Ministerial Declaration by States Parties to the 1951 Convention and/or 1967 Protocol

The Consultations led to the adoption of a Ministerial Declaration by States Parties to the 1951 Convention and/or 1967 Protocol at a Ministerial Meeting held in 2001. The Declaration recognized the enduring importance of the 1951 Convention as the primary refugee protection instrument that, as amended by the 1967 Protocol, sets out rights and minimum standards of treatment that apply to persons falling within its scope.

Agenda for Protection

States also adopted an *Agenda for Protection*, which was subsequently endorsed by ExCom.³⁷ The Agenda represented the first comprehensive framework for global refugee policy since UNHCR was created. It set out

³⁷ UN High Commissioner for Refugees, *Agenda for Protection*, October 2003, Third edition, available at: <http://www.unhcr.org/refworld/docid/4714a1bf2.html>.

clear goals for strengthening international protection and suggests practical ways to achieve them. Thus, the Agenda provided a useful framework for cooperation among States, NGOs and UNHCR on refugee matters and helped UNHCR identify its priorities globally and on a country-by-country basis. The Agenda outlined six main goals:

- strengthening implementation of the 1951 Convention and 1967 Protocol;
- protecting refugees within broader migration movements;
- sharing burdens and responsibilities more equitably and strengthening capacities to receive and protect refugees;
- addressing security-related concerns more effectively;
- redoubling the search for durable solutions;
- meeting the protection needs of refugee women and children.

These goals are supplemented by specific objectives for both UNHCR and States. The Agenda encouraged the development of new tools to ensure that effective protection is provided to refugees and other persons of concern. UNHCR has also used the Agenda as a basis to move forward on a number of different initiatives including the development of *The Framework for Durable Solutions for Refugees and Persons of Concern*³⁸. In view of the number of commitments by States, and the fact that they agreed to and endorsed this Agenda, UNHCR has also relied upon it as an important lobbying and advocacy tool.

Convention Plus initiative

Multilateral Framework of Understandings on Resettlement

Strengthening Protection Capacity Project (SPCP)

One of the follow-up initiatives pursued by the High Commissioner at the time was the use of multilateral 'special agreements' among States to complement the 1951 Convention. He initiated the *Convention Plus* process to elaborate such agreements in three main areas or 'strands'. They included resettlement, targeting development assistance, and irregular secondary movements. One of the first concrete outcomes of this process was the 2004 *Multilateral Framework of Understandings on Resettlement*.³⁹ The Convention Plus process was subsequently integrated into ongoing UNHCR work, including specific follow-up on the *Agenda for Protection*, and additional tools continue to be developed.⁴⁰

The Strengthening Protection Capacity Project (SPCP) is a noteworthy example of an additional tool. The SPCP is designed to facilitate national responses to protection problems through a process of protection assessment, dialogue and joint planning in States hosting refugees. Facilitation of national responses is pursued via three main approaches. Firstly, a comprehensive analysis of gaps in the provision of refugees' rights is undertaken using the *Protection Gaps Framework for Analysis*:

³⁸ UN High Commissioner for Refugees, *Framework for Durable Solutions for Refugees and Persons of Concern*, *supra* note 34.

³⁹ This shall be examined more closely in the next Unit.

⁴⁰ For an overview of the implementation of the Agenda for Protection, see UN High Commissioner for Refugees, *Agenda for Protection: Review and Way Forward*, 48th Standing Committee, EC/61/SC/INF.1, May 2010, available at <http://www.unhcr.org/4c0527999.html>

Protection Gaps
Framework for Analysis:
Enhancing Protection of
Refugees

*Enhancing Protection of Refugees*⁴¹, an assessment tool developed as part of the SPCP. Secondly, the SPCP instigates national consultations with all actors concerned, including governmental and non-governmental agencies, the local community, and refugees themselves. Finally, the SPCP encourages the joint development of a plan of action to improve protection, provide for self-reliance and facilitate durable solutions.

Resettlement Currently

Resettlement has re-emerged as an important expression of international solidarity and responsibility-sharing and a durable solution, as well as an invaluable tool of protection. As we will review further in the next Unit, there has been considerable expansion of the number of resettlement places available and the number of departures. The number of resettlement countries has grown from the 10 'traditional' countries in the 80's, to the following 24 countries who have offered a resettlement quota for 2011: Argentina, Australia, Brazil, Bulgaria (starting 2011), Canada, Chile, Czech Republic, Denmark, Finland, France, Iceland, Ireland, Japan, Netherlands, New Zealand, Norway, Paraguay, Portugal, Romania, Spain, Sweden, United Kingdom, Uruguay, United States of America.

Projected global
resettlement needs

However, the increase in the number of resettlement places has not kept pace with global resettlement needs and the steady increase in the identification and submission of persons in need of resettlement. For 2011 alone UNHCR has estimated global resettlement needs of 172,300 refugees, leaving a huge gap of vulnerable refugees without a solution after the 80,000 available places are filled.⁴²

AT A GLANCE FIGURES⁴³

	2009	2008	2007	2006	2005
Submissions	128,558	121,214	98,999	54,182	46,260
Departures	84,657	65,859	49,868	29,560	38,507
Countries of Asylum**	94	80	80	88	73
Countries of Origin**	77	68	65	67	69
Countries of Resettlement***	24	24	25	20	23

* This figure includes 7,142 individual resubmissions (2,202 cases)

** based on submissions

*** based on departures

⁴¹ UN High Commissioner for Refugees, *Protection Gaps Framework for Analysis: Enhancing Protection of Refugees*, June 2006, available at: <http://www.unhcr.org/refworld/docid/430328b04.html>.

⁴² In 2009, 84,657 refugees departed to 24 countries of resettlement, the largest number since the early 1990s. For statistics and needs projections, see UN High Commissioner for Refugees *UNHCR Projected Global Resettlement Needs 2011*, June 2010, available at: <http://www.unhcr.org/refworld/docid/4c5acc3e2.html>

⁴³ *ibid.*

For some refugees, resettlement may be the only durable solution available

Although resettlement will be a durable solution for a comparatively small number of refugees, it has a vital role; particularly for refugees whose life, liberty, safety, health or other fundamental human rights are at risk in the country where they sought asylum. Where local integration is not an option, and voluntary repatriation is not possible in the foreseeable future, resettlement may be the only durable solution available, especially in protracted refugee situations.

Strategic use of resettlement

Resettlement may also have strategic value, such that utilizing it as a durable solution for some refugees may open avenues for others to enjoy improved conditions in the first country of asylum. Resettlement is thus by definition an important burden and responsibility-sharing tool.

The availability of opportunities for voluntary repatriation and/or local integration does not negate the possibility of resettling a refugee or a refugee group. UNHCR may still consider resettlement for individuals who are unable to return to their country of origin due to their continued fear of persecution, the impossibility of securing protection, or the inability to integrate locally. Resettlement can also be considered for individuals with specific needs that will not be addressed adequately in the country of asylum. Resettlement can thus be an important element of comprehensive solutions.

In the coming units we shall be looking in greater detail at resettlement as a tool of international protection and durable solution, and at the strategic and burden and responsibility-sharing role of resettlement.

Resettlement and integration

Resettlement is a process that does not end with refugees' transfer to a third State; integration in the country of resettlement is essential to the durability of resettlement. The resettlement country should provide legal status that ensures protection against *refoulement* and provides a resettled refugee and her/his family or dependants with access to civil, political, economic, social and cultural rights similar to those enjoyed by nationals. The resettlement country should also provide access for refugees to become naturalized citizens.⁴⁴

Integrating resettled refugees is beneficial for both the refugees and the receiving State. Resettled refugees become independent and active participants of society through integration. This, in turn, empowers them to make valuable contributions to the host society. It is therefore crucial for resettlement States to have services in place to assist settlement, such as language and vocational training and other programmes that facilitate access to education and employment. It is also important to provide refugees with cultural orientation and manage their expectations prior to and after their arrival in the resettlement country in order to ease the process of adjustment into the new community and foster a positive attitude toward integration. It is equally essential to create the possibility of and support for family reunification. The success of integration programmes is thus largely dependent on the political will

⁴⁴ *Resettlement Handbook*, UNHCR, November 2004 (country chapters last updated September 2009), available at: <http://www.unhcr.org/refworld/docid/3ae6b35e0.html>

Refugee Resettlement:
An International
Handbook to Guide
Reception and
Integration

and commitment of the resettlement country and the resources governments allocate to integration programmes.

Because of the importance of integration to resettlement, UNHCR launched an Integration Initiative in 1991. The *Refugee Resettlement: An International Handbook to Guide Reception and Integration*⁴⁵ is an important outcome of this initiative. Targeted at programme planners, it gives examples of good practices with regard to managing initial reception, preparing host communities, language training, education, employment and issues to be taken into account to ensure that the needs of all resettled refugees are considered in the planning process.

Current challenges to international protection

Shrinking protection
space, shrinking
humanitarian space

Resettlement must always be considered within the overall protection context, and at the end of the 1st decade of the 21st century there are major challenges impacting the search for durable solutions. The number of internally displaced persons (IDPs) has increased considerably⁴⁶, and the overall number of refugees has remained relatively constant, reflecting a decrease in the availability of durable solutions. The climate for international protection continues to be restrictive in many ways. Asylum seeking and, even more so, irregular migration has, in many countries, become highly politicized and the overall protection space is shrinking. The international humanitarian space itself is also shrinking, as ongoing conflict, insecurity and instability in entire regions in Africa, Asia and the Middle East hinder access to persons of concern, and endanger those delivering humanitarian assistance.⁴⁷

Decline in availability of
durable solutions

In many countries, successful return and reintegration have been hindered by stalled or failed peace processes, the presence of landmines, insufficient registration, inadequate reception capacity, and shortages of services and livelihood opportunities. As per UNHCR's 2009

⁴⁵ Issued in October 2002 together with the Foundation for Survivors of Torture (VFST), an Australian NGO. UN High Commissioner for Refugees, *Refugee Resettlement. An International Handbook to Guide Reception and Integration*, September 2002, available at: <http://www.unhcr.org/refworld/docid/405189284.html>

⁴⁶ According to the UNHCR 2009 *Global Report* (p. 17), "At the beginning of 2009, there were more than 36 million people of concern to UNHCR (the highest figure on record), including some 10.4 million refugees. The number of people displaced within their own country as a result of conflict grew to an estimated 26 million, with 15.5 million of them benefiting from UNHCR protection and assistance." Available at: <http://www.unhcr.org/gr09/index.html>.

⁴⁷ For a more detailed discussion of current protection trends, see UN High Commissioner for Refugees, *Note on international protection : report / by the High Commissioner*, 30 June 2010, available at: <http://www.unhcr.org/refworld/docid/4caaeabe2.html>

Concerns related to irregular migration, mixed flows, and abuse of asylum systems

Global Trends 2009 report, only 251,500 refugees voluntarily returned to their country of origin with UNHCR support in 2009, less than half the number from 2008, and the lowest number since 1990.⁴⁸ Host country economic difficulties, coupled with social and political factors have rendered the realization of full self-sufficiency a challenging prospect in many parts of the world, although local integration has emerged as a viable solution for some refugees in Africa.⁴⁹ With the lack of voluntary repatriation and local integration opportunities, the demand for resettlement is growing.

Increasing efforts to control irregular migration, including more extensive border monitoring, posting liaison and 'interdiction' officers abroad, stricter visa regimes, and carrier sanctions, that have been introduced since the 1980s have indiscriminately impacted not only economic migrants, but also refugees and asylum-seekers. With the options for regular arrival reduced, refugees have increasingly relied on smugglers and traffickers to cross borders. UNHCR has highlighted concerns that measures to control or manage migration should include special safeguards for refugees and asylum-seekers to access territory and asylum procedures.

Increasingly restrictive approaches to asylum including in the interpretation of the 1951 Convention

The mixed flows and the asylum-migration nexus have raised concerns about abuse of the asylum system by 'economic migrants' and persons not in need of international protection. As economies stagnate, the costs of asylum systems and reception facilities have also raised concerns. Some States have argued that it would be far less expensive for them if refugees stayed in their regions of origin. States have thus increasingly introduced restrictive measures in their asylum procedures, including more restrictive interpretations of the 1951 Convention. In doing so, they have increased the risk of breaches of the 1951 Convention and have decreased the likelihood of refugees being recognized. UNHCR has also raised concerns that such restrictions could force refugees to go underground, foregoing the protection that they should rightly receive.

Concerns related to security

Security concerns have also come to the forefront, particularly since the terrorist attacks of 11 September 2001 in the United States. These concerns have contributed to States using a more restrictive approach due to fears that terrorists might rely on the asylum route to obtain access to foreign territory. States have thus started to focus more on restricting access to asylum and facilities accorded to asylum-seekers, as well as to take a more restrictive approach in interpreting and applying the definition of a refugee, particularly with respect to the exclusion clauses.

Concerns related to lack of integration

States have also faced increasing challenges with a *de facto* lack of integration among migrant communities more generally. A number of

⁴⁸ UN High Commissioner for Refugees, *2009 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, June 2010, available at: <http://www.unhcr.org/4c11f0be9.pdf>.

⁴⁹ The United Republic of Tanzania naturalized 162, 000 Burundians as part of the comprehensive solution to this refugee situation. A further 53,600 opted to repatriate with the help of UNHCR.

different events, including riots and the debate over headscarves in schools, have served to highlight the extent to which integration of migrant communities has been challenging. The focus on integration, or lack thereof, has partly been linked to rising security concerns, as it has become clear that ‘terrorist acts’⁵⁰ have been committed by persons who had been granted long-term residence, or even citizenship, in the countries concerned. Integration, and how to foster it, has thus become a significant issue for many States. While this debate has not focused specifically on refugees and others in need of international protection, UNHCR has sought to draw the attention of States to their specific needs, and to encourage integration programmes that focus on two-way exchange and fostering integration positively.

60TH ANNIVERSARY COMMEMORATIONS 2010-2011

2011 marks UNHCR's 60th anniversary, along with the 60th anniversary of the Refugee Convention, and the 50th anniversary of the Convention relating to the Reduction of Statelessness. The commemorations of these anniversaries will have three broad goals:

- First, to strengthen the existing protection regime and promote a new protection dynamic. This could include exploring innovative ways to address protection gaps, including how regional protection or cooperation arrangements could most effectively be employed in parallel with national asylum systems;
- Second, to attain greater support for the statelessness conventions, including new accessions, as well as better mapping of the statelessness problem and more effective ways to respond; and
- Third, to raise public awareness and build solidarity with forcibly displaced and stateless persons, through a communications strategy aimed to influence public opinion and expand protection space. In so doing, it is hoped that new sources of funding can also be identified.

⁵⁰ It is important to note that as of mid-2008, no international definition of terrorism or terrorist acts has been agreed upon, largely due to differences in views and the adage that “one country’s freedom fighters are another’s terrorists”.

1 Assignments

Essential Reading:

- UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, A/Res/428(V), available at: <http://www.un.org/depts/dhl/resguide/r5.htm>
- UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>
- UN High Commissioner for Refugees, *Agenda for Protection*, October 2003, Third edition, available at: <http://www.unhcr.org/refworld/docid/4714a1bf2.html>.
- UN High Commissioner for Refugees, *Protection Gaps Framework for Analysis: Enhancing Protection of Refugees*, June 2006, available at: <http://www.unhcr.org/refworld/docid/430328b04.html>.

OPTIONAL:

For a more detailed introduction to international protection and durable solutions, you may also wish to look more closely at the UN High Commissioner for Refugees, *Self-Study Module 1: An Introduction to International Protection. Protecting Persons of Concern to UNHCR*, 1 August 2005, available at: <http://www.unhcr.org/refworld/docid/4214cb4f2.html>

Exercise 1.1:

Based on your review of the above instruments and tools, please provide brief yet full responses in your own words to the following questions. You may find it useful to consult protection staff in your office as well as your office's Global Needs Assessment and Country / Regional Operations Plans.

1. Which refugee law conventions has the country in which you work signed and ratified? Have they been effectively implemented? Does the country have asylum legislation? Is it in line with international law?
2. Does the country where you work have an individualized procedure for recognizing refugees or does it rely on a *prima facie* group determination approach? Who undertakes refugee status determination: the State or UNHCR?
3. Is the refugee definition applied in the country where you work in line with the 1951 Convention? Is there a wider definition applied? Explain. Are there any complementary forms of protection?
4. Describe the main refugee groups in your country, including distinguishing factors beyond country of origin, such as ethnic, religious or situational characteristics where applicable.
5. What are some major protection gaps in the country in which you work? The *Protection Gaps Framework* may help you structure your reply.
6. Which durable solutions are pursued by your office? Are different solutions pursued for different refugee populations? Assess the availability of the durable solutions against some of the indicators you just reviewed, and outline some of the main challenges.

Please submit your responses to the designated Learning Program administrator.

2

Resettlement as a tool for international protection and a durable solution

Learning Objectives

This Unit will address in greater depth policy and global operational issues relating to resettlement. It will introduce the resettlement criteria for and strategic use of resettlement, its use both as a tool of international protection and as a durable solution, and the concept of comprehensive approaches to durable solutions. It will also outline important developments in the global management of resettlement within UNHCR, introduce the role of resettlement States and fora for discussing policy and operational issues relating to resettlement, and present some key challenges in resettlement that have arisen in recent years.

At the end of this Unit, you should be able to:

- explain the eligibility and criteria for resettlement in general terms;
- understand how resettlement can serve as a tool for international protection, a durable solution and a burden- and responsibility-sharing tool;
- understand how resettlement can be part of a strategic and comprehensive approach;
- explain the structural and operational changes UNHCR has undergone at an organizational level with respect to resettlement;
- know how operational planning is undertaken and become familiar with current global priorities;
- give a general overview on how States approach resettlement;
- outline some key challenges to resettlement.

The designated Learning Programme administrator will recommend the time allotment for completion of this Unit.

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The use of resettlement

Definition of resettlement

Resettlement may be defined as the lawful admission of refugees from a State in which they have initially sought protection to a third State that has offered them permanent resident status. The status provided should ensure protection against *refoulement* and give a resettled refugee and her/his family or dependents access to civil, political, economic, social and cultural rights similar to those enjoyed by nationals. It should also carry with it the opportunity to become a naturalized citizen of the resettlement country.

Still, it is important to note that resettlement is *not* a right and no country is obliged to accept refugees for resettlement. States determine admissibility in accordance with their national policy and legislative requirements. Resettlement is thus by definition a voluntary and important burden- and responsibility-sharing tool. Moreover, the number of refugees who may benefit from resettlement is relatively small¹ in comparison to refugees who may benefit from other durable solutions.

The importance of resettlement as a durable solution and as a tool of international protection has increased considerably in recent years. The profile of resettlement cases is increasingly characterized by new and diverse nationalities, more complex cases originating from armed conflicts, and individuals needing specialized attention and treatment, such as survivors of violence and women at risk. This increasing complexity has generated a number of challenges for UNHCR and resettlement countries, such as how better to identify the people most in need of resettlement, how to ensure global consistency and predictability in resettlement delivery, and how to maintain the capacity to manage resettlement activities.

RESETTLEMENT ELIGIBILITY AND UNHCR RESETTLEMENT CRITERIA

In order to be **eligible** for resettlement consideration:

Eligibility for resettlement

- 1) the applicant must have been recognized as a refugee under the Mandate of UNHCR²; and
- 2) the prospects of other durable solutions must have been given full consideration and resettlement identified as the most appropriate durable solution.

¹ In 2010, we expect that less than ten per cent of the total world refugee population will be found to be in need of resettlement. Of these, not all will necessarily be resettled.

² Exceptions can be made for stateless persons and returnees for whom resettlement is considered the most appropriate durable solution, and also for the reunification of non-refugee family members of resettled refugees

Criteria for
resettlement

The agreed global criteria for resettlement were endorsed by UNHCR's ExCom in 1996 and are:

- **unavailability of legal and physical protection** for the refugee in the country of asylum (this includes a threat of *refoulement*);
- **survivors of torture and violence**, where repatriation or the conditions of asylum could result in further trauma and/or heightened risk; or where appropriate treatment is not available;
- **medical needs**, in particular life-saving treatment that is unavailable in the country of asylum;
- **women at risk**, where there is a real risk of exposure to sexual or gender-based violence;
- **family reunification**, when resettlement is the only means to reunite refugee family members who, owing to refugee flight or displacement, are separated by national borders or entire continents;
- **children and adolescents**, where a best interests determination supports resettlement;
- **older refugees** who may be particularly vulnerable and for whom resettlement is the most appropriate solution, generally due to family links;
- **lack of local integration or voluntary repatriation prospects**, which generally is relevant only when other solutions are not feasible in the foreseeable future, when resettlement can be used strategically, and/or when it can be used to open possibilities for comprehensive solution strategies.

The 'universal
imperative'

The 'universal imperative' requires that resettlement criteria be applied in a consistent manner within the same operation to ensure transparency and harmonized and equitable resettlement delivery. In other words, when UNHCR identifies a refugee with a certain profile (i.e. need for resettlement) within a given population it should, as a general rule, be willing to submit all refugees of the same profile for resettlement.³ The imperative must be respected not only within one office, but also on a regional and global level where the refugee profiles and rationale for resettlement are comparable between different countries of asylum.

³ See UN High Commissioner for Refugees, *Resettlement Handbook (country chapters last updated September 2009)*, 1 November 2004, Section 6.7.1, Step 5: UNHCR Submission Decision, available at: <http://www.unhcr.org/refworld/docid/3ae6b35e0.html>.

RESETTLEMENT AS A TOOL OF INTERNATIONAL PROTECTION

Most of the criteria relate to specific individual protection needs, such as the physical or legal security of a refugee in the country of asylum.⁴ The use of resettlement as a tool of refugee protection requires effective methods for the early identification of vulnerable or 'at-risk' people within a population of refugees.

However, resettlement as a tool of protection may occasionally involve a considerable number of refugees. The resettlement of an entire refugee population in a country may also be warranted based on international protection grounds if, for example, refugee status is not acknowledged in the country of asylum and refugees face the risk of deportation and *refoulement*. This may happen when a country of asylum has not ratified any of the international or regional refugee treaties, or such as in the case of Turkey, when it has maintained a geographical restriction with respect to the 1951 Convention. Resettlement may also be the most appropriate form of protection when States simply fail to adopt legislation and policies in line with the responsibilities they have assumed under international or regional conventions.

RESETTLEMENT AS A DURABLE SOLUTION

A fundamental objective of resettlement policy is to provide a durable solution for refugees unable to voluntarily return home or remain in their country of refuge. The Global Consultations and the Agenda for Protection spurred action both to increase the number of resettlement places available and to revitalize the role of resettlement as a durable solution and an element of responsibility and burden-sharing where no other solution is available.

Complementarities of the three durable solutions

The three durable solutions are complementary and any combination of the three may be applied to any given situation. Even if voluntary repatriation becomes feasible, local integration and resettlement may still be more appropriate durable solutions for certain refugees. Particularly in post-conflict situations, it may take quite some time before peace and order are fully re-established, and administrative and judicial institutions are functioning effectively. In such situations, refugees – especially those who have serious trauma that could worsen upon return to their countries of origin or who might face particular protection problems in their countries of origin – may be better served by local integration or resettlement.

While a complementary approach to durable solutions may arise naturally, the Global Consultations and the Convention Plus initiative

⁴ For more information about UNHCR's resettlement criteria, please see the UNHCR *Resettlement Handbook* (*supra* note 3). Identification of refugees in need of resettlement will be covered in Unit 4.

have focused on opening possibilities for voluntary repatriation and local integration through a comprehensive approach to the durable solutions.

Comprehensive approaches to durable solutions

A **comprehensive approach to durable solutions** refers to an effort to utilize all three durable solutions, – voluntary repatriation, local integration, and resettlement – often in a concerted and systematic manner directed at achieving durable solutions for a specific group, such as refugees in a particular protracted situation or a specific caseload in a given country of asylum. Such a comprehensive approach is implemented in close cooperation among countries of origin, host States, UNHCR and its partners as well as refugees. A comprehensive approach may be a formal Plan of Action with the goal of “solving” a particular situation, or instead reflect a concerted effort to coordinate the three durable solutions from the outset of a displacement situation with a view to preventing protracted situations from developing.

Framework for Durable Solutions for Refugees and Persons of Concern

The *Framework for Durable Solutions for Refugees and Persons of Concern* (introduced in Unit 1) was developed with such a complementary approach in mind. It incorporates the idea of close collaboration between the different actors concerned with refugees, including governments, local communities, refugees, UN agencies, national and international NGOs, development agencies and the donor community. It also provides for more international responsibility and burden-sharing by directing broader funding and resources, particularly development funding, to regions where voluntary repatriation or local integration is occurring.

STRATEGIC USE OF RESETTLEMENT

When considering the role of resettlement in the provision of durable solutions, UNHCR assesses how to maximize the potential benefits from the application of this scarce resource. With the active involvement of States, refugees and civil society, resettlement can open avenues for international responsibility-sharing and, in combination with other measures, can open possibilities for self-reliance and local integration. When used strategically, resettlement can bring about positive results that go well beyond those that are usually viewed as a direct resettlement outcome. Where political impasses prevent voluntary repatriation, a strategic approach to resettlement could involve additional efforts to improve the situation in the country of origin through political processes and interventions. Since UNHCR is a non-political organization, any such efforts need to take place under the leadership of the UN or through bi- or multilateral State efforts.

Definition

The **strategic use of resettlement** is defined as “the planned use of resettlement in a manner that maximizes the benefits, directly or indirectly, benefits other than those received by the refugee being resettled. Those benefits may accrue to other refugees, the hosting state, other states or the international protection regime in general.”⁵

Examples of how UNHCR has systematically used resettlement in a strategic manner to enhance protection are outlined in the June 2010 *UNHCR Position Paper on the Strategic Use of Resettlement*.⁶

Multilateral Framework of Understandings on Resettlement

Such a strategic use of resettlement is at the core of the *Multilateral Framework of Understandings on Resettlement*, which was agreed upon in 2004⁷ as part of the Convention Plus initiative. The Multilateral Framework emphasizes both comprehensive approaches and the strategic use of resettlement and specifically sets out understandings related to such approaches in a multilateral context. Under the framework resettlement countries are also urged to consider developing selection criteria to provide themselves with the flexibility to resettle persons of concern to UNHCR who may not fall within the terms of the 1951 Convention, which has been particularly important for the group resettlement methodology.

Group resettlement methodology

The Multilateral Framework also highlights the role that a group resettlement methodology, as opposed to the usual individualized approach, could serve in securing protection and durable solutions for large numbers of refugees. The group resettlement methodology was developed in 2003 to enhance resettlement through the use of simpler and more accelerated processing for groups of refugees that share specific characteristics. By facilitating the processing of resettlement, group methodology reinforces the use of resettlement as a durable solution and as an important responsibility and burden-sharing tool, thus making it particularly useful in comprehensive approaches. Group processing has been a major factor in accelerating the large-scale processing of refugees from a number of countries including Nepal, Thailand, Malaysia, Ethiopia and Kenya.

PROTRACTED REFUGEE SITUATIONS

Of particular relevance is using resettlement strategically to unlock protracted refugee situations. The problem of protracted refugee situations is not new, but has in recent years found a prominent place on

⁵ UN High Commissioner for Refugees, *The Strategic Use of Resettlement*, 3 June 2003, available at: <http://www.unhcr.org/refworld/docid/41597a824.html>

⁶ UN High Commissioner for Refugees, *Position Paper on the Strategic Use of Resettlement*, 4 June 2010, available at: <http://www.unhcr.org/refworld/docid/4c0d10ac2.html>

⁷ UN High Commissioner for Refugees, *Multilateral Framework of Understandings on Resettlement*, 16 September 2004, FORUM/2004/6, available at: <http://www.unhcr.org/refworld/docid/41597d0a4.html>

the international humanitarian agenda. The issue was a central concern of the 2002 Agenda for Protection, and was highlighted again in a June 2004 Standing Committee paper that demonstrated the dimensions of the problem throughout the world and presented the following definition of the 'protracted refugee situation' concept:

Definition

A **protracted refugee situation** is any situation "in which refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile. A refugee in this situation is often unable to break free from enforced reliance on external assistance."⁸

Such refugee situations are often created by political impasses in the country of origin that preclude voluntary repatriation as a viable option in the near future. Local integration may also be unobtainable, due to, for example, the heavy economic and social burden on the host country. Refugees in protracted situations often face restrictions on freedom of movement, being confined to camps, as well as limitations on employment. The strategic use of resettlement could therefore entail negotiating provisions for the relaxation of restrictions imposed on refugees by the country of asylum in connection with enhanced resettlement from that country. Even where other durable solutions remain unavailable in a protracted refugee situation, resettlement can be used strategically to ensure that more benefits accrue to refugees who remain in the host country, or to ensure continued access to asylum. Another important strategic objective is achieving possibilities for self-reliance, which is an important precursor to all three durable solutions.

High Commissioner's Initiative - Five Priority Situations

In December 2008 the High Commissioner's Dialogue on Protection Challenges focused on protracted refugee situations, examining the many negative consequences of protracted refugee situations, and identifying some emerging opportunities in relation to their resolution⁹. The High Commissioner also launched a Special Initiative on Protracted Refugee Situations, which focuses on five situations in different parts of the world where refugees have been living in exile for long periods of time:

- Afghan refugees in the Islamic Republic of Iran and Pakistan;
- refugees from Myanmar in Bangladesh;

⁸ Definition used in UN High Commissioner for Refugees, *Protracted Refugee Situations*, Standing Committee to the Executive Committee of the High Commissioner's Programme, 30th meeting, EC/54/SC/CRP.14, 10 June 2004, available at: <http://www.unhcr.org/refworld/docid/4a54bc00d.html>. At the beginning of 2006, UNHCR identified 36 protracted situations involving 5,243,000 refugees, using the criteria of refugee populations of 25,000 or more who had been in exile for five or more years in developing countries.

⁹ UN High Commissioner for Refugees, *Protracted Refugee Situations*, 20 November 2008, UNHCR/DPC/2008/Doc. 02, available at: <http://www.unhcr.org/refworld/docid/492fb92d2.html>

- Bosnian and Croatian refugees in Serbia;
- Burundian refugees in the United Republic of Tanzania; and,
- Eritrean refugees in eastern Sudan.¹⁰

Resettlement was identified as integral component of durable solutions for the situations of the Islamic Republic of Iran and Pakistan, Bangladesh and eastern Sudan.

10 POINT PLAN OF ACTION

10 Point Plan of Action

UNHCR has also developed *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*¹¹ to assist States in ensuring that refugee protection needs are recognized and properly addressed in situations of mixed migration flows. The Plan of Action is a framework outlining ten areas that are relevant to asylum issues and in which UNHCR could play a role. Partnership with other actors is instrumental to the Plan, as UNHCR has emphasized that it does not consider itself a migration agency. However, the ten points represent key areas where there is a nexus between asylum and migration. Durable solutions, including resettlement, figure prominently as a point in this framework.

URBAN REFUGEES

According to UNHCR's most recent statistics, almost half of the world's 10.5 million refugees now reside in cities and towns, compared to one third who live in camps. In recognition of the changes in the size and composition of the urban refugee population, as well as the protection risks facing these refugees, the UNHCR released a comprehensively revised policy on refugees in urban areas in 2009. The policy has two principal objectives:

- to ensure that cities are recognized as legitimate places for refugees to reside and exercise the rights to which they are entitled; and,
- to maximize the protection space available to urban refugees and the humanitarian organizations that support them.¹²

¹⁰ For an overview of the five priority situations, see UN High Commissioner for Refugees, *Protracted Refugee Situations. High Commissioner's Initiative*, December 2008, available at: <http://www.unhcr.org/refworld/docid/496f041d2.html>

¹¹ First issued in 2006; a revised version was issued in January 2007. See UN High Commissioner for Refugees, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, January 2007, Rev.1, available at: <http://www.unhcr.org/refworld/docid/45b0c09b2.html>. Since then the elaboration of the 2007 paper has inspired new initiatives and projects in many regions. For examples of these initiatives and practical guidance for implementation see UN High Commissioner for Refugees, *Refugee Protection and Mixed Migration: The 10-Point Plan of Action*, June 2009, Provisional release, available at: <http://www.unhcr.org/refworld/docid/4aca0af82.html>

¹² UN High Commissioner for Refugees, *UNHCR Policy on Refugee Protection and Solutions in Urban Areas*, September 2009, available at: <http://www.unhcr.org/refworld/docid/4ab8e7f72.html>

The policy represents a new approach with regard to the way that UNHCR addresses the issue of refugees in urban areas. This approach is a significant departure from the previous policy of giving primary attention to refugees in camps, and an acknowledgement that movement to urban areas can be a legitimate response to lack of access to livelihoods, education, and even physical and material security in the camps.

The urban policy also reopens the complex and controversial discussion about the legitimacy of 'secondary' or 'onward' movements for refugees who have not found "effective protection". While ExCom Conclusion 58 stipulates that refugees who have found effective protection in a given country should normally not move on to another state in an irregular manner, and some resettlement states have been hesitant to resettle those who they feel may have moved irregularly, UNHCR acknowledges that the effectiveness of protection must be carefully assessed.

"A refugee who is unable to live in decent and dignified conditions and who has no real prospect of finding a durable solution in or from their country of asylum within a reasonable timeframe cannot be considered to have found effective protection. When a refugee moves to seek reunification with immediate family members who are not in a position to reunite in that person's country of first asylum, and when a refugee moves as a result of other strong linkages with the country of destination, the onward movement may also be justified."¹³

Seven Pilot Sites

In follow-up to the release of the urban policy and the 2009 High Commissioner's Dialogue on Protection Challenges, UNHCR has identified seven 'Pilot sites' where special effort will be made to engage with partners. These cities are: Nairobi, Desamparados (San Jose), Kuala Lumpur, Dushanbe, Moscow and St Petersburg, and Cairo.

Global management of resettlement in UNHCR: changes and challenges

The impact of the Global Consultations and the Agenda for Protection on UNHCR's management of resettlement globally

Redoubling the search for durable solutions, including by expanding and making more efficient use of resettlement as called for by the Global Consultations and the Agenda for Protection required increased capacity within UNHCR to resettle refugees. UNHCR has thus focused its efforts on strengthening policy development as well as operational capacity and management of global resettlement activities.

¹³ *Ibid*, at para 154.

In view of the considerable increase in the number of resettlement operations, effective planning and coordination of resettlement activities is vital. Resettlement has indeed become a part of the planning and operations of the majority of UNHCR offices throughout the world, though the size of the individual operations differs. In some offices, resettlement is managed through dedicated resettlement staff, while in other smaller operations the protection staff may be responsible for resettlement processing.

Steps in the resettlement process

UNHCR has reviewed and adopted a number of important structural changes, and has given increased attention to operational standards and safeguards to strengthen all stages of the resettlement process. These stages include:

- identification of refugees in need of resettlement as part of the overall protection strategy of the office;
- assessment of eligibility and need for resettlement;
- preparation of documentation and a Resettlement Registration Form (RRF);
- submission decision, both in terms of resettlement criteria and priority;
- submission of the RRF to a resettlement country;
- pre-departure processing;
- reception and integration in the resettlement country.

STRUCTURAL DEVELOPMENTS TO IMPROVE MANAGEMENT OF RESETTLEMENT ACTIVITIES ORGANIZATIONALLY

Changes have been introduced in recent years to reflect the importance of resettlement in UNHCR operations, to improve UNHCR's ability to manage resettlement activities globally, and to increase operational capacity to resettle. These changes, including the focus on multi-year planning, the strengthened role of resettlement in comprehensive solutions strategies and improvements in the identification of persons have resulted in a steady increase of identification and submissions of persons in need of resettlement over the past few years.

Upgrading and establishment of a Resettlement Service

In 2006, the Resettlement Section at Headquarters was upgraded to a Service, not only to improve the management of global resettlement activities but also to reflect the important role of resettlement in UNHCR operations.

Efforts to ensure greater consistency in the application of resettlement criteria and policy

To ensure global coherence and consistency in resettlement delivery, UNHCR has strengthened its capacity to develop policy and provide regional oversight. UNHCR is thus better able to develop guidelines and operational tools to support field operations. Links within Headquarters, including among the Regional Bureaux, have also been strengthened, *inter alia*, through regular meetings that improve communication and coordination on policy and procedural developments and ensure that

consistent messages on operational issues relating to resettlement activities are disseminated.

Establishment of Regional Hubs

Close coordination between Headquarters and national offices is important not only for policy purposes, but also for operational ones. Particularly in regions where the number of offices involved in resettlement and the number of refugees resettled have increased considerably, UNHCR has established **Regional Hubs** to improve coordination and planning at a regional level.¹⁴ These Regional Hubs should help manage the resettlement submissions on a sub-regional basis, coordinate the implementation of global policies on a regional level and thereby ensure greater consistency and transparency in the processing of resettlement. The Regional Hubs moreover support and reinforce the capacities of particular national resettlement operations, a function that is particularly important for smaller country operations.

Regional Planning Meetings

Hubs / Regional Offices and Country Offices is required for operational purposes. In order to facilitate such coordination and provide a forum for planning, UNHCR holds regional planning meetings yearly in each major region from where resettlement is undertaken, focusing on issues and challenges specific to respective regions..

UNHCR-ICMC Resettlement Deployment Scheme

UNHCR established a deployment scheme in 1997 to help meet the demand for increased resettlement of refugees as well as to provide an opportunity for skilled persons from NGOs to gain experience with a UNHCR resettlement field operation, and thus to enhance inter-organizational collaboration and expertise-sharing. The International Catholic Migration Commission (ICMC) has administered the deployment scheme since 1998, and has developed new tools to manage the scheme as it grows and changes over time. The **UNHCR-ICMC Resettlement Deployment Scheme** is currently an important resource for enhancing the capacity of UNHCR offices which are in need of additional staff capacity to assist with resettlement identification, assessments and submissions.¹⁵

Status of the affiliate work force including ICMC deployees and UNVs

Important: Although the formal status of persons working with UNHCR in resettlement may differ, for the purposes of this Learning Programme, the term “staff” includes regular staff members, persons on temporary contracts, consultants, secondees, deployees, and staff of implementing partners specifically assigned to work with UNHCR.

¹⁴ Currently, there are two HUBs: Nairobi (Kenya) and Beirut (Lebanon). There are also regional resettlement officers in Almaty (Kazakhstan), Bangkok (Thailand), Dakar (Senegal), Kinshasa (Democratic Republic of the Congo) and Pretoria (South Africa).

¹⁵ More information about the deployment scheme can be found at <http://www.icmc.net/> Similar deployment schemes also exist to enhance the general capacity for protection work (Surge Protection Capacity Project), as well as to support refugee status determination (RSD) operations.

GLOBAL OPERATIONAL COORDINATION

UNHCR has also focused extensively on developing new tools to help operation management. It has streamlined identification and referral tools, put in place an anti-fraud plan to improve the credibility and reliability of processing, elaborated specific resettlement training programmes to improve staff expertise, and increased the resources available for resettlement activities. UNHCR has also expanded its partnership arrangements with NGOs. Some of these developments will be introduced in the next Units, where we will discuss the different stages of resettlement in greater detail. A few warrant mention here, however, due to their global nature: the global **Baseline Standard Operating Procedures (SOPs)**, the *proGres* global database, and a tool for proactive planning on a country level.

Baseline Standard
Operating Procedures
(SOPs) on Resettlement

The Baseline Standard Operating Procedures on Resettlement¹⁶ were developed by the Resettlement Service to ensure global standardization, transparency, and predictability in resettlement delivery, and to reinforce procedural safeguards to mitigate the risk of fraud. SOPs were previously developed independently by field offices, which presented considerable challenges in identifying gaps in service delivery. The global SOPs provides a baseline against which all operations are measured, while still permitting office-specific procedures adapted to the size of the operation and the local situation. Global rollout of the SOPs began in the second half of 2007, but the document is continually updated and revised in accordance with evolving policy developments.

ProGres as a tool to
manage resettlement

The *proGres* registration database was developed under *Project Profile*.¹⁷ It was intended to help improve registration standards and thus is not specifically a resettlement tool. However, when fully utilized, *proGres* is able to track information relating to individual refugees from the initial registration process until the implementation of the durable solution. By taking a comprehensive approach, it caters to a wide range of UNHCR operations and situations, whether camp or urban based, from initial arrival and assistance provision, to RSD, improved identification, and durable solution implementation. *ProGres* is thus a useful tool for the overall management of resettlement. Moreover, as we shall see in Unit 4, registration itself is very relevant to resettlement.

ProGres also provides some useful safeguards against fraud by introducing biometrics to increase the security of registration documents. Audit checks can also be used to assist with internal oversight. These safeguards will help increase recognition of registration documents issued by host Governments.

¹⁶ UN High Commissioner for Refugees, *Baseline Standard Operating Procedures on Resettlement*, 1 January 2008, available at: <http://swigea56.hcrnet.ch/refworld/docid/48b6997d2.html>.

¹⁷ See Unit 4 of this Resettlement Learning Programme for more detailed information concerning the *proGres* registration database.

Proactive planning tool for resettlement is part of the Regional / Country Operations Planning

Pursuant to UNHCR's priority to use resettlement as a protection tool and as part of a comprehensive durable solutions strategy, Country Offices are requested to incorporate reporting on resettlement within the Summary Protection Assessment as part of the Regional /Country operation planning process in *Focus*. As will be discussed in more detail in Unit 4, offices should follow the standard methodologies outlined in the guidelines on proactive resettlement planning to reach an estimate of the number of refugees in need of resettlement for the following calendar year. The overall resettlement needs should not be based on existing or projected capacity of the office for the programme year, but the actual resettlement needs and, where applicable, involving the strategic use of resettlement.¹⁸ Resettlement planning on a global level is highly contingent on quality data from individual operations.

Mainstreaming of resettlement in the protection strategy of each office

Additionally, each office's Comprehensive Needs Assessments should reflect resettlement planning to help ensure that resettlement activities are mainstreamed in the protection strategy of each office. As we will see in the Unit 4, this is important since resettlement activities do not occur in a vacuum, but rather relate to the work done in other areas of protection.¹⁹

Projected Global Resettlement Needs

UNHCR Headquarters compiles information on the resettlement needs and processing capacity of country operations to prepare an annual report on *Projected Global Resettlement Needs*²⁰, reflecting the overall resettlement needs, and the rationale and scope of UNHCR's resettlement operations worldwide. This document is presented to resettlement States and NGO partners and serves as a primary planning tool and the main reference document for discussions with resettlement States on the allocation of their resettlement quota.

Selection interviews vs. acceptance of cases on a 'dossier' basis

UNHCR encourages all States to be open to accepting resettlement cases on the basis of the review of an applicant's dossier. Dossier decisions allow more flexibility in situations where the cases may not require a selection interview, where logistics and/or physical access to the refugee are problematic, or where decisions are required urgently. Usually, Sweden, Brazil, Denmark, Finland, France, Iceland, Ireland, the Netherlands, Norway, Portugal, and the UK have allocated a specific quota for dossier submissions, and newer resettlement countries in the process of establishing their programmes may also accept dossier cases. Some of the countries who usually prefer to decide resettlement

¹⁸ See: *Proactive planning for Resettlement for 2011 in Focus*, and *Country Chapter Template for Resettlement*, both at: https://intranet.unhcr.org/intranet/unhcr/en/home/protection_and_operational/Durable_Solutions/resettlement.html

¹⁹ For additional information on reporting, see UN High Commissioner for Refugees, *Instructions and Guidelines to UNHCR Field Offices and Headquarters Units on Reporting on 2008, Implementation in 2009 and Planning for 2010*, /IOM/092/2008 – UNHCR/FOM/094/2008 (23 December 2008) available at: <http://intranet.hcrnet.ch/SUPPORT/POLICY/IOMFOM/2008/iom09208.htm>

²⁰ UN High Commissioner for Refugees, *UNHCR Projected Global Resettlement Needs 2011*, June 2010, available at: <http://www.unhcr.org/refworld/docid/4c5acc3e2.html>

admissions after conducting an interview with the refugee applicants are also willing to accept 'dossier' submissions on an ad hoc basis, or specifically for emergency cases.

Planning selection missions

Most states undertake 'selection missions' to interview refugees prior to deciding on their admissibility. These selection missions are planned only after there is a consensus on the proposed annual intake. UNHCR Headquarters and Regional Resettlement Hubs / Regional Offices coordinate the timing and target destinations of global selection missions in consultation with the field. The operational needs of the field must be considered, as selection missions require not only logistical support for the duration of the mission itself, but also enough time to prepare sufficient submissions in advance of the mission. Early planning is crucial to adequate preparation.

Pre and Post-mission Questionnaires for Resettlement Interview Missions

To help further with early planning, UNHCR has introduced a *Pre-mission Questionnaire for Resettlement Interview Missions*²¹ for States to complete, which assists Governments and UNHCR field offices with the planning process. A *Post-mission Questionnaire for Resettlement Interview Missions*²² is also used to allow for an evaluation and further dialogue on issues regarding the mission and to promote continuous improvement by all parties in resettlement delivery.

Evacuation Transit Facilities (ETFs) have been established to provide additional avenues for emergency cases

UNHCR advocates for States to provide a larger number of places for 'emergency' and 'urgent' cases to meet identified needs, but only a limited number of places are currently available. There are also real concerns about the timeframes for processing cases identified as requiring immediate emergency resettlement. The average length of time between the submission of emergency cases by UNHCR in 2009 and the departure for resettlement was approximately 5 months (140 days).²³ To increase the capacity for providing protection, at least on a temporary basis, UNHCR has negotiated to establish Evacuation Transit Facilities (ETFs) or systems where refugees could be evacuated temporarily until a resettlement State is identified, or until the processing for resettlement is completed.

On 8 May 2008, UNHCR signed a tripartite agreement with the Government of Romania and the IOM to establish an Evacuation Transit Centre (ETC) in Timisoara for a maximum of 200 refugees at any given time. Since the opening of the centre in November of 2008 until January 2010, 492 refugees from seven nationalities were evacuated to the centre and 348 departed to resettlement countries. Additional needs were identified, and on 17 July 2009, UNHCR entered into a tripartite

²¹ UN High Commissioner for Refugees, *Pre-Mission Questionnaire for Resettlement Interview Missions*, 5 January 2009, available at: <http://www.unhcr.org/refworld/docid/49631d782.html>

²² UN High Commissioner for Refugees, *Post-Mission Questionnaire for Resettlement Interview Missions*, 5 January 2009, available at: <http://www.unhcr.org/refworld/docid/49631dcb2.html>

²³ Data based on total emergency resettlement submissions by UNHCR Headquarters and Regional Hubs to resettlement States offering places on a dossier basis in 2009.

agreement with the Slovak Republic and IOM for the evacuation of 101 Palestinian refugees from Iraq. Negotiations are currently underway to determine the continuance of the evacuation facility in 2010.

To accommodate needs in Asia, UNHCR also signed a tripartite agreement with the Government of the Philippines and IOM in August of 2009 to establish an Evacuation Transit Mechanism (ETM) in Manila with an initial capacity of 20 refugees. Since then, 17 refugees from four nationalities have been evacuated to the Philippines.²⁴

States, NGOs and resettlement

Resettlement partnership

UNHCR has strengthened its partnership and cooperation on resettlement with all stakeholders, in particular with States and NGOs. States provide for refugee resettlement as part of international responsibility and burden sharing, and not due to legal obligations. States retain the final word on the refugees they will accept for resettlement, establish their own policies and procedures, and may set their own priorities for accepting refugees on resettlement. NGOs are active partners both in countries of asylum (e.g. identification and processing), and in countries of resettlement (reception and integration). Complex challenges and opportunities related to resettlement can therefore be best managed through enhanced partnership and dialogue with States and NGOs.

Regular fora for resettlement States, NGOs, IOM and UNHCR to communicate on policy and operational issues enhances global consistency and predictability in resettlement delivery

Global consistency and predictability in resettlement delivery is essential. A lack of predictability not only increases uncertainty for States, NGOs, IOM, UNHCR and the refugees concerned, but also makes planning more difficult for *inter alia* resource mobilization and assistance. Regular fora for interaction between the different actors are necessary to exchange information and discuss policies and operational issues, including the allocation of resettlement places.

²⁴ For more information on the figures, rationale and some of the challenges related to emergency resettlement, see UN High Commissioner for Refugees, *Emergency Resettlement and the Use of Temporary Evacuation Transit Facilities*, 19 May 2010, available at: <http://www.unhcr.org/refworld/docid/4bf3adfb2.html>

WORKING GROUP ON RESETTLEMENT AND THE ANNUAL TRIPARTITE CONSULTATIONS ON RESETTLEMENT

Working Group on Resettlement (WGR)

A UNHCR evaluation on resettlement activities in 1994²⁵ highlighted the need to improve the dialogue and cooperation between all the partners involved in resettlement. The Report called for UNHCR to establish mechanisms of systematic consultation with these partners, which led to the formation of the Working Group on Resettlement (WGR). The Working Group is convened twice yearly (usually in March and October or November), and the Chair rotates between resettlement States. Shortly thereafter, annual consultations drawing in NGO partners were initiated. Held annually since 1995, UNHCR's Annual Tripartite Consultations on Resettlement (ATCR) are now the main forum for furthering the resettlement agenda. The work of the ATCR has *inter alia* focused on strengthening the role of resettlement, promoting the emergence of new resettlement countries and the diversification of resettlement programmes and opportunities, including the strategic use of resettlement.

Participation in the WGR consists of resettlement States, UNHCR and International Organizations, and provides an informal consultative forum for these actors to discuss policy directions on resettlement and steer efforts to enhance the use of resettlement as a tool of international protection, a durable solution and a responsibility- and burden-sharing mechanism. The WGR has focused on supporting the work of the ATCR since the latter's establishment, both through preparatory work, including discussion papers, and through follow-up on ATCR recommendations.

Annual Tripartite Consultations on Resettlement (ATCR)

Participation in the ATCR includes resettlement States, UNHCR, International Organizations and NGOs. Coordination is provided through the Working Group Chair, and the organization taking on the NGO Focal Point role, which is typically from the same State as the current Chair. The inclusion of NGOs is important to ensure a more effective and transparent consultation process. The ATCR thus provides a useful forum in which resettlement actors can share information and develop joint strategies to address resettlement needs. They are usually held every July, and help build consensus in the ExCom for resettlement through many avenues, including establishing new programmes, sharing information on resettlement needs and priorities, and providing opportunities for planning analysis of important policy issues. The ATCR also focus resettlement actors' attention on UNHCR's resettlement activities, relevant operational issues, and key responsibilities for case identification and referral.

²⁵ UN High Commissioner for Refugees, *Resettlement in the 1990s: A Review of Policy and Practice*, EVAL/RES/14, December 1994, available at <http://www.unhcr.org/3ae6bcfd4.pdf>

The ACTR and WGR provide important opportunities for resettlement States, NGOs and UNHCR to discuss ways to respond to specific populations in need of resettlement

The ACTR and WGR meetings provide important opportunities for resettlement States, NGOs and UNHCR to discuss ways to respond to specific populations in need of resettlement. UNHCR presents populations for whom resettlement is a priority or could be used strategically, and it is here that the report on *Projected Global Resettlement Needs*²⁶ is discussed in detail. The meeting thus serves as an opportunity for UNHCR to direct resettlement States' attention to refugee populations in priority need of resettlement.

Seven priority situations where strategic use of resettlement can have an impact

The Working Group Chair can also have a profound role in moving the agenda forward, as did Sweden as the 2009-2010 Chair. Sweden embraced the growth of resettlement as its priority. In response to UNHCR's identification of seven prioritized situations where strategic use of resettlement can have impacts, the Chair invited WGR members to an extraordinary meeting in December 2009 at which discussion on specifying strategic protection dividends and developing concrete steps and work methods for these situations was initiated. The situations identified by UNHCR's regional bureaus were: Turkey, Libya, Kenya, Islamic Republic of Iran, Syria/Jordan/Lebanon, the Pacific States and Uzbekistan.

Additional bilateral meetings

UNHCR usually receives an indication from States – in separate bilateral or smaller multilateral meetings – concerning their anticipated response to specific resettlement needs and the composition of the population and numbers to be resettled for the coming year.

In addition to the ACTR and WGR, UNHCR holds numerous bilateral meetings with Governments to strengthen joint planning efforts and to discuss specific needs and issues that arise with particular countries. Such meetings may take place at a regional or national level throughout the year at Headquarters. With new resettlement countries or States accepting refugees on an *ad hoc* basis, UNHCR provides additional support to help them ensure that goals are met and that any challenges are overcome.

EXPANDING THE COMMUNITY OF RESETTLEMENT STATES²⁷

Expanding the resettlement base

As mentioned, the ACTR forum has also been crucial to encouraging the expansion of the resettlement and providing support for new resettlement countries. Given refugees' needs for resettlement and

²⁶ The *Projected Global Resettlement Needs* reports are produced annually based on the information submitted by each country operation's proactive resettlement planning. These reports are generally for restricted distribution, though a public version is often made available following the ACTR.

²⁷ For more information on current resettlement trends and figures, see the Resettlement Fact Sheet, available through the UNHCR Intranet at: https://intranet.unhcr.org/intranet/unhcr/en/home/protection_and_operational/Durable_Solutions/resettlement/key_policy_documents.-ContentSlot-38932-ItemList-96223-File.File.pdf/ResettlementFactSheet.pdf

UNHCR's increased and more predictable submission capacity, UNHCR is pursuing three parallel efforts to bridge the gap. It is:

- encouraging more countries to establish resettlement programmes (or to consider ad hoc resettlement referrals from UNHCR);
- requesting established resettlement countries to increase their existing (annual or multi-year) resettlement programmes; and
- prioritizing responses to resettlement needs and submissions, in light of the limited resettlement places available.

New and potential resettlement States encouraged to attend the Working Group and the ATCR

UNHCR and resettlement States have invited and encouraged States that have shown interest in becoming resettlement States, or that have accepted refugees for resettlement on an *ad hoc* basis without formally establishing annual resettlement programmes, to attend WGR and ATCR. UNHCR and ATCR members have further encouraged new resettlement States through "twinning" or technical cooperation relationships with established resettlement countries and other capacity-building arrangements. This collaboration has served to support two major regional initiatives to encourage new resettlement states, the Latin American *Solidarity Resettlement Programme* and the proposed *Joint European Union Resettlement Programme*.

Solidarity Resettlement Programme

In November 2004, on the 20th anniversary of the Cartagena Declaration on Refugees, the Mexico Plan of Action (MPA) was adopted by 20 Latin American Countries. The MPA is an innovative protection initiative for the region, addressing both refugee and IDP movements, focussing on urban settings and marginalised border areas. The MPA also gave resettlement new impetus to resettlement in the region through its *Solidarity Resettlement Programme*. Chile and Brazil had been resettling small numbers of refugees since 2002, but have increased their quotas, and have been joined by Argentina, Uruguay and Paraguay.

The main principles of the Programme are responsibility sharing, international solidarity and the promotion of the strategic use of resettlement in the region; the latter through *inter alia* maintaining an open space for asylum in the three countries which currently host the greatest number of asylum-seekers and refugees, namely Costa Rica, Ecuador, and Venezuela. The programme of Solidarity Resettlement is the concrete expression of the will of Latin American countries to provide support to the countries hosting large number of refugees in the region. The programme receives financial and technical support from established resettlement countries to consolidate the existing programme and to build the capacity of the new resettlement countries in Latin America.

European Resettlement and the European Refugee Fund

UNHCR, government and non-governmental actors have been working closely with the European Commission to encourage more EU Member States to engage in refugee resettlement, and to encourage established European resettlement countries to increase the number of places available. UNHCR expects the process for the establishment of the Joint EU Resettlement Programme will continue once disagreements between the EU Parliament and the EU Commission are resolved.

The European Commission's *European Refugee Fund* currently provides various forms of financial assistance to Member States which carry out resettlement, and allocates 4,000 Euros per resettled person to those Member States which resettle specific categories of refugees.

These initiatives have supported the emergence of new resettlement countries in Europe such as the Czech Republic, Romania, Spain and Bulgaria, who join the ten established resettlement countries: Denmark, Finland, France, Iceland, Ireland, Netherlands, Norway, Portugal, Sweden and the United Kingdom. However, the overall number of European places remains relatively low.

EXPANDING THE BASE: A SNAPSHOT²⁸:

- **12 NEW COUNTRIES** have indicated their readiness to receive a limited number of resettlement submissions from UNHCR since 2008
Belgium, Bulgaria, France, Germany, Italy, Japan, Luxembourg, Portugal, Romania, Spain, Switzerland and the Czech Republic. A number of these countries previously had refugee resettlement programmes in the 1980s and 1990s
- **7 OF THESE COUNTRIES HAVE FORMALLY ANNOUNCED** the establishment of resettlement programmes:
Bulgaria, the Czech Republic, France, Japan, Portugal, Spain and Romania.
- **24 RESETTLEMENT STATES WORLDWIDE**
Argentina, Australia, Brazil, Bulgaria, Canada, Chile, the Czech Republic, Denmark, Finland, France, Iceland, Ireland, Japan, the Netherlands, New Zealand, Norway, Paraguay, Portugal, Romania, Spain, Sweden, United Kingdom, Uruguay, United States of America.

Despite the welcome addition of these new resettlement countries, the overall number of places for resettlement, or 'quotas', that individual States provide has not kept pace with the increased resettlement need. Whereas some States have yet to operationalize their resettlement activities, most established resettlement countries have not made any further significant increases in their annual resettlement targets to meet the global needs. Also, while the majority of the emerging resettlement countries are in Europe, the number of resettlement places in Europe remains relatively low. UNHCR will continue exploring further opportunities to resettle refugees in other countries, consistent with its Global Strategic Priority and Agenda for Protection goal.

As part of UNHCR's overall planning, critical areas of concern to UNHCR's operations where standards in protection and assistance are not currently being met were identified, and Global Strategic Priorities were set for 2010-2011. These priorities were endorsed by ExCom in October of 2009. The achievement of each priority will require concerted action with Governments and communities of concern, as well as the full support of partners and donors.

Priority # 6 is to "Intensify efforts and gain sustained international support to find durable solutions for people of concern", and identifies as challenges and opportunities for resettlement the fact that available resettlement places are not keeping pace with the growing number of refugees identified as in need of resettlement, and the need for enhancing operational efficiencies to ensure that resettlement needs are appropriately prioritized.

²⁸ UNHCR *Projected Global Resettlement Needs 2011*, supra note 20.

Set as 201-2011 targets are:

- The # of resettlement places offered by resettlement countries increased by 10%
- The % of individuals identified for urgent and emergency resettlement that are resettled increased to 60% from the 2009 figure of 46.5%²⁹

UNHCR has been alerting states that these targets would not be met without joint efforts from all stakeholders to achieve them and to enhance resettlement processing.

For 2011, UNHCR estimates:

- 805,535 refugees identified as in need of resettlement globally, and
- 172,307 refugees in need of resettlement in 2011 alone
- 80,000 resettlement places available globally
- Only 10 out of 100 in need of resettlement will be resettled

Within their resettlement quotas, a number of States place emphasis on responding to refugees with specific needs, such as having minimum targets for women at risk or quotas for medical cases. As mentioned, some States also have mechanisms in place to respond to emergency cases, which may include medical cases, but the number of places available is normally quite limited. States may identify additional criteria for resettlement and/or indicate regions and populations they are interested in targeting; these are, however, often guided by the needs and priorities indicated by UNHCR.

Protection Sensitive Migration

Many resettlement States also have standard migration programmes (e.g. migration of skilled workers and family reunion) that refugees could potentially access. These programmes are not specifically geared to humanitarian outcomes or the protection priorities of UNHCR. However, such programmes may be useful for refugees, as they may provide admission for persons who are otherwise in need of international protection but who might not be prioritized for resettlement under refugee or humanitarian resettlement programmes. Through the WGR/ATCR fora, UNHCR is exploring with States the possibility of securing such protection - sensitive migration channels to help reduce the pressure placed on existing resettlement programmes and offer a complementary durable and effective solution to an increased numbers of refugees who can find protection as international migrants. This will allow UNHCR to concentrate its efforts on assisting, protection and securing durable solutions for those refugees most in need of resettlement interventions to ensure their continued protection.

²⁹ See UN High Commissioner for Refugees, *Global Strategic Priorities 2010-2011*, UNHCR, June 2010, available at: https://intranet.unhcr.org/intranet/unhcr/en/home/executive_direction/official_policies/global_strategic_priorities.html

PARTNERSHIPS WITH NGOS

Partnerships with NGOs is an essential element of effective resettlement delivery

UNHCR has also focused on enhancing its partnership with NGOs further on a global level; it has thus held strategic UNHCR-NGO workshops in North America and Europe³⁰, and has regularly sought to involve NGOs in regional, bilateral or multilateral coordination meetings. It has also sought to foster NGO expertise through cooperation and training efforts, and has established formal partnerships for resettlement through direct agreements with specific NGOs and through the UNHCR-ICMC Resettlement Deployment Scheme.

UNHCR-NGO Toolkit for Practical Cooperation on Resettlement

UNHCR and NGOs recognize the importance of strengthening consistent and predictable partnerships to identify vulnerable refugees in need of protection solutions, including resettlement, and acknowledge the need for balanced protection delivery between regions and within countries, including urban, camp and other operational contexts. Such partnerships are necessary in order to bridge protection gaps, including capacity and resource challenges.

UNHCR and resettlement NGOs have collaborated to produce a *UNHCR-NGO Toolkit for Practical Cooperation on Resettlement*. The first draft was released at the ATCR in 2010. The purpose of the toolkit is to raise awareness of the potential for collaboration, the good practices in place and to provide the tools for supporting enhanced partnerships on resettlement. It offers practical tools to assist UNHCR and NGOs in adopting cooperative approaches in (i) operational activities; (ii) community outreach; (iii) information sharing and advocacy; and (iv) reception and integration. The finalized toolkit will be released in late 2010.

Resettlement needs vs. 'resettle-ability'

The 'universal imperative'

To determine the need for resettlement, UNHCR applies globally agreed-upon definitions and criteria, which have been endorsed by the States themselves through ExCom, to identify refugees for resettlement. The 'universal imperative', i.e. criteria being applied consistently from one operation to another to ensure consistency and transparency in the identification of refugees for resettlement consideration, is relevant to this process.

However, as noted earlier, the groups in need of resettlement do not always match the indicated priorities of States. Matching the

³⁰ A UNHCR-NGO Workshop was held in Washington, U.S.A., in March 2005, and a UNHCR-ECRE Workshop in September 2006, at Headquarters.

preferences (e.g. target populations, profiles) indicated by States with actual resettlement needs is thus often a challenge for UNHCR.

Specific challenges may also arise due to organizational differences of opinion on particular policy issues. Resettlement States often determine the use and allocation of their resettlement capacity based on domestic considerations and constraints, rather than on UNHCR or international standards.

States' general policies on asylum and migration also impact their resettlement policies and criteria. As we saw in the last Unit, States have become increasingly restrictive in this regard, so UNHCR may need to undertake specific lobbying and advocacy efforts on behalf of specific refugee populations. Its challenge in managing the global resettlement programme is to maximize and diversify the places made available for refugees submitted by UNHCR and ensure the predictability of the process, while at the same time being sensitive to the domestic concerns of resettlement countries.

MORE RESTRICTIVE APPROACHES WITH RESPECT TO ASYLUM

Status of persons to be resettled

In principle, resettlement should be considered only for refugees and their dependent family members. As we saw in Unit 1, however, UNHCR and States may not use the same definition of a refugee. The State concerned may define a refugee in accordance with the 1951 Convention, whereas UNHCR defines refugees more broadly to include persons fleeing serious and indiscriminate threats to life, physical integrity, or freedom resulting from generalized violence or events seriously disturbing public order. Some, but not all, States permit this wider category of persons to be considered for resettlement. Differences therefore arise if States apply the same definition of refugee for resettlement cases as they would for persons of the same or similar profile who arrived spontaneously, which can result in refusals to accept specific cases presented for resettlement by UNHCR.

Ability to integrate as an additional criterion

A number of States also add their own criteria to the general resettlement criteria. One issue of concern to States is the refugees' ability to integrate in the resettlement country. Some States thus seek to use indicators of 'integration potential' similar to those applied when considering standard immigration, such as language skills, education, and professional background. Despite the fact that many refugees have integrated and made considerable contributions to their host societies, particularly where they have been given appropriate support, the strict application of such a criterion could prevent refugees without this 'integration potential' from obtaining the protection or durable solution they need. UNHCR has urged States to consider integration issues flexibly, not to penalize refugees who need protection, and to develop effective programmes to address settlement needs. Indeed, as APCR underscores, "integration potential" is often largely a measure of the State's capacity to assist with effective integration. Thus, UNHCR, as part

of the Integration Initiative with States and NGOs, supported the development of the publication *Refugee Resettlement: An International Handbook to Guide Reception and Integration* to promote good integration practices.³¹

Additional informal criteria

States may also impose 'informal' criteria, based on domestic policy considerations rather than strict legislative requirements, when selecting refugees for resettlement. Some States have included limitations on family size, restrictions on age or gender (such as a preference against the elderly for fear of the cost to the community, or against men of a certain age group for fear of a possible threat to public order), and restrictions on certain sensitive national or ethnic groups. These criteria are generally not based on legislation or formal policies and are usually not announced formally, but may nonetheless have an important impact on which cases are accepted for resettlement. Such criteria can be not only discriminatory, but also can reduce the transparency and predictability of the process considerably.

Secondary movements as an additional challenge for resettlement

Some States have also been reluctant to consider resettlement submissions for refugees who moved irregularly to a second or third country of asylum. This is particularly true when the country of asylum is located far from the country of origin and close to the country of resettlement; this suggests that the refugee has a pattern of irregular movement. While States generally have not formalized such restrictions in legislation, some States argue that accepting such refugees will encourage further irregular migration flows.

UNHCR is well aware of the concern that poorly managed resettlement might create a "pull factor"; i.e. encourage the irregular movement of refugees from neighbouring countries or individuals from their country of origin in hopes of obtaining resettlement. Where, however, the reason for onward movement is protection-related or necessitated by the lack of any other durable solutions, UNHCR will treat the refugee as under normal procedure in terms of resettlement.³²

Resettlement vs. spontaneously arriving asylum-seekers

Concern among States with irregular mixed movements of economic migrants and asylum-seekers has led them to focus increasingly on resettlement as an alternative that permits a managed approach to asylum and migration. States have argued, for example, that more 'deserving' refugees can be admitted through resettlement, implying that refugees arriving spontaneously are not necessarily the most deserving or needy. UNHCR has emphasized, however, that resettlement cannot replace access to territory and to fair and effective asylum procedures that conform to international and regional obligations for spontaneously-arriving asylum-seekers.

³¹ UN High Commissioner for Refugees, *Refugee Resettlement. An International Handbook to Guide Reception and Integration*, September 2002. Available at: <http://www.unhcr.org/refworld/docid/405189284.html>

³² See also Unit 4 on this issue.

Restrictions related to security concerns at times bar entry and at best cause considerable delays

Security concerns have also had an impact on refugee admissions in major resettlement countries by leading these States to impose greater restrictions on asylum admissions. Many States have reduced the number of processing locations and added security clearance checks both of which have considerably extended the time required for processing and admission. Some States have also instituted stricter legislative and policy requirements for refugees.³³

Most of these requirements have been related to concerns about terrorism, the definition of which has been broadly interpreted in many contexts. Some security measures have added delays of months and even years to the receipt of resettlement submissions responses. These delays have increased the uncertainty for UNHCR about whether a solution will be available in a particular country or whether another solution should be sought. Planning becomes very difficult in this context, especially where the need for resettlement is urgent and the repercussions may be particularly serious. Where resettlement is part of a comprehensive and/or strategic approach, such delays can also reduce the impetus to open other avenues or to improve asylum conditions in the first host country.

UNHCR is acutely aware of the concerns of States to maintain public security and combat terrorism. These concerns are entirely legitimate and UNHCR understands and shares the desire of States to ensure the integrity of resettlement programmes. A balance must be struck which addresses these concerns, whilst avoiding the erosion of long-standing refugee protection principles.

DIFFERENCES IN THE DEFINITION OF A FAMILY

The definition of refugee is not the only area where UNHCR and resettlement States may differ. A difference in the way family is defined by UNHCR and by resettlement States has also given rise to challenges, both in the context of initial resettlement and subsequent family reunification.

³³ For example, the US *Patriot Act 2001* and the *Real ID Act 2005* bar entry for individuals who have past or current associations with organizations deemed to be “terrorist” or who may have committed or planned to commit ‘terrorist’ activities, including providing financial or in kind material support, including minimal assistance. The government has discretion as to whether it will exempt an individual who provided such support under duress or a group of persons supporting an identified organization.

Within the European Union, the *European Union Qualification Directive* allows States to determine whether a recognized refugee poses a threat to national security before issuing a residence permit. In Germany, the *Act to Combat Terrorism 2002* and the *Anti-Terrorism Supplement 2007* permit authorities to deny residence permits to foreigners who have participated in or supported terrorism, and the *Residence Act of 30 July 2004 (as amended March 2005)* provides for their expulsion and deportation. In the United Kingdom, the *Anti-Terrorism, Crime and Security Act in 2001* grants the Home Secretary the authority to certify a non-citizen as a suspected “international terrorist” if the Home Secretary believes that this person’s presence in the UK threatens national security and suspects that this person is a terrorist.

Derivative status

Normally, when a refugee is recognized, his or her family is granted what is called 'derivative status'; that is, because they are with the principal applicant in the same country, they are deemed to be refugees who derive their status from the main claimant. This approach is meant to protect the right to family unity and to protect family members who may be at risk of persecution based on their link to the principal claimant. In principle, however, family members who also individually meet the eligibility criteria for refugee status should be recognized as such based on their individual protection needs, particularly if there is a possibility that adult members of the family might be submitted for resettlement as separate linked cases.

Derivative status or separate refugee status may not be granted to all family members because of their personal status; for example, if they are citizens of the host country or another country, they will not be given derivative status. Even in such cases, however, UNHCR may intervene because one member of the family is considered to be a refugee.

No universally agreed definition of a family

Affecting resettlement on family reunification grounds can be challenging, however, as UNHCR's definition of family for the purposes of resettlement is more inclusive than that used by many resettlement States. There is not one universally agreed definition as to whom constitutes a family; in some cultures, the term 'family' is interpreted relatively loosely to include extended relatives while in others, the term is restricted to 'nuclear' family members, that is, spouses and minor children.

UNHCR's definition of a family

UNHCR's definition includes persons who are engaged to be married, who have entered into a customary marriage, or who have otherwise established long-term partnerships (including same-sex partnerships). UNHCR's definition also includes persons who may be fully or partially dependent on the family unit, be it socially, emotionally and/or economically. This could include children who have reached maturity or who are married (if they remain dependent on the family unit) or persons who are not biologically related, such as children who have been 'adopted' informally and with whom there is no blood link. Separation of such family units can be traumatic and lead to considerable hardship for persons remaining behind and also for those resettled.

UNHCR Offices have a responsibility, as part of their mandate, to protect refugees and to promote and facilitate the reunification of refugee families. This means they should assist family members of a recognized refugee to join her or him in the country of asylum. This applies whether or not the family members are still in their country of origin. UNHCR's assistance and support may be requested by the family member(s), by the refugee, and/or by the UNHCR Office where the refugee or her or his family is living. Assistance may involve:

- helping refugees or their family members submit official applications for family reunification and/or for entry or exit permission, in accordance with UNHCR guidelines to protect the integrity of the process; and/or

- assisting the refugee in applying for resettlement based upon family reunification.

In this context, the concept of family is to be interpreted broadly and is to include family members who are economically and/or emotionally dependent upon the refugee.

UNHCR's family reunification challenges increase if family members are not located in the same country. Some States may impose additional restrictions with regard to the age or marital status of children or they may impose the same conditions on refugee family reunification as on regular migrants (such as requiring them to show sufficient income, adequate housing, etc.).

Status of family members and possible restrictions on family reunification

UNHCR is also concerned with the status and type of permit that refugees receive once in the country of asylum or country of resettlement. In principle, family members should be able to enjoy the same protection, or refugee status, as the main applicant. UNHCR also believes that refugee family reunification cases should not be subject to the same restrictions that are applied to other migrants, as refugees do not have the option to reunite elsewhere with their families.

Polygamous marriages

Polygamous marriages³⁴ raise other policy challenges. Nearly all resettlement States have national laws that prohibit such marriages, and they therefore often will only recognise one spouse. This is usually the first spouse or the spouse chosen by the polygamous partner, provided that s/he divorces all other spouses. Polygamous marriages also raise concerns from an international human rights law perspective about abuse or serious discrimination. Despite these serious concerns and resettlement challenges, where a relationship of dependency exists, particularly when children are concerned and when the marriage has been validly contracted according to the laws of the country of origin or asylum, UNHCR has respected the unity of the family.³⁵

In rare cases, States may accept such cases if the family is split between two or more separate resettlement cases in which there is only one legally recognized spouse of the polygamous partner, but the cases of the other non-legally recognized spouses are linked and submitted to the same resettlement State. However, this can give rise to other complications (e.g. protecting the rights of the child, necessitating Best Interests of the Child Determinations and custody arrangements) and can result in family separation because there is no guarantee each case will be granted resettlement. Consequently, one/some of the spouses and her children may be left behind in the first country of asylum, which not only leads to family separation and violation of rights under Article 9 of the Convention on the Rights of the Child (CRC), but may also put the woman at risk of abuse, violence, exploitation, and/or exclusion from

³⁴ The term 'polygamy' includes both polygyny (in which a man has multiple wives) and polyandry (in which a woman has multiple husbands).

³⁵ *Resettlement Handbook*, *supra* note 3, at Chapter IV.

DNA testing in the context of resettlement and family reunification

society. Therefore, in principle UNHCR promotes the submission of such cases only after extensive consultation with the resettlement State and on the condition that one case will not be accepted without the other(s).

Resettlement States are also concerned about fraud related to family composition. While UNHCR does all it can to verify family composition, States sometimes require documentation that is difficult or even impossible for refugees to obtain. States increasingly rely on tests, such as DNA tests, which are usually taken as conclusive, to confirm family relationships. However, such testing raises other concerns, including the right to privacy, confidentiality issues and the need for pre- and post-test counselling. The results of DNA tests can inflict emotional trauma on individuals, such as a father who discovers that his child is not biologically his or children who discover that they were conceived by a rape that their mother never acknowledged.

While fraud in family composition is a serious concern, UNHCR has encouraged States to be flexible in their requirements of documentary proof for purposes of family reunification. It has sought to highlight that DNA testing, where relied upon, should not be considered as the only factor in determining family composition and that other factors, such as the dependency of non-biological members of the household, should be considered. UNHCR has further advocated that no testing be undertaken without informed voluntary consent and counselling.³⁶

FRAUD AND OTHER ISSUES

Resettlement Anti-Fraud Plan of Action

Fraud has, more generally, been a serious concern of both States and UNHCR. Increased restrictions on access to asylum and resettlement can create pressures that give rise to exploitation and abuse. Refugee status and resettlement opportunities are highly sought after, such that they have become commodities, not only for the protection they provide, but also for the improved economic opportunities they may bring. This can make refugee status determination (RSD) and the resettlement process targets of fraud and abuse.

³⁶ See UN High Commissioner for Refugees, *UNHCR Note on DNA testing to Establish Family Relationships in the Refugee Context*, June 2008, available at: <http://www.unhcr.org/refworld/pdfid/48620c2d2.pdf>

Resettlement fraud is not only damaging to resettlement States, but also to the reputations and integrity of all parties involved in resettlement. It is often also generally detrimental to refugees, as consideration of submissions may be suspended or subject to more stringent and time consuming checks. To combat this issue, UNHCR, along with its partners, developed a Resettlement Anti-Fraud Plan of Action in 2004. This Plan outlines a number of measures designed to prevent fraud, including introducing safeguards into procedures, awareness-raising and training. While these measures have largely been implemented³⁷, UNHCR continues to develop its policy, procedural guidelines and tools to minimize and prevent fraud.³⁸

A number of the safeguards which have been introduced to help reduce the possibility of fraud and abuse will be discussed in the following Units. We will explore fraud and measures to prevent it in greater detail in Unit 6.

³⁷ See UN High Commissioner for Refugees, *Information Note: Resettlement Anti-Fraud Plan of Action. Annual Tripartite Consultations on Resettlement, Geneva, 28-30 June 2007 (Agenda Item 3i)*, 28 June 2007, available at:

<http://www.unhcr.org/refworld/docid/46822d002.html>

³⁸ UN High Commissioner for Refugees, *Policy and Procedural Guidelines: Addressing Resettlement Fraud Perpetrated by Refugees*, March 2008, available at:

<http://www.unhcr.org/refworld/docid/47d7d7372.html>

2 Assignments

Essential Reading:

Please read the following documents:

- UN High Commissioner for Refugees, *Resettlement Handbook (country chapters last updated September 2009)*, 1 November 2004, available at: <http://www.unhcr.org/refworld/docid/3ae6b35e0.html>
 - Chapter 1 on “Resettlement: A Vital Instrument of International Protection and an Element of Comprehensive Solutions”
 - Chapter 2 on a “Comprehensive Approach to Resolving Refugee Situations and Providing Durable Solutions”
- UN High Commissioner for Refugees, *The Strategic Use of Resettlement (A Discussion Paper Prepared by the Working Group on Resettlement)*, 3 June 2003, EC/53/SC/CRP.10/Add.1, available at: <http://www.unhcr.org/refworld/docid/41597a824.html>
- UN High Commissioner for Refugees, *Progress report on resettlement*, 31 May 2010, EC/61/SC/CRP.11, available at: <http://www.unhcr.org/refworld/docid/4c5ac6942.html>

Exercise 2.1:

Please provide brief yet complete responses (approximately 1-2 pages total) in your own words to the following questions. You may wish to discuss with other resettlement and protection colleagues and to consult your office's Country Operations Plan and the Summary Protection Assessments.

1. Has resettlement been used strategically in your operation; e.g. to improve asylum conditions in the country? If yes, how so? If no, what are the possibilities as to how the strategic use of resettlement could be enhanced? Give specific examples if possible.
2. Has a comprehensive approach to durable solutions been pursued with respect to any of the groups of refugees in your operation? If so, which ones? If not, why not? For example, are there groups for which all three durable solutions are implemented, or for which one or more durable solutions are not available? How does the availability of one durable solution affect the other(s)?
3. What main policy-related challenges have you faced in terms of resettlement in your country (keeping in mind that challenges may arise from resettlement country policies, country of asylum policies, and/or UNHCR policies)?

Please submit your responses to the designated Learning Program administrator.

3 Refugee Status Determination

Learning Objectives

As we saw in the last Unit, recognition as a refugee, with very few exceptions, is a pre-condition for resettlement consideration. In addition, the Resettlement Registration Form (RRF) requires a credible and convincing explanation of why UNHCR considers an applicant to be a refugee. Although protection or eligibility staff normally provide these explanations, it is useful for resettlement staff to have a good understanding of the basics of Refugee Status Determination (RSD). Understanding in greater detail what makes someone a refugee will also help you identify areas which you may wish to clarify in the resettlement interview.

At the end of this Unit, you should be able to:

- explain who is eligible for refugee status and key elements of the refugee criteria;
- appreciate what is required to examine credibility and prepare a well-supported credibility assessment;
- understand the characteristics of a good legal analysis of eligibility for refugee status, and recognize whether there are any gaps;
- confirm whether any exclusion considerations have been identified and addressed.

The designated Learning Programme administrator will recommend the time allotment for completion of this Unit.

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Refugee status determination and resettlement

Situations where
UNHCR may to
undertake RSD under its
mandate

States have the primary responsibility for determining the status of individuals who arrive on their territory, and in particular for determining whether an individual is entitled to international protection. States Parties to the 1951 Convention have assumed specific obligations towards refugees, including establishing procedures to identify who is a refugee and is therefore entitled to rights and protections afforded under the 1951 Convention.

UNHCR, however, also has a responsibility to provide refugees with international protection and may conduct Refugee Status Determination (RSD) under its mandate to identify persons of concern.¹ This is particularly likely to occur in States which have not ratified the 1951 Convention or the regional instruments; in States that are party to the 1951 Convention but have not established asylum procedures; or when UNHCR, as part of its supervisory role, has assessed serious shortcomings in the State's asylum procedure such that refugees are unlikely to obtain the protection they need, either because they are not recognized, or because recognition does not entail the protection it should.

Eligibility examination
for Resettlement only

In both signatory and non-signatory States, UNHCR may examine individual eligibility for refugee status for the sole purpose of implementing resettlement as a durable solution. This is often undertaken where refugee status has been recognized on a *prima facie* basis, or in Enhanced Registration procedures. For example, the widespread violence associated with the conflict in Iraq triggered massive flight, and UNHCR's RSD operations in several countries in the region adopted procedures under which asylum seekers from south and central Iraq were recognized on a *prima facie* basis following a more detailed registration to identify immediate protection needs as well as possible exclusion triggers.

For resettlement submissions regarding refugees recognized *prima facie*, however, an individual examination of eligibility is required to document in greater detail the basis of refugee status which has already been recognized. In this respect, the examination does not result in determination of refugee status, and is not RSD in the strict sense. The procedures used will not therefore be the same in all respects as where RSD is carried out to determine eligibility for refugee status. However, the examination of protection needs in light of the refugee criteria, and

¹ Besides asylum-seekers and refugees, "persons of concern to UNHCR" also include returnees, stateless persons and, under certain circumstances, internally displaced persons.

the other substantive and due process issues are also relevant and applicable in procedures to examine individual eligibility for refugee status for the purpose of resettlement.

UNHCR may also be required to conduct refugee status determination under its mandate to address fundamental protection gaps. Refugee status recognition under UNHCR's mandate has a vital protection function and is the pre-condition to implementing durable solutions, including resettlement. The high quality of UNHCR RSD procedures and practice is also essential for UNHCR's credibility with Governments and NGOs, and ultimately for the availability of durable solutions for refugees who are recognized by UNHCR. It is important to emphasize that, through the Resettlement Registration Forms (RRFs), Governments have the opportunity to closely scrutinize and assess the quality and thoroughness of refugee status determination by UNHCR.

Refugee status recognition is the pre-condition to implementing durable solutions

Refugee Status Determination is seldom a straightforward or conclusive exercise. In refugee claims, the applicant has the burden of establishing the accuracy of the facts on which the refugee claim is based. Yet, in the majority of the cases, the applicant will not be able to substantiate the claim beyond doubt. By their nature, the facts that are relevant to refugee claims are often impossible to prove with certainty. The eligibility officer must make a credibility assessment by examining the way the applicant presents the claim, and considering the known information about the country of origin. The challenge for eligibility officers is enormous, and the RSD decisions reached have profound implications for human lives. It is therefore essential that eligibility officers have the proper knowledge and skills.

Separation of RSD from resettlement as a safeguard

RSD should not normally be undertaken by resettlement staff, but rather by protection or eligibility staff, partially as an additional safeguard against fraud and abuse. Resettlement staff, however, are responsible for ensuring that RRFs are accurate and of a high standard in respect to the refugee(s) concerned. Understanding what constitutes a quality assessment of refugee status is thus imperative, as it allows staff to follow up properly with protection or eligibility staff whenever any doubts or questions arise.

Importance of an inclusive interpretation of the 1951 Convention definition of a refugee

The definition of 'refugee' set out in the 1951 Convention and its 1967 Protocol, as well as the broader definition encompassed in UNHCR's mandate and in some regional instruments, set out the legal requirements for an individual to be considered a refugee. The "inclusion criteria" in these definitions must be considered together with the "exclusion clauses", which set out the circumstances under which a person who meets the inclusion criteria may, nonetheless, be ineligible for refugee status.

Although UNHCR staff apply both the 1951 Convention definition and the broader refugee definition when examining eligibility for refugee status, in pursuing RSD and resettlement, wherever possible, UNHCR should seek to identify the basis for eligibility under the 1951 Convention. In practice, it may be more challenging for UNHCR to

protect and assist refugees recognized under the broader refugee definition, as many States do not accept obligations towards refugees who do not meet the 1951 Convention criteria.

It is important to remember that, even in situations of generalized violence, or events seriously disturbing public order, targeted persecution may occur against groups of people based on specific traits such as ethnicity or political affiliation. In situations of armed conflict, many individuals may have a well-founded fear of harm for reasons set out in the 1951 refugee definition. In such cases, a link to a 1951 Convention criterion can and should be made.

Refugees who do not meet the 1951 Convention are not automatically excluded from submission for resettlement if this is the most appropriate durable solution. However, as noted above, as many States do not accept obligations towards refugees who do not meet the 1951 Convention criteria, the prospects for resettlement are, in reality, very often more limited for refugees recognized by UNHCR or States under one of the broader refugee definitions.

A quality assessment includes a well-argued legal analysis, including any exclusion considerations

A quality assessment of refugee status should include the accepted facts of the claim, a detailed legal analysis of how each of the criteria are met, together with supporting documentation where available. Any exclusion considerations should also be explored. For resettlement purposes, if there are no factors that raise possible exclusion considerations, this should be clearly noted.

The requirements for an assessment to be included in an RRF may actually be higher than those required for UNHCR's own purposes. The standards or positions to be applied are not necessarily different, but the analysis must be explicit and cogent enough to convince an external party, in this case a potential resettlement State, to recognize an individual as a refugee. This is particularly true for refugees whose credibility may be in doubt or who have complex issues that raise possible exclusion considerations, such as former combatants or persons with criminal records.

Tools for understanding the refugee definition: the *Handbook on Procedures and Criteria for Determining Refugee Status* and *Guidelines on International Protection*

Making these assessments requires a detailed understanding of each specific criterion of the refugee definition, such as inclusion and exclusion provisions, as well as standards of proof and the basis on which a credibility evaluation should be made. The *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol Relating to the Status of Refugees*² remains one of the most important authorities on the interpretation and application of the 1951 Convention inclusion criteria, and has been complemented by more detailed guidance in the series of **GUIDELINES ON**

² UN High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, 1979, re-edited version January 1992, available at: <http://www.unhcr.org/refworld/docid/3ae6b3314.html>.

INTERNATIONAL PROTECTION ("GIP") and **OTHER GUIDANCE NOTES** on specific eligibility issues.

A standard **UNHCR RSD ASSESSMENT FORM**³ has been developed and will be used as the basis for the discussions and exercises on preparing RSD Assessments. The annotated RSD Assessment Form has been designed to assist eligibility officers to address each of the relevant substantive issues and to present the relevant facts and reasons for their decision in a structured and consistent manner.

Who is a refugee?

Refugee Status Determination under UNHCR's Mandate

Understanding the definition of 'refugee' set forth in the various legal instruments is crucial.

RSD and resettlement practitioners must have in-depth knowledge and understanding of the refugee definition contained in the 1951 Convention and its 1967 Protocol and of the eligibility criteria under UNHCR's broader mandate. The need for a proper understanding of the refugee definition under the pertinent international instruments cannot be over-emphasized. In the words of a renowned expert on international refugee law, the purpose of defining who is a refugee is in fact "*to facilitate, and justify, aid and protection.*"⁴ The term "protection" also, of course, encompasses finding a durable solution.

Two categories of persons may be refugees within UNHCR's international protection mandate:

I) REFUGEES WITHIN ARTICLE 1A (2) OF THE 1951 CONVENTION

Definition of refugee according to the 1951 Convention

The refugee definition contained in the 1951 Convention forms the core of the eligibility criteria for mandate refugee status. Pursuant to Article 1A(2) of the 1951 Convention, the term 'refugee' shall apply to:

³ UN High Commissioner for Refugees, *UNHCR RSD Assessment Form (Annotated)*, 2009, available at: <http://swigea56.hcrnet.ch/refworld/docid/4acf37b72.html>.

⁴ See G.S. Goodwin-Gill, *The Refugee in International Law*, 2nd edition, 1996, Oxford University Press, 4.

Individuals meeting the criteria of the 1951 Convention are referred to as “Convention refugees” or refugees with “Convention status”

“a person who...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or unwilling to return to it.”

II) REFUGEES UNDER THE BROADER REFUGEE DEFINITION

The definition of ‘refugee’ contained in UNHCR’s mandate extends UNHCR’s protection responsibilities

UNHCR’s mandate to protect refugees also extends to persons who are affected by the indiscriminate effects of armed conflict or other ‘man-made disasters’, including, for example, foreign domination, intervention, occupation or colonialism. In addition to individuals who meet the criteria in the 1951 Convention definition, UNHCR recognizes as refugees, those who are:

“outside their country of origin or habitual residence and unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.”

Individuals falling within UNHCR’s extended mandate are referred to as “Mandate refugees”

The group of persons who may be refugees under UNHCR’s extended international protection mandate is similar to those categories covered by the refugee definitions incorporated in regional refugee instruments, which provide for significantly expanded refugee definitions to address the specific protection problems of the African and Latin American regions. While UNHCR does not have a legal mandate to apply these regional instruments, it is important that eligibility staff in countries which are bound by the definitions contained therein are familiar with them.

Refugee definitions in regional instruments

Definition of ‘refugee’ according to the 1969 OAU Convention

1969 OAU Convention Governing Specific Aspects of the Refugee Problems in Africa (the “OAU Convention”) – Article 1⁵

(i) For the purpose of this Convention the term “refugee” shall mean every 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 nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it.

⁵ Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Convention”)*, 10 September 1969, 1001 U.N.T.S. 45, available at: <http://www.unhcr.org/refworld/docid/3ae6b36018.html>

Definition of 'refugee' according to the 1984 Cartagena Declaration

(ii) The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality"

1984 Cartagena Declaration – Conclusion No.3⁶

"..the definition or concept of refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order".

In most cases where eligibility under the broader refugee definition is relevant, UNHCR Offices will have received direction from Headquarters regarding the characterization of events in the region concerned and the impact that these events are deemed to be having upon the populations affected. This is usually provided through **eligibility guidelines**, which are prepared to promote a common understanding of the objective country conditions and a harmonized approach to the status determination of individuals from the countries concerned.⁷

HOW DOES UNHCR DETERMINE REFUGEE STATUS?

When assessing whether an applicant meets the inclusion criteria for mandate refugee status, UNHCR's eligibility officers should consider:

- i) whether the individual concerned falls within the criteria for inclusion set out in the refugee definition of the 1951 Convention; and, if this is not the case,
- ii) whether he/she meets the criteria of the broader refugee definition under UNHCR's mandate.

Establishing as a first step whether these criteria are met is important, since recognition as a refugee within the meaning of the 1951 Convention definition may in practice provide a more secure status than recognition as a refugee under UNHCR's mandate. States (particularly those who are not bound by relevant regional refugee instruments) may not necessarily accept any obligation towards those who do not fall within the Convention criteria, and it is therefore often more difficult for UNHCR to ensure international protection or to find durable solutions in such cases.

⁶ *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, available at: <http://www.unhcr.org/refworld/docid/3ae6b36ec.html>*

⁷ See for example UN High Commissioner for Refugees, *UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 17 July 2009, available at: <http://swigea56.hcrnet.ch/refworld/docid/4a6477ae2.html>

Only if it has been established that an applicant does not meet the eligibility criteria of the 1951 Convention definition should UNHCR proceed to consider whether he/she comes within the wider category of persons who are also refugees under UNHCR's mandate.

Importance of an inclusive interpretation of the 1951 Convention definition of a refugee

UNHCR's protection responsibilities for refugees recognized under the Office's extended mandate are the same as for Convention refugees, and refugee status accorded on that basis should not be viewed as 'secondary' or 'subordinate'. In particular, it does not mean that those mandate refugees who cannot establish a claim under the 1951 Convention are automatically excluded from resettlement. Similarly, UNHCR's international protection responsibilities towards *prima facie* refugees are the same as for those whose refugee status has been determined individually.

The Refugee Definition of the 1951 Convention

Inclusion criteria

Article 1A(2) of the 1951 Convention sets forth the so-called *inclusion criteria* of the refugee definition, that is, those elements which must be met for an asylum-seeker to qualify as a refugee under this Convention, provided that none of the exclusion clauses contained in Article 1D, 1E or 1F are applicable to him/her. The following sections consider these criteria one by one.

OUTSIDE THE COUNTRY OF NATIONALITY OR HABITUAL RESIDENCE

The first inclusion criterion is to be outside one's country of nationality or habitual residence. Although UNHCR is involved with internally displaced persons (IDPs) in various capacities, these individuals remain, in principle, under the protection of their respective State.

A person can only be a refugee if he/she is outside his/her country of nationality, or for those who are stateless, outside their country of habitual residence. This is a factual issue, which is to be established on the basis of documents, statements or any other information submitted by the applicant or obtained from other sources.

Persons who have more than one nationality must establish a well-founded fear of persecution with respect to each of the countries concerned in order to qualify for refugee status, but this applies only if the applicant's second nationality actually carries with it the full range of rights normally enjoyed by citizens of the country concerned.

The 1951 Convention does not require that a person's departure from his/her country of origin or habitual residence was caused by a well-founded fear of persecution. Grounds for recognition as a refugee may arise when the individual concerned is already out of the country – in such situations, the person may become a refugee while being in the host country ("*sur place*").

WELL-FOUNDED FEAR

The term 'well-founded fear' has two aspects:

The inclusion of 'well-founded fear' includes both a subjective and an objective element

1. **THE SUBJECTIVE ELEMENT:** this refers to the applicant's **FEAR**, which denotes a state of mind and will depend on his/her personal and family background, personal experiences, and the way in which he/she interprets his/her situation. A subjective fear can often be inferred from the objective circumstances, for example where there is a clear risk of persecution upon return. In most cases, the mere fact of having applied for refugee status is sufficient to indicate a fear of return.
2. **THE OBJECTIVE ELEMENT:** this concerns the question of whether or not the applicant's fear is '**WELL-FOUNDED**' in light of the situation in the country of origin. The indicators for assessing well-foundedness of fear include the applicant's personal circumstances (background, experiences, personality, family history etc) and the objective situation in the country of origin (social/political conditions, human rights records, legislation, etc). Reliable country-of-origin information is essential for eligibility staff, both to understand the applicant's personal circumstances and to assess the well-foundedness of his/her fear. Experiences of family members and/or other persons with a comparable profile may also be relevant.

The applicant's fear can be considered well-founded if there is a **REASONABLE POSSIBILITY** that he/she would face some form of harm or predicament if returned to the country of origin or habitual residence. In general, eligibility for refugee protection under the 1951 Convention requires a current or future fear of persecution. The applicant must not necessarily have suffered persecution in the past, but if it is established that this has happened, it may normally be assumed that there continues to be a risk of persecution in the future.⁸

PERSECUTION

The notion of persecution

The notion of persecution infers a threat to life or physical freedom, or other serious violations of human rights

The concept of 'persecution' is not defined in the 1951 Convention or in any other international instrument. From Article 33 of the 1951 Convention it can be inferred that a threat to **LIFE OR PHYSICAL FREEDOM** constitutes persecution, as would other **SERIOUS VIOLATIONS OF HUMAN RIGHTS**. The preamble to the 1951 Convention refers to international human rights standards. These provide a useful framework for analysis, and it is important that decision makers are familiar with them.

⁸ Paragraphs 37 – 50 of the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, *supra* note 2, explain in great detail the process of establishing whether the applicant has a well-founded fear.

Primary human rights law instruments include the 1948 Universal Declaration of Human Rights, the 1966 International Covenants on Civil and Political Rights, and on Economic Social and Cultural Rights

Non-derogable rights may never legitimately be restricted by States

Derogable rights may be limited during emergencies, but only as strictly necessary

Certain other rights may be limited by States under certain circumstances

The principle of non-discrimination is important for economic, social and cultural rights

International human rights law enshrines a significant number of rights which all persons, regardless of their nationality, enjoy. The 1948 Universal Declaration of Human Rights (UDHR)⁹ set out a list of fundamental rights which should be universally respected, and the 1966 International Covenants on Civil and Political Rights (ICCPR)¹⁰, and on Economic, Social and Cultural Rights (ICESCR)¹¹ codified these in legally binding form. A series of other human rights instruments have built on and developed these standards to address specific categories of rights.

When determining whether particular acts amount to persecution, decision makers should keep in mind that under international human rights instruments, States may never legitimately restrict certain fundamental rights. Referred to as “non-derogable”; these rights include the right to be protected against arbitrary deprivation of life, torture, cruel punishment or treatment, slavery, retroactive penal laws, the right to be recognized as a person before the law, and the right to freedom of thought, conscience and religion.¹² Their violation would normally constitute persecution. The enjoyment of other rights (known as “derogable”) may be limited during times of an officially-proclaimed national emergency, but only to an extent which is strictly necessary and proportionate, and without any element of discrimination. Derogable rights include the right to be protected against arbitrary arrest, the right of all accused to a fair trial, the protection of privacy and integrity of the individual and the family, the right to form a trade union, to take part in the conduct of public affairs, and the right to access to public services without discrimination.¹³ Moreover, with regard to certain rights and freedoms, human rights law recognizes that restrictions may be warranted under certain circumstances. Restrictions may thus be placed on freedom of movement, the right to manifest one’s religion and beliefs, to freedom of opinion and expression, and to freedom of association and assembly.¹⁴ The ICCPR, in particular, permits the limitation of a number of rights on grounds specifically spelled out in the relevant provisions.

Other rights do not create immediately binding obligations in terms of their realization but require States to work progressively towards their objectives. This is the case for economic, social and cultural rights. However, even where States are not able immediately to extend these to all citizens, they may not discriminate between groups in society with

⁹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>

¹⁰ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>

¹¹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b36c0.html>

¹² ICCPR Articles 6, 7, 7, 8, 15, 16, and 18(2) respectively, *supra* note 10.

¹³ ICCPR Articles 9-10, 14, 17, 22, 25, and 25 respectively, *supra* note 10.

¹⁴ ICCPR Articles 12, 18(3), 19, and 21-22 respectively, *supra* note 10.

regard to access to these rights. These include the right to work, food, clothing, housing, medical care, social security, primary education, or participation in cultural, scientific, literary or artistic life.¹⁵

Discrimination amounting to persecution

Not every violation of an applicant's human rights or instance of discrimination or harassment is serious enough to be considered persecution. **DISCRIMINATION**, in particular, can constitute persecution if it is linked to a protected right (such as, for example, freedom of religion), and if it reaches – for the particular asylum claimant – a certain level of seriousness, or if there has been a persistent pattern of discrimination. The threshold of persecution is clearly met if the applicant's enjoyment of fundamental human rights – for example, access to the basic means of survival – is seriously restricted. Moreover, discriminatory measures which, taken separately, would not amount to persecution, may on aggregate render the situation for the applicant intolerable. This would be considered persecution on 'cumulative grounds'.

Persecution also encompasses other kinds of serious harm or intolerable predicament

However, 'persecution' is not limited to human rights abuses. It also encompasses other kinds of serious harm or intolerable predicament.

When assessing whether a particular treatment or measures amount to persecution, decision makers should consider it/them in light of the opinions, feelings and psychological make-up of the applicant. The same act may affect people differently depending on their previous history, profile and vulnerability. In each case, decision makers must determine in light of all the specific individual circumstances whether or not the threshold of persecution is reached.

Circumstances not amounting to persecution

Individuals afraid of natural disasters or seeking to improve their economic situation are not considered refugees unless they also fear persecution based on one of the Convention grounds

You should also be aware that certain circumstances do not amount to persecution. Thus, for example, persons who fear natural disasters are not refugees, unless they also have a well-founded fear of persecution for one of the reasons set out in the 1951 Convention definition (discussed below). Likewise, persons who leave their countries solely to improve their economic situation are not refugees, although as noted above, severe economic restrictions which deprive a person of all means of earning a livelihood can amount to persecution.

¹⁵ ICESCR Articles 6, 11, 11, 11, 12, 9, 13, and 15 respectively, *supra* note 11.

Who is the persecutor?

Persecution may be perpetrated by the State through its official agents or its acquiescence, or by individuals or groups where the State is either unwilling or unable to provide protection

In many cases, persecution originates directly from the Government, through official agents, such as police, army or civilian administrators. In other cases, it may be carried out by groups that, although formally separated from the government structure, act at the instigation or with the consent of the Government, such as death squads, militias and paramilitary forces. Persecution may also originate from *de facto* authorities and may even occur at the hands of private citizens or people not connected with the authorities. In such cases, the decisive question is whether or not the authorities are able and willing to provide protection to the individuals concerned.¹⁶

1951 Convention grounds – the ‘nexus’ requirement

Persecution must be linked to one of the five grounds mentioned in the Convention, namely race, religion, nationality, political opinion, or membership in a particular social group

The refugee definition in the 1951 Convention specifies that a person may qualify for refugee status under its terms only if he/she fears persecution ‘for reason’ of one or more of the **five grounds** listed in Article 1A(2). This link is often referred to as the ‘nexus’ requirement. It is satisfied if the Convention ground is a relevant factor contributing to the persecution – it does not have to be its sole or even dominant cause.

In practice, more than one Convention ground may apply, for example if a member of a particular religious or ethnic group is also a political opponent. The link between the fear of persecution and the relevant Convention ground is also present where the authorities mistakenly impute a particular belief (e.g. religion or political opinion) or attribute a characteristic (e.g. homosexual) to the individual concerned. Neutrality may also form the basis of a refugee claim, for example in the context of a civil war, as a person who remains neutral in such circumstances may be perceived by either side as a political opponent, which in turn may result in his/her persecution.

Gender-related claims may fall within any of the five grounds. The UNHCR Guidelines on Gender-Related Persecution provide further guidance

The *UNHCR Guidelines on Gender-Related Persecution* provide detailed guidance on examining gender-related claims in light of the five grounds contained in the 1951 Convention.¹⁷ The Guidelines emphasize that gender-related claims may fall within any of the five grounds. Examination of these claims should not therefore be limited to the ground of "membership of a particular social group." The challenge for decision makers in this respect is to understand the way in which gender fits into each of the five grounds. When analyzing gender-related claims,

¹⁶ Please read carefully the discussion of “Agents of Persecution” in paragraph 65 of the *Handbook on Procedures and Criteria for Determining Refugee Status*, *supra* note 2.

¹⁷ UN High Commissioner for Refugees, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, available at: <http://www.unhcr.org/refworld/docid/3d36f1c64.html>

for example, you need to consider that certain acts and situations affecting women, that often appear purely private and personal, may in reality be *profoundly political* and should therefore be considered under the ground "political opinion".

RACE

Understanding the underlying social context is crucial, for example in the case of 'mixed' marriages

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

RELIGION¹⁸

Claims for refugee status on the basis of religion may be related to elements of religious belief (or their absence), religious identity or religion as a way of life

As noted above, freedom of religion is a fundamental human right. It includes the right to have or not to have a religion, to practice one's religion, and to change religions. 'Religion' as a 1951 Convention ground refers not only to the established institutionalized religions; it covers any system of belief – that is, convictions or values about a divine or ultimate reality, or the spiritual destiny of mankind. Claims for refugee status on this basis may involve elements related to religious belief (or the fact of not having a belief), religious identity or religion as a way of life. Examples of persecution for reason of religion include the following:

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

NATIONALITY

'Nationality' as a ground for refugee status does not only refer to 'citizenship', but also extends to groups of people defined collectively through their real or perceived ethnic, religious, cultural or linguistic

¹⁸ Detailed guidance on the examination of claims for refugee status based on religion can be found in UN High Commissioner for Refugees, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, 28 April 2004, HCR/GIP/04/06, available at:

<http://www.unhcr.org/refworld/docid/4090f9794.html>

identity, regardless of whether this difference has been formalized legally.

Persons who are stateless – that is, without a nationality in its more limited sense of ‘citizenship’ – may be refugees if they have been denied citizenship on the basis of one of the five 1951 Convention grounds, or if they have a well-founded fear of persecution on one of the Convention grounds in the country of habitual residence.

MEMBERSHIP OF A PARTICULAR SOCIAL GROUP¹⁹

A ‘particular social group’ within the meaning of the Convention is innate, unchangeable, and otherwise fundamental to identity, conscience or the exercise of human rights.

This Convention ground applies where an applicant belongs to a group of persons who share a common characteristic other than the risk of being persecuted. This characteristic is one which is:

- **innate** – such as sex, race, caste, kinship, ties, linguistic background, or sexual orientation;
- **unchangeable** – for example, because it relates to the individual’s past history, such as former military officer, former trade union member, or former landowner; or
- **otherwise fundamental** to identity, conscience or the exercise of one’s human rights, such that the person should not be expected to change or reject it.

The group must be set apart in some way from others, either because it sees itself as being different, or because it is perceived as such by the persecutor. It is not dependent on whether the members of the group know each other and associate together, nor is it necessary that it be a small group – thus, for example, there may be situations in which it is appropriate to recognize ‘women’ generally as a particular social group.

Claims related to sexual orientation, gender identity and expression are also appropriately recognized under the 1951 Convention ground “membership of a particular social group,” although individual cases may also be recognized under other grounds.

One of the most visible examples of a particular social group is the family. Claims for refugee status may arise, for example, where family members of political activists or opposition fighters are targeted for persecution as a means of punishing the latter or forcing them to surrender or cease their activities.

¹⁹ A detailed analysis of the applicability of this Convention ground is contained in UN High Commissioner for Refugees, *Guidelines on International Protection No. 2: “Membership of a Particular Social Group” Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/02, available at: <http://www.unhcr.org/refworld/docid/3d36f23f4.html>. See also UN High Commissioner for Refugees, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, available at: <http://www.unhcr.org/refworld/docid/48abd5660.html>

POLITICAL OPINION

Political opinions upon which a claim for refugee status is based go beyond identification with a specific political party or recognized ideology

The concept of 'political opinion' as a ground for recognition as a refugee should be interpreted in a broad sense, as encompassing any opinion concerning matters on which the machinery of the state, government or society is engaged. It goes beyond identification with a specific political party or recognized ideology, and may include, for example, an opinion on gender roles. The mere fact of holding a political opinion which is different from that of the government is not in itself a ground for claiming refugee status. The key question is whether the applicant holds – or is perceived to hold – opinions which are not tolerated by the authorities or by the community, and whether he/she has a well-founded fear of persecution for this reason.

The Gender Note

"Gender-related persecution" denotes quite a varied set of possible claims. These claims may typically include acts of sexual violence, family violence, coerced family planning, female genital mutilation, sexual orientation, etc. These types of claims may mix forms of persecution (e.g. persecution effected through sexual violence) with reasons for persecution (e.g. persecution because of deviation from attributed gender's role). What is common amongst them is the fact that gender is a relevant factor in the determination of the claims.²⁰

AVAILABILITY OF STATE PROTECTION

As individuals should normally be under the protection of their State, international protection is extended to those individuals unwilling or unable to avail themselves of State protection.

The final clause of the 1951 Convention refugee definition states that a refugee is a person who is unable or (owing to a well-founded fear of persecution) unwilling to avail him/herself of the protection of the country of nationality or habitual residence. Being **unable** to avail oneself of the protection of the country implies circumstances that are beyond the control of the person concerned. For instance, a country may be unable to extend proper protection in a state of war, civil war, or other grave disturbance. Being **unwilling** to avail oneself of the protection of the country of nationality or habitual residence implies that the person refuses to accept the protection of that country due to his/her well-founded fear of persecution.

Persecution by groups or individuals who are non-state actors

As noted above, claims based on a fear of persecution by groups or individuals who are not part of the State apparatus require an assessment of whether the State is both able **and** willing to protect the individual concerned. If this is the case, the applicant's fear may not be well-founded.

²⁰ For further guidance on gender-based persecution see UN High Commissioner for Refugees, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, *supra* note 17.

Internal flight or relocation alternative

If the applicant's fear of persecution emanates from non-State actors and is confined to a specific part of the country, outside of which the feared harm cannot materialize, it may be appropriate to assess whether he/she would have a possibility of finding protection elsewhere in the country of origin. This is known as the '**internal flight or relocation alternative**'. Where it exists, the applicant may not be eligible for international refugee protection. In practice, the need for an assessment of an internal flight alternative arises only rarely. Guidance on this subject can be found in UNHCR's Guidelines on International Protection: "Internal Flight or Relocation Alternative."²¹

Claims of children should also be considered in light of the 1951 Convention grounds. In particular, it is important to note that children may also have political opinions, though these may be manifested differently from the opinions of adult males and females in the society. In this particular respect, it is important to note that children may not have a subjective fear (because of their age and lack of maturity). This, however, would not impact upon their need for protection provided that the objective element of fear is present.²²

Eligibility under the Broader Refugee Definition

Individuals fleeing generalized violence or events seriously disturbing public order may be eligible for mandate refugee status

As we have noted above, individuals who have fled their country of origin and are unable to return owing to indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order, may be eligible for mandate refugee status even if they do not have a well-founded fear of persecution linked to a 1951 Convention ground.

The eligibility criteria under UNHCR's mandate differ in various ways from those of the refugee definition of the 1951 Convention:

Differences between UNHCR's mandate criteria and the criteria contained within the 1951 Convention

Firstly, there is no requirement of a subjective fear: the broader refugee definition focuses on the objective risk to the applicant if he/she were forced to return. Instead of a 'well-founded fear of persecution', the basis for the claim is a serious threat to the applicant's life, physical integrity or freedom. The standard of proof for establishing the existence of such a threat, however, is the same as under the 1951 Convention definition – there must be a reasonable likelihood that the harm will materialize if the person concerned were to be returned.

²¹ UN High Commissioner for Refugees, Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, 23 July 2003, HCR/GIP/03/04, available at: <http://www.unhcr.org/refworld/docid/3f2791a44.html>

²² For detailed guidance on examining the claims of child applicants, read UN High Commissioner for Refugees, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, available at: <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>

Moreover, under the broader refugee definition, the threat may be indiscriminate – in most cases where an individual is subject to a selective or discriminate risk of harm, this would be linked to a 1951 Convention ground.

And finally, the threat of harm must result from generalized violence or events seriously disturbing public order; in other words, it should arise from a generalized breakdown in the State's capacity to provide protection, as may be a result, for example, of armed conflict or other 'man-made disasters', including foreign domination, intervention or occupation and colonialism.

Recognizing a quality RSD assessment

The role of Country-of-Origin Information (COI) in establishing well-founded fear of persecution

Good Country-of-Origin
Information is crucial

Good Country-of-Origin Information (COI) is crucial to helping establish both the subjective and objective elements of the asylum-seeker's claim. Eligibility officers should make every effort to consult relevant sources of COI as part of their file preparation before the RSD interview. An appropriate use of COI assists the eligibility officer:

- to ask pertinent questions and to help elicit the asylum-seeker's story;
- to identify and clarify any apparent contradictions or inconsistencies as the interview progresses;
- to assess the reliability of statements and other information provided by the applicant and any witnesses and establish the relevant facts.

Information on the conditions prevailing in the country of origin, however, very often gives the interviewer only a "general impression" of the situation affecting an individual. Country-of-Origin Information cannot, therefore, be systematically applied in the process of Refugee Status Determination without being adequately *assessed* and put in the *appropriate context*.

Absence of information
should not in itself
justify a negative
eligibility decision

The mere absence of information, moreover, or one's inability to find information that supports an applicant's claim, should not in itself justify a negative eligibility decision.

COUNTRY-OF-ORIGIN INFORMATION SOURCES

UNHCR positions on the return of asylum-seekers and refugees to their country of origin, often issued in the form of eligibility guidelines, will be relevant to support a presumption of the well-foundedness of claims.

The quality of the existing information systems has improved dramatically in recent years. UNHCR's *Refworld* contains a large collection of documents related to security and human rights situations in countries of origin and legal and policy documents. The information has been selected and filtered from a wide variety of sources including the UN, UNHCR, Governments, non-governmental organizations, academic institutions and judicial bodies.

Both the source and the information should be carefully evaluated

The internal version of *Refworld* includes all of the public documents available on the external version of *Refworld*, as well as those which are classified as internal. All internal documents are marked in red, within search results, navigation, and in the document view itself.

The ease with which information can be published on the internet makes it crucial that both the source and the information be carefully evaluated.

Assessment of the claim and report-writing

Perhaps the most challenging step following the Refugee Status Determination interview is the evaluation of the claim and the preparation of the written RSD Assessment. In this phase, the interviewer is required to organize his/her own notes and the impressions gathered throughout the interview into a structured and coherent report known as the RSD Assessment.

A quality RSD assessment is both well-organized and comprehensive

A well-organized and comprehensive RSD Assessment will contribute greatly to the quality of the RSD decision as well as the efficiency and accuracy of the review and appeal procedures. The RSD Assessment should include:

1. a summary of the claim;
2. a credibility assessment, which should identify evidence that was not accepted or was regarded to be insufficient and provide an explanation for this finding; credibility is only assessed with respect to the evidence presented; evidence assessed as credible then forms the basis of the legal analysis;
3. a statement of the facts which are considered established;
4. a legal analysis of whether the accepted facts bring the applicant within the refugee criteria; this should examine first eligibility under the 1951 Convention, and if this criterion is not met, it should proceed to examine whether the applicant falls within the broader refugee protection criteria;

5. an assessment of whether exclusion issues may apply, and an examination of the relevant issues where potential exclusion grounds are identified; and
6. a recommendation on whether or not the applicant should be recognized.

The UNHCR **RSD ASSESSMENT FORM**²³ has been developed to provide a standard structure for the analysis of the main elements of the decision. The form is designed to assist eligibility officers to address the relevant issues and provide the relevant facts.

A poor-quality Assessment can result in the case being delayed for resettlement or returned for additional RSD Assessment.

We have already mentioned the close link existing between the refugee status determination process and the resettlement process. In the preparation of the RSD Assessment the link is all the more evident as, in many UNHCR Offices, resettlement referrals are carried out on the basis of the RSD Assessment. The quality of the information contained in the RSD Assessment, therefore, will directly affect the speed and the effectiveness with which resettlement is implemented.

RSD Assessments that are not well-organized and well-written inevitably result in the case being delayed for resettlement. For example, some substantial inconsistencies may arise at the moment of the resettlement interview and this may result in the case being referred back to the RSD decision maker for clarifications. Under certain circumstances, this delay may be critical to the refugees who have an urgent protection need.

The legal analysis

The legal analysis of a refugee claim is a step-by-step process breaking the analysis down into its individual elements, examining each part systematically.

After establishing the relevant facts of the claim and assessing the credibility of the applicant, the decision maker needs to make the determination of whether the applicant meets the criteria set out in the refugee definition of the 1951 Refugee Convention or comes within the category of refugees covered by the broader refugee definition under UNHCR's mandate. This phase requires a systematic approach that breaks down the reasoning process into manageable parts. Each element of the refugee definition should be checked against the facts gathered through the interview. Controversial issues should be addressed and discussed systematically, and the reasoning should be clearly explained. In this phase, analysis of evidence provided by the applicant, evidence from witnesses, and information about the country of origin must all be examined together to determine whether the applicant falls within the refugee criteria.

The RSD decision should clearly state the arguments to support the determination, whether positive or negative. Equally important is the impartiality, objectiveness, and consistency of decisions.

²³ *Supra* note 3.

It is important to avoid including elements of subjectivity in the RSD process

A common risk for RSD decision makers is to include elements of subjectivity in the RSD process, i.e. to apply their own perspectives in the way they portray the facts in an interview report. As noted by Spijkerboer, "*the flight motives of an applicant are always the product of choices made by people involved in getting them down on paper - the applicant, the translator, the interview official, the lawyer, the decision maker. The same story can be told in very different ways, and the way in which the story is told inescapably reflects the perspectives of the person doing the telling.*"²⁴

It is important that all decision makers use a consistent framework of analysis to assess refugee claims. This is crucial to ensure that RSD is carried out in a harmonized manner by all UNHCR's Offices throughout the world and that refugees have equal chances to have their status recognized, independently of the UNHCR Office in which they submit their claim.

THE IMPORTANCE OF A WELL-SUPPORTED RSD ASSESSMENT

The organization and quality of information provided in the RSD Assessment, the language and tone used to present it, and its quality and comprehensiveness have an important bearing on the quality – and success – of resettlement referrals.

The information provided in the RSD Assessment, the organization of this information, the language used, as well as the tone of the writing play an important role in the way the recommendation will be received. The quality and comprehensiveness of the RSD Assessment will also have an important bearing on the quality of resettlement referrals.

In fact, the refugee claimant recently interviewed for RSD and recognized may be subsequently found to be in need of resettlement, either during the same interview or upon a subsequent interview undertaken by resettlement colleagues. The information included in the RSD Assessment report, therefore, may be used to prepare Resettlement Registration Forms (RRFs) that are shared with Governments of the resettlement countries. Moreover, the authorities of resettlement countries do usually undertake their own refugee status determination with the refugees submitted by UNHCR for resettlement.

²⁴ Spijkerboer, Thomas, *Gender and Refugee Studies*, Aldershot: Ashgate, 2000, 45-46.

The application of the Exclusion Clauses of Article 1F

The notion of exclusion under Article 1F²⁵ is an integral part of the RSD procedure. It ensures that no person undeserving of international protection receives it. However, the consequences of excluding someone from international protection are grave. It is therefore crucial that any potentially excludable acts be carefully and systematically analyzed as the exclusion clauses need to be interpreted restrictively and applied using the highest standards of procedural fairness.

Article 1F of the 1951 Convention sets out the conditions by which an individual may be found undeserving of international protection.

Exclusion under Article 1F of the 1951 Convention means that persons who would otherwise meet the criteria of the refugee definition of the 1951 Convention are nevertheless denied refugee status.²⁶ The idea behind these exclusion clauses is that certain acts are so grave that they render their perpetrators undeserving of international protection as refugees, and that the refugee framework should not be abused by individuals who seek to escape legitimate prosecution for certain serious crimes. The types of acts which may give rise to exclusion on the basis that those responsible are not deserving of international refugee protection are exhaustively enumerated in Article 1F. These are:

- (a) crimes against peace, war crimes, or crimes against humanity;
- (b) serious non-political crimes committed outside the country of refuge prior to admission to that country as a refugee;
- (c) acts contrary to the purposes and principles of the United Nations.

²⁵ Please note that the 1951 Convention also provides for exclusion from refugee status of certain categories of persons who are not in need of international protection, either because they are receiving protection or assistance from organs or agencies of the UN other than UNHCR (Article 1[D]) or because they are currently recognised by the competent authorities of the country in which they have taken residence as having the rights and obligations attached to the possession of the nationality of that country (Article 1[E]). Guidance on the application of these exclusion clauses can be found in UN High Commissioner for Refugees, *Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, 2 October 2002, available at: <http://www.unhcr.org/refworld/docid/3da192be4.html>; and UN High Commissioner for Refugees, *UNHCR Note on the Interpretation of Article 1E of the 1951 Convention relating to the Status of Refugees*, March 2009, available at: <http://www.unhcr.org/refworld/docid/49c3a3d12.html>, respectively.

²⁶ Paragraph 7(d) of UNHCR's Statute contains similar exclusion clauses. When considering exclusion in mandate refugee status determination procedures, UNHCR staff should examine whether the applicant would come within the scope of Article 1F of the 1951 Convention. See UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <http://www.unhcr.org/refworld/docid/3b00f0715c.html>

Please note that the *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees of 4 September 2003* and its *Background Note on the Application of the Exclusion Clauses* are the fundamental UNHCR policy documents setting out the legal principles and standards governing the application of the exclusion clauses.²⁷ The Background Note on Exclusion should also be considered the main reference throughout this portion of the Unit. The procedural safeguards which should be observed in exclusion proceedings are set out in UNHCR's *Procedural Standards for Refugee Status Determination under UNHCR's Mandate* of November 2003, at § 4.8.²⁸ All UNHCR staff involved in interviewing, decision-making and/or reviewing of RSD decisions should be familiar with these documents.

The integrity of the institution of asylum depends on the proper application of Article 1F.

Assessing whether an asylum-seeker falls under the exclusion clauses involves considerable moral and professional responsibility. One of the objectives of this Unit are to assist UNHCR's interviewers and decision makers in this complex task by helping them to understand exclusion within the RSD process and by enhancing their skills in the practical application of Article 1F.

Applying the Exclusion Clauses of Article 1F

Each individual RSD Assessment should address the question of whether or not exclusion considerations arise

The exclusion clauses form an integral part of the refugee definition contained in the 1951 Convention. As a consequence, each individual RSD Assessment should address the question of whether or not exclusion considerations arise.²⁹ Demonstrating that due attention was paid to exclusion issues in the RSD process is particularly important in the context of resettlement.

The following sections briefly highlight some important general issues to be kept in mind when examining exclusion under Article 1F. It also sets out a Framework for Analysis which provides a structure for examining the applicability of Article 1F and presents a case study as an example of how this Framework should be applied.

²⁷ UN High Commissioner for Refugees, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees* (hereinafter "*Guidelines on Exclusion*"), 4 September 2003, HCR/GIP/03/05, available at: <http://www.unhcr.org/refworld/docid/3f5857684.html> and UN High Commissioner for Refugees, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees* (hereinafter "*Background Note on Exclusion*"), 4 September 2003, available at: <http://www.unhcr.org/refworld/docid/3f5857d24.html>.

²⁸ UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate* (hereinafter "*RSD Procedural Standards*"), 20 November 2003, available at: <http://www.unhcr.org/refworld/docid/42d66dd84.html>.

²⁹ See question V-1 of the *RSD Assessment Form*, *supra* note 3.

INCLUSION BEFORE EXCLUSION

In principle, inclusion should be considered before exclusion.³⁰ If a person does not meet the inclusion criteria of the refugee definition, he/she does not have a well-founded fear of persecution, and it is for this reason that his/her claim for recognition as a refugee should be rejected.

Where exclusion considerations arise, all elements of the applicant's claim – those related to his/her fear of persecution as well as those which are relevant to Article 1F – must be taken into account to determine whether his/her conduct gives rise to individual responsibility for acts within the scope of Article 1F and, if this is the case, whether the consequences of his/her exclusion would have been adequately addressed when considering the principle of proportionality.

STANDARD AND BURDEN OF PROOF

As opposed to the “reasonable possibility” standard of inclusion, exclusion requires the threshold of “serious reasons for considering” that the individual committed or participated in the commission of excludable acts

The standard of proof which needs to be met for exclusion under Article 1F is that of ‘serious reasons for considering’ that an individual has committed, or participated in the commission of, acts within its scope. For this standard to be met, clear and credible information is required. ‘Serious reasons’ may be established on the basis of credible statements of the applicant or other persons, and/or reliable COI, if it is sufficiently detailed and specific. An indictment by an international criminal tribunal would also give rise to serious reasons for considering that the person concerned is individually responsible for crimes within the scope of Article 1F. However, the credibility of Indictments or convictions by national courts – especially if issued in the applicant's country of origin – would need to be examined carefully, as they may constitute a means of persecution.³¹

Indictments or convictions by national courts may constitute a means of persecution and must be examined carefully

In keeping with the exceptional nature of exclusion, the burden of proof lies on the decision maker. Where UNHCR intends to apply Article 1F to an applicant, fundamental principles of procedural fairness require that the person concerned be given an opportunity to consider, and respond to, the information which would form the basis for the decision to exclude.³² The applicant's statements in response to such information,

³⁰ See paragraph 100 of the *Background Note on Exclusion*, *supra* note 27. However, as the *Guidelines on Exclusion* note, exclusion may be exceptionally considered without particular reference to inclusion issues (i) where there is an indictment by an international criminal tribunal; (ii) in cases where there is apparent and readily available evidence pointing strongly towards the applicant's involvement in particularly serious crimes, notably in prominent Article 1F(c) cases; and (iii) at the appeal stage in cases where exclusion is the question at issue. See paragraph 31 of the *Guidelines on Exclusion*, *supra* note 27.

³¹ For further guidance on the standard and burden of proof in exclusion cases, please refer to paragraphs 105–111 of the *Background Note on Exclusion*, *supra* note 27.

³² The applicant's right to full disclosure of relevant information may be limited only in certain exceptional situations, where this is necessary (generally to protect the security of UNHCR staff or a witness or other source of information). Guidance on the

as well as the decision maker's assessment of any explanation provided by him/her, should be reflected in the RSD Assessment.

NON-COOPERATION

Non-cooperation is not sufficient to exclude an asylum-seeker unless the 'serious reasons' standard is met

RSD interviewers are sometimes faced with applicants who do not cooperate, and in particular, refuse to answer questions concerning their involvement in excludable crimes. As such, this would not be sufficient to exclude an asylum-seeker from refugee status, unless there is enough information to meet the 'serious reasons' standard and thus to justify the application of Article 1F. That being said, an applicant's refusal to cooperate may have a negative effect on his/her overall credibility and result in the rejection of his/her claim.³³ However, before rejecting the claim on this basis, the decision maker should investigate the cause of an applicant's non-cooperation, as it may be related to mistrust and/or confusion as a result of trauma or even lack of understanding of the procedures.

UNHCR is not meant to conduct a criminal trial, nor is the UNHCR's role that of a judge

In this context, it is worth remembering that, when examining the applicability of Article 1F, UNHCR is not meant to conduct a criminal trial, and its role with regard to the individual concerned is not that of a judge. This is an important principle, which all RSD interviewers and decision makers should take into due account, and which should find expression in their attitude during the interview.

PROCEDURAL SAFEGUARDS

Procedural fairness requires a full RSD interview to be conducted, and the individual has a right both to respond to any information which may justify exclusion, and to appeal the decision

Given the potentially serious consequences of exclusion, procedures which may lead to the application of Article 1F should provide certain fundamental safeguards. These include, in particular, the need for a full RSD interview and the right of the individual concerned to respond to information which may form the basis for an exclusion decision. Procedural fairness also requires that the excluded person be given a possibility to submit an appeal, which should be examined by a UNHCR staff member who was not involved in adjudicating or reviewing the first-instance decision.³⁴

EXCLUSION AT THE ELIGIBILITY STAGE: CANCELLATION AND REVOCATION OF REFUGEE STATUS

Exclusion concerns may arise at the eligibility stage

Issues related to exclusion may arise at the eligibility stage. The need to consider the applicability of Article 1F may emerge in various ways (for example, through statements of the applicant or information received from other sources) and at different stages of the procedure (for

circumstances in which this may be relevant, and on appropriate UNHCR procedures, can be found in the *RSD Procedural Standards*, at § 4.8.2 and § 6.2, *supra* note 28.

³³ See para 111 of the *Background Note on Exclusion*, *supra* note 27.

³⁴ See para 98 of the *Background Note on Exclusion*, *supra* note 27, and § 4.8 of the *RSD Procedural Standards*, *supra* note 28.

example, during the registration phase, in the course of an eligibility interview, or as a result of inquiries by UNHCR before or after the interview). If it is determined that there are serious reasons for considering that an asylum-seeker is individually responsible for acts within the scope of Article 1F, he/she is excluded, that is, denied refugee status.

Exclusion considerations may also arise after a person has been recognized as a refugee and lead to the cancellation or revocation of his/her status:

Cancellation of refugee status

CANCELLATION refers to a decision to invalidate the recognition as a refugee of a person to whom refugee status should not have been granted in the first place. This is appropriate if it is established, following proper procedures, that the applicant did not meet the inclusion criteria or that an exclusion clause would have been applicable to him/her at the time of the initial determination. Cancellation means that refugee status is considered never to have been granted – it is invalidated from the time of the original decision.³⁵

Revocation of refugee status

REVOCAION means the ending of refugee status with effect for the future where a person who was properly determined to be a refugee engages in acts within the scope of Article 1F(a) (crimes against peace, war crimes, crimes against humanity) or 1F(c) (acts contrary to the purposes and principles of the United Nations) after recognition.³⁶

Framework for Analysis

How do we assess the applicability of Article 1F on Exclusion to individual cases? Below you will find a Framework for Analysis which sets out a step-by-step approach and lists the issues that need to be considered when examining the exclusion clauses in the course of RSD procedures. Please note that the Framework for Analysis follows the structure of Part V (Exclusion) of the RSD Assessment Form. In keeping with the principle that inclusion should be considered before exclusion, the exclusion analysis should be conducted after it has been determined that the individual concerned meets the inclusion criteria set out in Article 1A(2).

Step 1: Is Article 1F triggered?

(Question V-1 of the RSD Assessment Form)

- Are there any indications that the applicant may have been associated with acts within the scope of Article 1F?

³⁵ For further guidance on the cancellation of refugee status, please refer to UN High Commissioner for Refugees, *Note on the Cancellation of Refugee Status*, 22 November 2004, available at: <http://www.unhcr.org/refworld/docid/41a5dfd94.html>. The recommended procedures for cancellation of refugee status by UNHCR Offices are set out in Unit 10 of the *RSD Procedural Standards*, *supra* note 28.

³⁶ See *Background Note on Exclusion*, *supra* note 27, at para 17.

Step 2: What acts, if any, may bring the applicant within the scope of Article 1F?

(Questions V-2, V-3 and V-4 of the RSD Assessment Form)

- Identify the acts and qualify them in light of the criteria of Article 1F(a), (b) and/or (c)
- Establish whether there is credible and reliable information linking the applicant to acts within the scope of Article 1F

Step 3: Individual responsibility

Basis for individual responsibility

(Question V-5 of the RSD Assessment Form)

Is there credible and reliable information to establish that:

- the applicant committed the act(s) in question or participated in the commission of excludable acts by others?
- the applicant's conduct meets the requirements as to the mental element (*mens rea*), i.e. intent (with regard to conduct or consequences) and knowledge (with regard to circumstances or consequences)?

Grounds for rejecting individual responsibility

(Question V-6 of the RSD Assessment Form)

Do(es) any of the following apply to negate the applicant's individual responsibility:

- Lack of mental element (e.g. due to insanity, mental handicap, involuntary intoxication, lack of mental capacity);
- Defences (e.g. superior orders, duress/coercion, self-defence);
- Expiation (e.g. sentence purged, amnesty or pardon).

Step 4: Proportionality Assessment

(Question V-7 of the RSD Assessment Form)

- Does the seriousness of the crime(s) in question outweigh the consequences of exclusion for the individual?

The application of the Framework for Analysis to a case study

The following case study may serve to illustrate how this Framework for Analysis helps in structuring the assessment of an individual case in which exclusion considerations are raised.

CASE STUDY

The UNHCR Office in Country A was approached by Mr. K.M., a 34-year-old member of a religious and ethnic minority in Country B, who

requested recognition as a refugee. During the first interview with an eligibility officer, Mr. K.M. provided the following account:

“Members of my ethnic group are restricted from many kinds of employment and are not allowed to practise their religion. My children are prohibited from going to local schools. Despite my many academic qualifications, I am unemployed. I was dismissed three times by my employers, after it became known that I belonged to the religious and ethnic minority. I was arrested twice for participating in public protests against the government's treatment of my minority group. On each of these occasions, I was detained for one week and was severely tortured during detention.

Out of exasperation, I decided to join a clandestine organization whose goal was to improve overall conditions for my ethnic group and to achieve greater autonomy within our region. After a few years, the organization dissolved, and all its members managed to flee to another country. Many members of the ethnic and religious minority, including my family and our neighbours, fled to Country A, out of fear of retaliation from the authorities. We were all recognised on a prima facie basis by the authorities of Country A. Two leaders of the clandestine organization, who also fled to Country A were tried in absentia and sentenced to death in our home country. The authorities of Country A have repeatedly refused the extradition of these individuals, but increasing pressure is being put on them and we have heard that they are considering the possibility of returning them to Country B. I am afraid that the two leaders will mention my name among the members of the organization.”

At the end of the interview, UNHCR's eligibility officer informed Mr. K.M. that some time would be needed to verify the information he had provided, and that it might be necessary to interview him again. UNHCR subsequently obtained COI, including numerous reports by UN bodies and human rights organizations, which confirmed that Mr. K.M.'s ethnic minority was subject to widespread human rights violations in his country of origin.

UNHCR also found out that the clandestine organization which Mr. K.M. joined initially operated through peaceful information campaigns in the villages situated in their region. After a few years, however, the organization split and a more radical wing was formed. According to reports from a number of reliable sources, this radical wing was responsible for a violent incident, in which explosives were used during a public rally organized by the ruling party in a square in the centre of the capital of Country B, and which resulted in the killing of five High Level Government Officials and severe injury to eight civilians. The explosion took place as the government representatives attending the rally entered the square to approach the podium from where they were scheduled to speak. The organization dissolved shortly after this incident. According to public statements made by the two leaders of the organization who were detained in Country A and are currently under strict surveillance by the authorities of that country pending a final decision on the request for their extradition, Mr. K.M. had been part of its radical wing and had assisted in the planning and implementation of the above-mentioned violent incident.

Mr. K.M. was interviewed again and asked about the incident. He denied any involvement in the events which led to the killing of the government officials and injury of civilians. He described himself as a mere “supporter” of the group. When asked for more details about his own role and activities within the group, Mr. K.M. was evasive and reluctant to talk.

At this stage, the interviewer informed Mr. K.M. that exclusion was being considered in his case and confronted him with the statements made by the two leaders of the organization, according to which he had participated in the planning and execution of the incident during the public rally. In response, Mr. K.M. affirmed that, while he was an active supporter of the group, he never took part in the practical accomplishment of the violent incident. He stated that he was present at a meeting in which plans for the incident were being discussed, but that he only mentioned the location of the rally, the time it was starting and the route the government officials were planning to take in order to arrive at the podium. This information had been given to him by an acquaintance. Mr. K.M. said he did this because he felt he had to say something and appear to be in favour of the plan, as failure to do so might have resulted in his expulsion from the organization for lack of commitment to its cause. Mr. K.M. also said that he believed the two leaders of the organization were trying to appear to be collaborating with the authorities of Country A in order to improve their own situation and avoid being extradited.

Following the second interview with Mr. K.M., UNHCR also interviewed a number of other members of his ethnic group and some family members, all of whom affirmed that Mr. K.M. was not involved in any violent acts.

Analysis of the case study: Inclusion

Inclusion before Exclusion

As noted above, the decision maker must begin his/her analysis of a claim by determining whether an asylum-seeker meets the inclusion criteria set out in Article 1A(2) of the 1951 Convention or that he/she is eligible for recognition as a refugee on the basis of the broader refugee definition applicable under UNHCR’s international protection mandate.

THE CASE OF MR. K.M. – INCLUSION ANALYSIS

The decision maker came to the conclusion that Mr. K.M. meets the inclusion criteria of the 1951 Convention. This was based on the following considerations:

- **Credibility assessment:** Mr. K.M.’s account of his past experience and the treatment he fears to suffer if returned to his country of origin is credible and coherent. It is also consistent with available COI. During the second interview, Mr. K.M. was somewhat evasive and reluctant to provide information concerning his role and activities within the clandestine organization he had joined and his involvement in the violent incident, but this does not undermine the overall credibility of his claim.

- Well-founded fear: Mr. K.M. has expressed a fear of being subjected to human rights violations and discrimination in his country of origin. This fear is well-founded. COI confirms that violations of human rights of members of the ethnic minority to which Mr. K.M. belongs are widespread. Mr. K.M. has already been detained and tortured. He has also suffered serious discrimination. There is a reasonable possibility that Mr. K.M. would be subjected to similar treatment if he were to be returned to his country of origin.
- Persecution: Mr. K.M. was not allowed to practise his religion and was arrested twice for participating in peaceful demonstrations against the Government. Both times, he was severely tortured while in detention. Such treatment is in clear violation of the applicant's basic human rights and constitutes persecution in the sense of the 1951 Convention. The same applies to the various forms of discrimination which Mr. K.M. and his family have been subjected to as members of the ethnic and religious minority. He has been dismissed twice from his job and his children are not allowed to attend local schools.
- 1951 Convention ground: Mr. K.M. has been persecuted in his country of origin on account of his religion, nationality (ethnic origin) and political opinion.

Analysis of the Case Study: Exclusion

Step 1: Trigger

When there is nothing in an applicant's claim that would suggest an issue of exclusion, an exclusion analysis is not required

Not every case requires an exclusion analysis. If there is nothing in an applicant's claim which suggests that exclusion may be an issue, an exclusion analysis is not required.³⁷ However, if there are indications that the applicant may have been associated with acts within the scope of Article 1F, the decision maker must carefully examine whether the criteria for exclusion are met. The need to conduct an exclusion analysis may be triggered by statements of the applicant him/herself, or any other information which suggests that he/she may be linked with excludable acts (for example, an indictment or conviction by an international tribunal or a national court, an extradition request).

THE CASE OF MR. K.M. – STEP 1: IS ARTICLE 1F TRIGGERED?

The decision maker ticked "Yes" in response to Question V-1 of the RSD Assessment Form and provided the following explanation:

"In Mr. K.M.'s case, exclusion considerations were triggered by the information obtained during UNHCR's inquiries to verify the statements made by him in the course of the first interview. It emerged that the organization he admitted to have belonged to was engaged in potentially excludable acts."

³⁷ Under Question V-1 of the RSD Assessment Form.

There must be indications that specific acts, which fall under Article 1F(a), (b), or (c), have been committed, and also that such acts are linked to the individual concerned

Step 2: Excludable acts; link between acts and the applicant

The next step in the exclusion analysis requires the decision maker to address the following two questions:

A. Acts

First, it is necessary to determine whether the acts in question constitute crimes covered by Article 1F. This involves identifying the relevant acts and determining whether these acts come within the scope of Article 1F(a), (b) and/or (c).³⁸

B. Link

If it is determined that the act(s) in question are covered by Article 1F, the decision maker must examine whether there are serious reasons for considering that the applicant is linked to these acts. The basis for establishing this link could be the applicant's own statements or those of family members, witnesses or others, or any other credible and reliable information.

THE CASE OF MR. K.M. – STEP 2: IS THE APPLICANT ASSOCIATED WITH ACTS WITHIN THE SCOPE OF ARTICLE 1F?

A. Identifying the act(s) and determining the relevant clause(s) of Article 1F

The decision maker proceeded, first, to identify the acts which may bring the applicant within the scope of an exclusion clause, and then continued the analysis by determining the relevant sub-clause of Article 1F:

"In the case of Mr. K.M., the act which needs to be examined in light of the criteria of Article 1F is the violent incident which resulted in the killing of five high level government officials and injury to eight civilians through the use of explosives during a public rally held in the capital of Country B.

Neither Article 1F(a) nor 1F(c) are applicable in the present case. The reasons for this are as follows:

There are no indications that an armed conflict was taking place in Country B at the relevant time. As a consequence, Article 1F(a) – 'war crimes' – is not relevant. Article 1F(a) – 'crimes against peace' – is equally inapplicable to the acts in question. Inhumane acts including murder committed during peacetime could constitute 'crimes against humanity', the third category under Article 1F(a), but for this to be the

³⁸ For detailed guidance on the acts which may give rise to exclusion under Article 1F of the 1951 Convention, see paragraphs 23–49 of the *Background Note on Exclusion*, *supra* note 27.

case these crimes would need to have been part of a widespread or systematic attack against civilians. In the present case, there are no indications that the violent incident met these criteria.

For Article 1F(c) – ‘acts contrary to the purposes and principles of the United Nations’ – to be applicable, the acts in question would need to impinge on the international plane, on account of their gravity, international impact and implications for international peace and security. This does not apply in the present case.

However, it is necessary to consider whether the violent incident during the public rally comes within the scope of Article 1F(b) – ‘serious non-political crime committed outside the country of refuge prior to admission to that country as a refugee’. For the reasons set out below, it is considered that the criteria of this exclusion clause are met, and that the acts in question are:

Serious: the killing of five people and causing severe injury to eight others by detonating explosives in a public place clearly meets the level of seriousness required under this provision.

Non-political: It is necessary to consider the motivation, context, methods and proportionality of a crime to its objectives. In the present case, the radical wing of the organization acted for political motives and with the purpose of improving the situation of their ethnic and religious minority. Despite the political motivation, however, the killing of five officials and serious injury to eight civilians at the public rally constitutes a ‘non-political’ offence within the meaning of Article 1F(b). The acts in question (i.e. detonating an explosive device in circumstances which was likely to cause indiscriminate death or injury to members of the public) fail to meet the so-called predominance and proportionality tests, which are required under Article 1F(b). For the predominance test to be satisfied, there must be a close, direct and clear link between the acts and the intended goal. The proportionality test requires weighing the seriousness of the acts against the political objective.

Outside the country of refuge prior to admission to that country as a refugee: the acts in question took place in Country B, before Mr. K.M. reached Country A.”

B. Establishing the link between the acts in question and the applicant

Having determined that there are serious reasons for considering that acts within the scope of Article 1F(b) have been committed, the decision maker went on to examine whether there was credible and reliable information linking the applicant to the excludable acts:

“Mr. K.M. stated that he joined the clandestine organization. He also said that he was present at a meeting during which the violent incident at the public rally was planned. There is COI from reliable sources detailing the incident and attributing responsibility for it to the radical wing of the organization.

In view of the above, it is concluded that there are serious reasons for considering that Mr. K.M. was associated with the radical wing of the

clandestine organization, and that the latter carried out a serious non-political crime within the meaning of Article 1F(b). It is necessary, therefore, to consider whether his conduct gave rise to individual responsibility for the killing and injury of a total of thirteen people during the public rally."

The decision maker ticked "No" in response to Questions V-2 and V-4 of the RSD Assessment Form, "Yes" under Question V-3.

Step 3: Individual responsibility

At this stage of the exclusion assessment, it is necessary to determine whether the applicant incurred individual responsibility for the excludable acts identified in Step 2. This involves two sets of issues.

A. Basis for individual responsibility

First, the decision maker will need to examine the basis for incurring individual responsibility.³⁹

This means establishing whether there is credible and reliable information/evidence that:

- i. the applicant *committed* a crime him/herself or *participated* in the commission of a crime by someone else (i.e. through planning, instigating, ordering, aiding or abetting, participating in a joint criminal enterprise);
- ii. he/she did so with the necessary mental element (*mens rea*). This requires an assessment of the applicant's state of mind when engaging in a particular conduct. For most crimes within the scope of Article 1F, the mental element required is *intent and knowledge* (Article 30 of the ICC Statute)⁴⁰.

Both 'intent' and 'knowledge' are required to engage individual responsibility

'**Intent**' exists where the person concerned means to engage in a certain conduct or cause a certain consequence. '**Knowledge**' means that he/she is aware that a particular circumstance exists or that a consequence will occur in the ordinary course of events. As with all factual findings under Article 1F, the decision maker must determine whether there are *serious reasons for considering* that an applicant

³⁹ For more detailed guidance on individual responsibility for acts within the scope of Article 1F of the 1951 Convention, please refer to paragraphs 50–64 of the *Background Note on Exclusion*, *supra* note 27. Special considerations apply with regard to establishing individual responsibility of children. As para 28 of the *Guidelines on Exclusion* notes (*supra* note 27), "The exclusion clauses apply in principle to minors, but only if they have reached the age of criminal responsibility and possess the mental capacity to be held responsible for the crime in question. Given the vulnerability of children, great care should be exercised in considering exclusion with respect to a minor and defences such as duress should in particular be examined carefully. Where UNHCR conducts refugee status determination under its mandate, all such cases should be referred to Headquarters before a final decision is made."

⁴⁰ UN General Assembly, *Rome Statute of the International Criminal Court (last amended January 2002)*, 17 July 1998, A/CONF. 183/9, available at: <http://www.unhcr.org/refworld/docid/3ae6b3a84.html>

meant to act in a certain way and was aware of relevant circumstances and/or the consequences of his/her conduct. A finding that he/she had the *mens rea* necessary for committing an Article 1F crime has to incorporate rigorous procedural safeguards, including the opportunity for the applicant to consider and comment on the evidence presented by the caseworker (such as detailed and specific COI findings) on which the decision to exclude may be made, and not rely merely on the basis of reliable COI alone, even if sufficiently detailed and specific regarding the circumstances.

Individual determination of conduct and state of mind are required

In all cases, an *individual determination* of the applicant's conduct and state of mind is required. This also applies to persons who belong to a group or government responsible for excludable crimes. There is no automatic exclusion for such persons (this would amount to a finding of "guilt by association"), although for certain particularly violent groups or governments, it may be justified to apply a *presumption of individual responsibility* for acts within the scope of Article 1F on the basis that anyone who voluntarily became or remained a member of such groups would thereby knowingly make a substantial contribution to the crimes committed by the group or government. Such a presumption is rebuttable, that is, the person concerned must be given an opportunity to respond to it, and the presumption does not apply if the applicant provides a plausible explanation to the effect that he/she was not involved in the acts in question.

There is no automatic exclusion simply because of membership in certain groups

The individual must have the opportunity to rebut this presumption

Command / superior responsibility may be engaged for crimes committed by subordinates in some circumstances.

Under certain circumstances, persons in positions of authority in a military or civilian hierarchy may also incur individual responsibility for crimes committed by persons under their effective command or control. This is known as command/superior responsibility.

B. Grounds for rejecting individual responsibility

Second, it is necessary to assess whether there are grounds for rejecting individual responsibility.⁴¹

Various grounds exist for rejecting individual responsibility, including lack of *mens rea*, expiation, duress, or self-defence

Examining whether there are any grounds which would negate individual responsibility in a particular case also forms part of the exclusion analysis. This may be the case if the applicant acted without the necessary *mens rea* (for example, due to insanity, involuntary intoxication), or if he/she has a valid defence, that is, if there are particular circumstances which relieve him/her from responsibility for the crimes committed (e.g. superior orders, duress or self-defence).

Moreover, in certain cases, where an applicant has served a sentence for a crime within the scope of Article 1F (referred to as expiation), or where

⁴¹ For detailed guidance on grounds which may negate individual responsibility for acts within the scope of Article 1F of the 1951 Convention, please refer to paragraphs 64–75 of the *Background Note on Exclusion, supra* note 27.

he/she has benefited from an amnesty, exclusion may no longer be considered applicable.

THE CASE OF MR. K.M. – STEP 3: INDIVIDUAL RESPONSIBILITY

“As noted in the credibility assessment, Mr. K.M. was evasive and reluctant to talk about his role and activities as a member of the organization. This does not, however, give rise to a negative finding with regard to his overall credibility. The statements made by the leaders are not specific and do not contain any details with regard to Mr. K.M.’s conduct, nor was it possible to obtain such details through COI or other sources.

In view of the above, there are no serious reasons for considering that Mr. K.M. perpetrated the killing of five officials and injuring eight civilians during the public rally in the capital of country B. It is necessary, however, to examine whether through his conduct during the meeting at which the incident was planned, Mr. K.M. made a substantial contribution to the subsequent commission of the crimes.

In particular, it must be established whether, by providing information about the public rally, he incurred individual responsibility on the basis of aiding or abetting. For this to be the case, the applicant’s conduct must have had a substantial effect on the commission of the crime, and he must have acted in the knowledge that he/she was thereby assisting or facilitating the commission of the crime.

Mr. K.M. took part in a meeting during which plans for the violent incident were discussed. Mr. K.M. felt he had to appear in favour of the plan and therefore provided information about the location of the rally, the time at which it was set to start, and the route by which government officials were planning to arrive at the podium. This information had been given to him by an acquaintance. Mr. K.M. knew that the group was planning to carry out the violent incident. In the circumstances, it must be considered that he was aware that the information he was providing had a substantial effect on the perpetration of the crime. It is therefore concluded that Mr. K.M. knowingly facilitated the commission of the crime and, as a consequence, incurred individual responsibility for the killing of five officials and serious injury to eight civilians during the public rally.

It is also necessary to consider whether there are any circumstances which would negate Mr. K.M.’s individual responsibility. Mr. K.M. stated that he felt he had to make his contribution in order to appear in favour of the plan, as he feared that failure to do so would result in his expulsion from the group for lack of commitment. This does not give rise to a valid defence of duress, as Mr. K.M. did not act in order to avert an imminent threat of death or serious bodily harm, nor are there any indications that other grounds for rejecting individual responsibility (e.g. lack of mental capacity, superior orders, self-defence) are applicable in his case.”

The decision maker ticked “Yes” in response to Question V-5 of the RSD Assessment Form and “No” under Question V-6.

Step 4: Proportionality assessment⁴²

The final step involves weighing the seriousness of the crimes against the consequences of exclusion, an analysis which should consider any mitigating or aggravating factors

Particularly heinous crimes will normally justify exclusion in proportionality considerations

If the applicant's individual responsibility for acts within the scope of Article 1F has been established, the final stage of the exclusion analysis consists in weighing the seriousness of the crimes against the consequences of exclusion for the person concerned, notably the degree of persecution feared. In assessing the seriousness of the crime, decision makers should consider any mitigating or aggravating factors. In order to determine the consequences of exclusion, it is necessary to assess what will happen in practice to the person concerned. One relevant question in this regard is whether the host country respects its obligations under international and regional human rights law not to return a person to a risk of torture or other serious human rights violations.

In all potential exclusion cases, a proportionality analysis must be conducted. If the applicant is likely to face severe persecution, the crime in question must be very serious in order to exclude him/her. Conversely, a very serious crime will justify exclusion, as the gravity of particularly heinous crimes will outweigh the consequences of exclusion, no matter how serious the risk to the applicant upon return. Such crimes include crimes against peace, crimes against humanity or acts against the purposes and principles of the United Nations, as these are considered to be particularly grave.

THE CASE OF MR. K.M. – STEP 4: PROPORTIONALITY

The decision maker made the following assessment:

“On the one hand, the crime in question is very serious: it resulted in the death of five persons and serious injury to eight others. On the other hand, Mr. K.M. would risk serious persecution if he were to be returned to his country of origin. If he is excluded, Mr. K.M. would still benefit from protection under international human rights law. However, in practice, the authorities of the host country regularly return people to the country of origin regardless of the risk of human rights abuses, which are widely reported by the UN and other reliable sources.

In weighing the two, it is considered that the gravity of the crime outweighs the potential consequences.”

The decision maker ticked “Yes” in response to Question V-7 of the RSD Assessment Form and, under V-8, recommended that Mr. K.M. be excluded on the basis of Article 1F(b).

⁴² For further guidance on the proportionality assessment, please refer to paragraphs 76–78 of the *Background Note on Exclusion*, *supra* note 27.

Exclusion and Resettlement

THE IMPORTANCE OF EXCLUSION IN THE CONTEXT OF RESETTLEMENT

A proper exclusion analysis helps preserve the integrity of the institution of asylum

As mentioned previously, by making sure that persons responsible for certain serious crimes do not benefit from refugee status, the proper application of Article 1F helps to preserve the integrity of the institution of asylum.

Resettlement is a fundamentally humanitarian and non-political act

The granting of resettlement, like asylum, is a fundamentally humanitarian and non-political act. Accepting refugees for resettlement is a mark of true generosity on the part of Governments and a strong expression of their commitment to the mandate of UNHCR. Resettlement under the auspices of UNHCR is strictly limited to addressing the needs of those individuals who have been recognized as refugees under UNHCR's mandate, and who qualify under one of the resettlement criteria spelled out in the Resettlement Handbook⁴³. From this perspective, ensuring that the exclusion clauses are applied to those who come within the scope of Article 1F and are therefore considered not deserving of international protection also helps to maintain and to preserve the integrity of the resettlement concept.

Resettlement countries rely on UNHCR's ability and professionalism in assessing cases submitted for resettlement

UNHCR and resettlement countries operate in a system of partnership, based on reciprocal trust and reliance. On the one hand, UNHCR relies on the responsiveness of resettlement countries to find resettlement places for refugees in need, often in urgent and emergency circumstances; on the other hand, the resettlement countries rely on UNHCR's ability and professionalism in assessing the cases submitted for resettlement. In particular, countries trust that each single refugee case that UNHCR submits to them for resettlement has been thoroughly reviewed and accurately checked for exclusion considerations.

STATES' HEIGHTENED INTEREST IN THE ISSUE OF EXCLUSION

Efforts to combat terrorism and to punish serious violations of human rights and humanitarian law have increased States' interest in exclusion

There is no doubt that the exclusion clauses are receiving unprecedented levels of interest from States, both in the international and in the national arena. This interest has been fed by the growing number of internal conflicts accompanied by serious violations of human rights and humanitarian law, and has further increased in the context of current efforts to combat terrorism. States want to see the perpetrators of heinous acts punished for their crimes and are concerned that these perpetrators may reach their countries either directly through individual

⁴³ UN High Commissioner for Refugees, *Resettlement Handbook*, UNHCR, November 2004 (country chapters last updated September 2009), available at: <http://www.unhcr.org/refworld/docid/3ae6b35e.html>

asylum requests or through UNHCR-sponsored resettlement.⁴⁴ For this reason, major resettlement countries have recently called for a more rigorous implementation of the current exclusion regime in the context of resettlement.⁴⁵

Some States have created their own exclusion regimes, applying specific Statutory requirements in addition to the exclusionary acts of Article 1F

While the exclusion clauses of Article 1F have been incorporated *ad verbatim* in the national legislation of many States, some countries have created their own exclusion regime, based in part on the 1951 Convention and in part on their own national concerns, including, in particular, security considerations.⁴⁶ Thus, for example, statutory requirements for the admission of asylum-seekers, including checks for involvement in criminal conduct prior to arrival, are applied in an extensive manner and may in effect amount to 'exclusion' from international refugee protection.⁴⁷ In other countries, the authorities' interpretation of Article 1F is particularly broad.⁴⁸

The criteria which give rise to exclusion from refugee status on account of certain acts are exhaustively enumerated in Article 1F

In practice, this results in a significant number of individuals whom UNHCR considers to be refugees under the 1951 Convention or under its mandate being denied refugee status and/or consideration for resettlement by some countries. It is important to remember that the criteria which give rise to exclusion from refugee status on account of certain acts are exhaustively enumerated in Article 1F.

UNHCR'S RESPONSIBILITY WITH REGARD TO EXCLUSION IN THE CONTEXT OF RESETTLEMENT

What can be done to ensure that resettlement countries continue to rely upon the quality of UNHCR-assessed cases that are submitted to them for resettlement?

⁴⁴ As noted by M. Kingsley Nyinah in "Exclusion Under Article 1F" *International Journal of Refugee Law*, Volume 12, Special Issue 2000, p.302: "*one result [of the current trend] has been the tendency for Article 1F exclusion to become increasingly politicised, with States and UNHCR under pressure to draw sharp lines between the undeserving and the victims, and to be seen to be doing so*".

⁴⁵ Statement made by a major resettlement country at the ExCom meeting in October 2001.

⁴⁶ This is the case, for example, in the United States of America. Under US law, an applicant may be excluded from refugee protection when he/she is considered i) to be a persecutor of others; ii) to have committed serious non-political crimes; iii) to have committed a particularly serious crime; iv) to pose a threat to national security or v) to be a terrorist.

⁴⁷ For the purpose of admissibility, the definition of combatants and terrorists is interpreted in an extensive manner in Canada.

⁴⁸ In the Canadian interpretation of Article 1 F, for example, "the goal [of the Article] is to exclude persons who have willingly engaged in acts of violence or actively participated in militant or subversive organizations that support violence. These actions, *be they taking up arms or giving active support to militant groups through non-combative means*, call into question the suitability of these individuals as immigrants to Canada" [emphasis added]. Excerpts from CIC Basic Overseas Refugee Selection Course, *Self-Instruction Manual, Module 3/ Eligibility: Convention Refugees Seeking Resettlement*, p. 63.

The quality of refugee status determination reflects directly on the quality of exclusion procedures

The exclusion clauses form part of the refugee definition contained in Article 1 of the 1951 Convention and consideration of their applicability is an integral component of the procedures to determine an individual's eligibility for refugee status. It is self-evident that the quality of status determination procedures reflects directly on the quality of exclusion procedures. Thus, any calls for improving the quality of exclusion procedures must be linked to the need to raise the standards for the overall process of refugee status determination.

UNHCR's exclusion analysis must meet high standards of professionalism and expertise

UNHCR has an obligation to ensure that the exclusion clauses be applied scrupulously, albeit carefully and as a result of procedures which offer appropriate safeguards to the individual concerned. The heightened interest of States in security issues which, as noted above, is particularly manifest in the context of resettlement, makes it all the more important that UNHCR's exclusion analysis meet high standards of professionalism and expertise.

When dealing with exclusion in the context of resettlement referrals, remember:

Include a reference to exclusion in all RSD Assessments, whether or not the cases are submitted for resettlement.

Always include a reference to exclusion in RSD Assessments and in RRFs

Always include a reference to exclusion in the RSD Assessments of refugee cases, irrespective of whether or not these cases are submitted for resettlement.⁴⁹ A one-line reference (e.g. "exclusion clauses are not relevant/applicable to this case") may suffice, but only in those cases where the exclusion is manifestly not at issue. If the cases are submitted for resettlement, make sure that a reference to exclusion is also incorporated in the Resettlement Registration Form (RRF).

Conduct a detailed analysis for the cases where exclusion considerations are triggered.

For cases where exclusion considerations are triggered, a detailed analysis is essential

As we have seen above, whenever there are indications that an applicant may be associated with acts within the scope of Article 1F, UNHCR must conduct an exclusion analysis. Thus, for example, an exclusion assessment will regularly be necessary if there is information to the effect that the applicant was a member of an organization or a government known to have been involved in violent acts, or in cases of former members of the army, the secret services, the police, as well as members of militias or other para-military groups at any level. In all such cases, UNHCR must address the issue of exclusion when determining the applicant's eligibility for refugee status. If exclusion is triggered, but UNHCR finds that Article 1F is not applicable, this determination and the reasons for it should be set out in the RSD Assessment Form.

⁴⁹ See Question V-1 of the RSD Assessment Form.

When submitting such cases for resettlement, provide the reasons why the exclusion clauses are not applicable.

The exclusion analysis must explain *why* the exclusion clauses are not applicable, and this must be substantiated

As noted above, each RRF should contain a statement on exclusion. Where exclusion is an issue but, after a thorough examination of all relevant factors, it has been established that Article 1F is not applicable, the RRF should provide the reasons for this determination. It is not enough to write in the RRF that "an individual does not fall under the exclusion clauses of the 1951 Convention". This needs to be further explained and substantiated. To support the eligibility analysis in the RRF *vis-à-vis* resettlement countries, the submitting Office should cite the principal sources of information it relied upon in reaching its determination. It is good practice to ground the legal reasoning on the UNHCR *Guidelines* and *Background Note on Exclusion*.⁵⁰

Invest some time and effort to assess the possible applicability of the exclusion clauses

A well-considered exclusion analysis protects the integrity of the RSD and resettlement processes, and maintains the credibility of UNHCR *vis-à-vis* States

Providing an exclusion analysis in the RRFs can be a complex exercise. It is important, however, to invest some time in this effort and to use the best of your ability to come to a reasoned and accurate decision on exclusion for each individual case.

Remember that, by properly addressing the exclusion clauses in your eligibility assessments, you contribute to preserving the integrity of the RSD and resettlement process and to maintaining the credibility of UNHCR *vis-à-vis* States.

⁵⁰ *Supra* note 27.

3 Assignments

Essential reading

Please study the following documents:

- UN High Commissioner for Refugees, *UNHCR RSD Assessment Form (Annotated)*, 2009, available at: <http://swigea56.hcrnet.ch/refworld/docid/4acf37b72.html>
- UN High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, 1979, re-edited version January 1992, available at: <http://www.unhcr.org/refworld/docid/3ae6b3314.html>
- UN High Commissioner for Refugees, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, available at: <http://www.unhcr.org/refworld/docid/3d36f1c64.html>
- UN High Commissioner for Refugees, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, available at: <http://www.unhcr.org/refworld/docid/3f5857684.html>
- UN High Commissioner for Refugees, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, available at: <http://www.unhcr.org/refworld/docid/3f5857d24.html>

You may also wish to review the materials on interviewing included in the Annex to Unit 4, in particular the relevant sections on credibility analysis.

Optional:

- UN High Commissioner for Refugees, *Manual on Mandate Refugee Status Determination (RSD) - A Reference Tool for UNHCR Adjudicators*, 1 October 2005, available at: <http://swigea56.hcrnet.ch/refworld/docid/438c17194.html>

Exercise 3.1

Please complete the case studies in the attachment provided.

Exercise 3.2

Please complete the case study in the attachment provided.

4 Identification

Learning Objectives

This Unit focuses on the identification of refugees for resettlement, and will also provide an overview of the different tools and methods that are used to map and profile the refugee population and to help identify both groups and individual refugees who may be considered for resettlement. Finally, it will introduce important partners for identifying refugees for resettlement purposes, both internally and externally and examine in depth the criteria for resettlement.

At the end of this Unit, you should be able to:

- understand and explain the tools and methods to map and profile the refugee population to identify those in need of resettlement;
- understand identification challenges and the importance of training and expectations management;
- identify key partners in the identification of refugees in need of resettlement;
- understand the importance of referral systems and an individual case management framework;
- explain in detail the criteria for resettlement.

The designated Learning Programme administrator will recommend the time allotment for completion of this Unit.

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Importance of effective identification

Efficient and effective identification of refugees for resettlement consideration is essential to ensuring a continuum of refugee protection. Identification should be proactive and accessible to the neediest people, and should ensure transparency and integrity.

Efficient and effective identification of refugees for resettlement consideration is crucial to ensuring a continuum of refugee protection. Failing to identify refugees in need of resettlement in a correct and timely manner means they could be denied protection and subject to unnecessary insecurity. An effective and consistent identification process is also critical to ensuring that refugees are provided with fair access to resettlement processing and can decrease potential for the fraudulent use of the resettlement system or any perceptions of arbitrariness in resettlement decision-making.

While resettlement is not a right, the refugees who are most in need should have access to the resettlement process in a timely and proactive manner. To ensure this, transparency and integrity are essential. Properly identifying refugees in need of resettlement is one of the most crucial, yet challenging, aspects of resettlement. It requires detailed knowledge of the refugee population and of their specific vulnerabilities, but this information may be limited, incomplete, or difficult to obtain. Thus, learning techniques to identify vulnerabilities are essential to resettlement work.

THE IDENTIFICATION PROCESS

Generally, persons identified as in need of resettlement must be refugees under UNHCR's mandate and must fall within one of the agreed global resettlement criteria. UNHCR identifies refugees for resettlement based on a refugee's objective **need** for resettlement and not on their subjective **desire** for it. Nor should identification be based on the desire of any specific actors, such as the host State, resettlement States, other partners, or UNHCR staff themselves. Identification based on need also means that identification should not be limited by the expected capacity of the office, the number of resettlement places presumed available, additional criteria (whether formal or informal) introduced by resettlement States, or restrictions imposed by the host State. UNHCR must cooperate with asylum and resettlement States for resettlement to succeed, but they should not influence UNHCR's identification process itself.

Resettlement should be driven by needs rather than policies or desires of different actors

Identification encompasses three main aspects. First, strategic planning, via such tools as *proGres* and *Focus*, give an indication of overall needs and allows proactive planning to provide a holistic picture of an operation's resettlement needs for current and subsequent years.

Second, individual identification, through use of participatory assessments, the *Heightened Risk Identification Tool*¹, and referrals from partners or from other UNHCR units (Protection or Community Services, for example) can help augment registration data and identify the most vulnerable individuals for resettlement consideration. Finally, individuals or groups considered for resettlement must be eligible for resettlement and must fall within one of the resettlement criteria, which will be discussed more in-depth towards the end of this chapter. After an introduction to establishing an identification system and mapping or profiling refugee needs, this chapter turns to these three aspects respectively.

Establishing identification systems

Identification systems must be designed to ensure consistent delivery of resettlement and mitigate risks such as fraud and abuse

Identification systems should be designed and implemented to suit specific operational contexts as well as to mitigate the risks associated with resettlement delivery, such as unrealistic expectations, fraud, abuse, irregular secondary movements and inconsistent approaches to resettlement delivery. They should allow for proactive and systematic identification by UNHCR and its partners and ensure the early identification of refugees who are at risk of serious harm, including the refugees who may have the most challenges in having their needs made known.

The identification system should respect the ‘universal imperative,’ meaning that if cases of a certain profile are identified and subsequently considered for resettlement, steps should be taken to identify all cases of the same profile and to submit those for resettlement. Safeguards also need to be introduced into any identification mechanisms to mitigate the risk of fraud, abuse and threats to refugee and staff safety. Fear of such risks, however, should not prevent the establishment of an effective system for identifying refugees in need of resettlement.

Importance of regular meetings to coordinate the identification process

It is not only helpful but vital that resettlement staff cooperate and coordinate with other internal units as well as external partners, such as NGOs, through regular meetings. Given the number of partners potentially involved in identification, regular and effective communication will help ensure coordination of activities.

¹ UN High Commissioner for Refugees, *The Heightened Risk Identification Tool*, June 2010, Second Edition, available at: <http://www.unhcr.org/refworld/docid/4c46c6860.html>; *User Guide* available at: <http://www.unhcr.org/refworld/docid/46f7c0cd2.html>

A designated officer of the Resettlement Unit oversees all identification efforts for resettlement purposes. All steps should be reflected in detail in the Standard Operating Procedures.

While various actors may be involved in the identification of refugees in need of resettlement, it is essential that these actors are well managed and monitored by the UNHCR officer accountable for resettlement, as well as by senior management within the office, to ensure transparent and consistent identification. It is also crucial to document the identification process well and to develop and implement transparent identification procedures in accordance with the Baseline SOPs² for resettlement.

Importance of ensuring that resettlement is integrated into the overall protection strategy of the office and the region

Although identification activities should be managed and monitored by resettlement staff, resettlement should be considered as part of the overall protection strategy of the office. Efforts at identification and assessment may not necessarily have resettlement needs as a primary objective, but such efforts can be very useful in identifying possible resettlement needs. Indeed, the more a particular identification effort is distinguished from resettlement as a durable solution, the less likely it is that information obtained is skewed towards resettlement; this also mitigates the risk of fraud. It is, however, still useful for all identification efforts to be adjusted to identify resettlement needs, as well. Resettlement staff should seek to be involved in the design of any identification efforts to ensure that the needs for resettlement are properly identified.

Importance of incorporating resettlement in the overall protection strategy

In addition, incorporating resettlement in the overall protection strategy of the office should help avoid any negative impacts of resettlement on other activities and vice-versa. These links are one reason why UNHCR offices are required to incorporate reporting on resettlement within the Summary Protection Assessment as part of the Regional / Country operation planning process in *Focus*. An interrelated working environment and team dynamic should be fostered in offices to maximize synergies between resettlement and other work areas (e.g. protection and community services) to strengthen case management and the search for solutions for refugees.

Summary Protection Assessments

Summary **Protection Assessments** aim to offer a concise narrative snapshot of the core protection problems currently affecting each type of population of concern (i.e. Refugees, Stateless persons, Returnees and IDPs) to the operation as part of planning process.³

² UN High Commissioner for Refugees, *Baseline Standard Operating Procedures on Resettlement*, 1 January 2008, available at: <http://swigea56.hcrnet.ch/refworld/docid/48b6997d2.html>.

³ See UN High Commissioner for Refugees, *Instructions and Guidelines on Planning for 2011*, IOM/008-FOM/009/2010, available at: https://intranet.unhcr.org/intranet/unhcr/en/home/executive_direction/official_policies/iom-foms/2010_iom-foms/iom00810.html

Global Planning for Resettlement

Proactive identified is important to identify needs, priorities, and likely gaps to ensure informed decisions on quota and resource allocations

Proactive identification helps identify the resettlement needs of refugee populations under the responsibility of a Country Office and ensure that the necessary resources and co-ordination are provided for resettlement activities. Yearly proactive planning exercise for resettlement, an integral part of the planning process in *Focus*⁴, represents an attempt to more comprehensively assess resettlement needs and serve as principal references for dialogue on resettlement needs, priorities, likely gaps and challenges in programme delivery, allowing informed decisions on quota and resource allocations for the following year. The Summary Protection Assessments provide important information to assist with forward planning in this respect.

Each Country Office that identified resettlement as one of the possible durable solutions for its population(s) of concern is requested to give a comprehensive look at the resettlement needs and strategies and provide a narrative that fully reflects the identified resettlement needs and strategic initiatives.

The *UNHCR Projected Global Resettlement Needs* document is the key document for planning the resettlement activities of the Office

The information provided is compiled by the Resettlement Service in close consultation with relevant Bureaus and Regional Hubs / Offices into the “UNHCR Projected Global Resettlement Needs” document which reports on the resettlement needs for each country operation for the following calendar year. This document is the key document for planning the resettlement activities of the Office as it provides the rationale and scope of UNHCR’s resettlement operations worldwide. This document is shared with the resettlement countries and NGO partners in the lead-up to the Annual Tripartite Consultations on Resettlement held in June or July, and provides the main reference document for the initial discussion with the resettlement countries about their resettlement quotas for the following year.

Resettlement planning globally depends on quality data, achieved through registration as well as methodologies such as participatory assessments, the HRIT

Resettlement planning on a global level is highly contingent on quality data from individual operations. For their part, individual operations must collect and maintain quality data on their populations of concern and individual specific needs starting with quality registration data, which should ideally be captured in *proGres* (or an operation’s alternate database for those operations without *proGres*). In addition to making effective use of *proGres* and/or other databases, the projection of resettlement needs will depend on information gathered during participatory assessments with refugees and other interactions with persons of concern, such as needs assessment surveys; e.g. using the Heightened Risk Identification Tool (HRIT)⁵. The sections below examine several methodologies for identification of vulnerable refugees for

⁴ *Proactive Planning for Resettlement for 2011 in FOCUS*. UNHCR staff can access this on the Intranet resettlement site: https://intranet.unhcr.org/intranet/unhcr/en/home/protection_and_operational/Durable_Solutions/resettlement.html

⁵ *Supra* note 1.

resettlement, including the use of *proGres* and registration data, as well as participatory assessments, the HRIT, and referrals from internal and external sources.

Challenges in Identification

As UNHCR increases its attention to developing comprehensive approaches to durable solutions, and as the strategic use of resettlement expands (which demands effective methods of identification), the numbers of refugees identified for resettlement have escalated. Resettlement staff face different identification challenges depending on whether the refugee population is located mainly in refugee camps or in less structured settings, such as in urban areas. Workers need different approaches to identification based on whether refugees have been registered and whether they have been recognized following individual status determination or on a *prima facie* group basis.

Resettlement staff must consider how to approach resettlement identification appropriately and effectively in their particular situation. Identification systems can be put in place even with limited resources, by linking them to other on-going activities or by developing a needs-mapping proposal that may then be used to obtain the required resources.

MANAGING EXPECTATIONS

Managing expectations of refugees an important aspect of establishing identification systems

One of the main challenges of any resettlement operation is managing expectations. Increasing identification activities often results in heightened and unrealistic expectations within the refugee population. Offices thus need to explore ways to collect information on protection and on the characteristics of the population without raising expectations of resettlement. This is particularly important where refugees are engaged in assessing their durable solutions needs, because allowing refugees to participate actively in identifying their needs and potential solutions can help manage unrealistic expectations.

Separation of the identification process from the possibility of resettlement helps to avoid raising expectations and to ensure more objective information

One way to avoid raising unrealistic expectations is to demonstrate that identifying the needs and protection vulnerabilities of refugees is linked to other protection interventions, not just to resettlement. The purpose of the various tools and methods for identifying refugees – registration, surveys, community consultations and participatory assessments – is thus not only to identify resettlement needs, but also to assess when other types of interventions are better options than resettlement.

Expectations are most effectively managed through counselling and the dissemination of clear information on the scope and limitations of possible durable solutions

Expectations are most effectively managed by counselling and disseminating clear information on resettlement to individuals and/or groups. It is therefore important for each office to develop an information strategy, which may include: regular public meetings that maximize reach to different groups of refugees, including women and children; standardized information on resettlement presented in brochures, signs and posters, TV and radio broadcasts; and individual counselling when refugees make specific enquiries to UNHCR or are interviewed concerning protection needs and/or assistance.

Efforts should be made to ensure that all staff and refugees understand the scope and limitations of all possible durable solutions. Some resettlement-related messages that will be particularly important to communicate include:

Important messages to communicate to refugees

- resettlement is one of three possible durable solutions and is normally only considered after exploring other possible interventions, including local solutions in the country of asylum;
- resettlement is not a right and is not automatically granted upon confirmation of refugee status;
- resettlement is conducted according to established criteria and is not influenced by external factors;
- the power to accept a refugee for resettlement remains with the resettlement country, not UNHCR;
- all UNHCR services, including those related to resettlement, are free of charge;
- committing fraud in the resettlement process may result not only in the closure of a refugee's resettlement file, but also in legal action or prosecution;
- misrepresenting family composition, or providing false information, is a form of fraud.⁶

Refugees must also be advised that identification, including self-identification, does not necessarily result in UNHCR promoting them for resettlement.

By improving the ways UNHCR and its partners communicate with refugees, as well as by addressing their specific needs through participatory assessments, surveys and individual interviews, unrealistic expectations and misunderstandings can be reduced.

⁶ *Supra* note 2.

IMPORTANCE OF TRAINING

Incorrect identification may result in inequity, unrealistic expectations and frustration among refugees

All partners need to understand that resettlement decisions are made and applied with the ‘universal imperative’ in direct reference to the criteria in Chapter 4 of the Resettlement Handbook⁷, because incorrect identification of refugees for resettlement can result in unfairness, unrealistic expectations, frustration and perceptions of mismanagement and fraud. They should further understand how to integrate identification systems in their respective activities, including ways to improve access to the most vulnerable refugees. Finally, they should be able to distinguish between cases requiring emergency or urgent intervention and cases in which the need is less pressing.

Joint information-sharing and training sessions are important to protect confidentiality, mitigate risks of fraud and abuse, and manage refugee expectations.

Joint information-sharing and training sessions should focus on specific aspects of case management, UNHCR’s code of conduct and confidentiality considerations, ways to mitigate risks such as fraud and abuse, and how to manage refugee expectations. Training should cover:

- managing expectations;
- mitigating risks including of fraud;
- resettlement criteria and general principles of resettlement;
- the importance of identification;
- respect for confidentiality guidelines.

Training should be considered an important part of establishing identification systems in addition to ensuring consistency, transparency and accountability, and countering any negative or ill-informed views that may exist with regard to resettlement. All staff – junior and senior, international and local, internal and external – that may potentially be involved in identification and referrals should be trained on resettlement policy and practice.

Training builds identification capacity and service excellence

The Resettlement Service encourages reinforcing formal training with ‘action learning’ opportunities such as registration, verification exercises and participatory assessments to enhance staff understanding of resettlement identification techniques and processing methodologies. Periodic ‘refresher’ courses may also help ensure continued awareness of the resettlement criteria and help resolve any questions or doubts that arise relating to the resettlement criteria. Training, however, should not replace regular meetings with all partners.

⁷ UN High Commissioner for Refugees, *Resettlement Handbook (country chapters last updated September 2009)*, 1 November 2004, available at: <http://www.unhcr.org/refworld/docid/3ae6b35e0.html>.

Mapping or profiling refugee needs

Mapping a refugee population helps identify needs, thus allowing for more effective planning

It is important to map refugee populations, not only in camps, but also in urban areas and elsewhere

More than one method should be used to ensure that assessment of resettlement needs reflects actual updated needs

It is important to respect any confidential information in line with the confidentiality guidelines

PRINCIPLES AND PRIORITIES

Mapping the characteristics of a refugee population, in particular the specific protection needs of refugees, is a critical management tool. UNHCR offices should seek to identify protection needs systematically so that relevant data is available to develop durable solution strategies.

By mapping the socio-demographic characteristics and protection needs and challenges of the refugees, staff will also gain a clearer picture of the population profile, of the individuals or groups likely to need priority intervention, and refugees for whom resettlement may be an appropriate solution. Mapping allows for proactive identification and pre-emptive risk mitigation. As an important planning exercise, its results should be reflected in the Regional / Country Operation Plans.

Mapping and protection profiling should also help ensure that the universal imperative is respected in operational planning. Thus, mapping serves as a mechanism to focus and prioritize protection and resettlement interventions. The profile of the population in need of resettlement identified through mapping the protection needs and risks faced by individuals should be documented as comprehensively as possible, and the *proGres* database will prove a useful tool here.

Any mapping and profiling of refugee populations should include even refugees who are difficult to access. The most detailed information is normally available for refugees living in camps, but efforts must be made to identify refugees in urban or other areas.⁸

Ideally, more than one method of mapping and profiling is used, to ensure that the assessment of resettlement needs reflects the actual and updated needs. A multidisciplinary approach also helps bridge potential gaps and mitigates the risk of data bias. Identifying refugees in need of resettlement, however, should not add to the risks faced by individuals and groups, but rather should be confidential and accurate in their portrayal of refugee situations as well as sensitive to cultural and community dynamics. In particular, an individual's consent should be received before information is shared with other actors; even then, information should only be shared when required for a specific purpose.⁹

⁸ See UN High Commissioner for Refugees, *UNHCR Policy on Refugee Protection and Solutions in Urban Areas*, September 2009, available at: <http://www.unhcr.org/refworld/docid/4ab8e7f2.html>

⁹ UN High Commissioner for Refugees, *Confidentiality Guidelines*, 1 August 2001, IOM/071/2001 - FOM/068/2001, available at: <http://swigea56.hcrnet.ch/refworld/docid/3be17dfd4.html>; see also Unit 6 of the Resettlement Learning Programme.

Registration as a starting point for identification

As indicated before, registration data is a useful starting point for mapping the specific needs of refugee populations. The more detailed and accurate such data is, the more helpful it can be for this purpose. Initial mapping can include basic facts such as age, gender, and family size statistics for the refugee population. Other facts may include duration of stay in the country of asylum, national, ethnic and religious characteristics and, where possible, specific needs, livelihoods and place of residence. Multivariate data analysis can show patterns within the population that may give rise to protection considerations, and that may assist with the design and implementation of participatory assessments and targeted surveys. It may be necessary to cross-check the data, particularly for specific needs and vulnerabilities, as these may be recorded in the database without verification. The *proGres* database should help facilitate this task, since it is used by all sectors, including RSD/protection, community services and resettlement staff.

Consultation with partners identified above is essential. All sources of available information and data should be relied upon

Consultation with partners helps UNHCR gain insight into a refugee's particular vulnerabilities in the country of asylum, and provides access to additional data that can be used to cross-check available registration data. Participatory assessments, community consultations and surveys may also be useful sources of information against which to cross-check available data. All available sources of information – including standard reports and data from partners and refugees, reports from protection, community services and resettlement co-ordination and strategic planning meetings – should be used for verification. Country of origin information (COI) can also be a useful tool, not only for RSD purposes, but also for the identification and assessment of resettlement needs.

Systematic review of new decisions recognizing refugee status is useful

RSD data itself can be useful in identifying resettlement needs. The files of all newly recognized refugees (whether recognized under the 1951 Convention or under the broader refugee definition), should be automatically reviewed in order to identify any individuals with particular vulnerabilities, such as women-at-risk, medical cases, security cases, and survivors of violence and torture. This screening requires organization and coordination within the office, and may be undertaken by either protection or resettlement staff.

Usefully, any data gathering exercise, regardless of the initiator will be planned in a manner to help facilitate the work of other sectors including resettlement

In principle, all data gathering activities, regardless of the initiator, tool or process used, are usefully seen as multi-functional exercises to facilitate identification of refugees' needs generally; identifying refugees in need of resettlement is just one among a number of outcomes. An effective case management framework that can ensure action is taken on cases thereby identified should also be put in place. One such effort that may be initiated in an inter-agency fashion is the identification of psycho-social needs of a population. The Inter-Agency Standing Committee, including UNHCR, has issued *IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings*,¹⁰ which is useful in this regard. UNHCR has also developed tools which may be helpful.

¹⁰ Inter-Agency Standing Committee, *IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings*, 20 June 2007, available at: <http://www.unhcr.org/refworld/docid/46c0312d2.html>

Identification methodologies

Working with partners in the resettlement process

REGISTRATION AND RESETTLEMENT

A particularly important source of information is registration data. Registration is a systematic method of collecting and recording data (e.g. names, date of birth, sex, etc.) for a specific purpose (e.g. assistance delivery, individual follow up, protection intervention, etc.), about individuals or families.

UNHCR registration standards require that a core set of information be gathered about all members of the population of concern at an individual level as soon as possible, and ideally within the first three months after the arrival of the person of concern.

Registration data is used to identify a person, to confirm a person's identity, or to provide information pertaining to an individual's status, such as whether s/he is an asylum-seeker, a refugee, a returnee or whether s/he falls under any other status category. This data is a principal means to know the population of concern on an individual basis, and is thus fundamental to effective protection.

Updated and accurate registration data helps to identify those at risk, and those with specific needs. Good registration data can help to protect a person from protection concerns such as *refoulement*, SGBV, unlawful detention, prolonged detention because of status, and forcible recruitment.

Registration can also help identify groups at risk and their specific needs. Specific protection programmes such as tracing, legal representation and family re-unification can only be adequately implemented if current and reliable data is available. Registration needs to be a continuous process that records and updates essential information – such as births, deaths, marriage, divorce, new arrivals and departures – as it changes over time.

UNHCR may work with the Government and partners of the country of asylum, or only with NGOs, to undertake registration. The *Multilateral*

Importance of registration to resettlement and the identification process

*Framework of Understandings on Resettlement*¹¹ emphasizes the importance of refugee registration to resettlement and why it should be available to all refugee populations.

With registration, resettlement staff can have access to at least basic biographical data on the refugee population. Where more detailed registration data is available (i.e. concerning specific protection and assistance needs), it may be possible to identify refugees not only for protection interventions but also for potential resettlement consideration. The more detailed registration data is, the more helpful it will be for purposes of identification.

proGres and the UNHCR Handbook for Registration

UNHCR has made considerable advances in this regard at the global level through *Project Profile*, which was initiated to implement the registration standards agreed upon in the Executive Committee (ExCom) Conclusion No. 91 (2001).¹² The aim of the Project was to develop unified standards, procedures and tools to support the registration process of persons of concern to UNHCR. It also sought to establish a comprehensive system based on a unified approach which encompasses data collection, documentation and management. The UNHCR database *proGres* is a key tool not only for registration, but also for management of resettlement activities. The *UNHCR Handbook for Registration*, which was provisionally issued in 2003, is another useful outcome of this Project and should help ensure more uniform registration standards globally.¹³

An accurate and comprehensive registration of refugees should be done as soon as possible after arrival and, more importantly, outside the resettlement context in order to safeguard the integrity of resettlement activities. The timing or the extent of registration may, however, vary depending on the refugee situation. When dealing with a mass influx of refugees, any registration is likely to be quite basic. Other issues, such as security considerations, may also cause difficulties in obtaining registration data.

¹¹ UN High Commissioner for Refugees, *Multilateral Framework of Understandings on Resettlement*, 16 September 2004, FORUM/2004/6, available at: <http://www.unhcr.org/refworld/docid/41597d0a4.html>.

¹² ExCom Conclusion 91 (LII) on registration of refugees and asylum-seekers: *reiterates* the fundamental importance of early registration as a key protection tool and the critical role of material, financial, technical and human resources in assisting host countries in registering and documenting refugees and asylum-seekers, particularly developing countries confronted with large-scale influxes and protracted refugee situations; *welcomes* in this context the significant progress achieved in the area of registration as evidenced by the ongoing roll-out of registration and documentation activities under the auspices of Project Profile; and *encourages* States and UNHCR to continue their work in this regard with the assistance of other relevant actors as appropriate. See UN High Commissioner for Refugees, *Compilation of conclusions adopted by the Executive Committee on the international protection of refugees: 1975 - 2004 (Conclusion No. 1 - 101)*, 1 January 2005, available at: <http://www.unhcr.org/publ/PUBL/41b041534.pdf>

¹³ See: UN High Commissioner for Refugees, *UNHCR Handbook for Registration*, September 2003, available at: <http://www.unhcr.org/refworld/docid/3f967dc14.html>

Emphasis has been placed on ensuring that registration data meet needs of colleagues working in different sectors

UNHCR has placed emphasis on ensuring that registration data is collected with a view to the needs of UNHCR activities other than just resettlement. Resettlement staff needs to recognize this and to ensure early and regular consultations to maximize the utility of registration data. Resettlement staff members play an important role in building effective liaisons with other units to maximize the utility of data for subsequent work on resettlement. This may require additional support from management and sufficient additional resources to undertake more detailed registration. As noted in Unit 2, in addition to the Resettlement Deployment Scheme, the Division of International Protection (DIP) also manages additional deployment schemes *inter alia* to support protection capacity more generally. Support from the other UNHCR deployment schemes (e.g. RSD, Surge Protection Capacity Project and Save the Children) may also strengthen capacity with a positive impact on protection and resettlement.

Three levels of registration

The UNHCR Handbook for Registration provides for three broad levels of registration. The levels are distinguished by the amount of data collected, the degree to which the generic process is respected, and the measure of compliance with the operational standards. The levels are not mutually exclusive or rigid categories, but rather suggest the progression that an operation's registration strategy should go through over time. The matrix below provides an overview of how certain factors determine registration levels.

ProGres			
LEVEL OF REGISTRATION			
Criteria	Level 1	Level 2	Level 3
Type of Operation	Emergency	<i>Prima facie</i> , camp management, voluntary repatriation	Individual status determination, local integration, resettlement
Prior Registration System in Place	None	Basic, functioning	Well established, functioning
Resources/Capacity	Very limited	Some	Adequate
Security Risks	High	Medium	Low
Co-operation of population and host government	Could be good	Good	Very good
Information/Data Collected	Essential data Level 1 registration is household based registration - Household/ family size - Age cohorts by sex for household - Location and physical address of household - Names of household representatives	Essential data Level 2 registration is individual registration In addition to the level 1 information: - Name - Sex - Date of Birth - Current location - Place of origin - Date of arrival - Special protection and assistance needs	Essential data Level 3 registration is individual registration forming 'profile of a person' In addition to the level 2 information: - Names of Spouse(s) - Name of father and mother - Additional personal names - Names of all children

	<ul style="list-style-type: none"> - Country of origin - Specific needs¹⁴ of any of the household members 	<ul style="list-style-type: none"> - Marital status - Citizenship - Education level - Occupation/skills - Religion - Ethnic origin (tribes/clans/ sub-clans) - Photograph - Biometric (if needed) - Permission to share information 	<ul style="list-style-type: none"> - Place of birth - Existing personal documents - Occupational category - Languages - Documentation issued locally - Specific events related to individuals and to the groups to which they belong - Resettlement case status - Local Integration status <p>Additional data</p> <ul style="list-style-type: none"> - RSD Case status - Voluntary repatriation status - Property status in country of origin - Means of arrival - Name, DOB, current location of non-accompanying family members - Employment history - Education history - Reasons for flight - Intentions for return - Place and date of return - Intentions for local settlement - Place of local integration - Resettlement opportunity - Place and date of resettlement - Other docs provided
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Early and accurate registration at Level 2 can itself be of considerable use in profiling for resettlement purposes, as it provides for identification of special protection and assistance needs. These include categories such as:

- persons manifestly in need of protection;
- survivors of torture and persons suffering trauma;
- unaccompanied minors or separated children;
- single women or single parents;
- physically and mentally disabled persons; and
- persons requiring medical assistance.

Level 2 does not, however, contain the detailed information of Level 3, which is the most useful for resettlement purposes. In addition, information on specific needs likely requires verification, since

¹⁴ See UN High Commissioner for Refugees, *Guidance on the Use of Standardized Specific Needs Codes*, IOM/030-FOM/030/2009, available at: https://intranet.unhcr.org/intranet/unhcr/en/home/executive_direction/official_policies/iom-foms/2009/IOM030FOM030_2009.html

registration staff are unlikely to be experts in identifying or confirming medical or psychosocial needs. Such persons should thus normally be referred to protection or community services staff for follow-up, who may be able to learn more information.

Information should be regularly verified and updated

Registration is, in principle, an on-going process with continuing verification and registration of any changes in the data relating both to any individual or family/household, and to specific needs. Data verification is particularly important when the population is believed to have changed considerably, or registration data is otherwise not thought to be accurate. This is particularly important at all stages of the resettlement referral process to ensure that the information about the principal applicant and all family members is accurate and to prevent possibilities for misrepresentation.

Use of *proGres*

Registration data should normally be contained in a database, and thus searchable. Where *proGres* is in place, it should be used proactively by all colleagues including protection, RSD, community services and resettlement colleagues. Only then can its full potential for identification be realized.

***proGres* IN PARTNERSHIP**

Under project PROFILE, *proGres* was first developed in 2003 to meet UNHCR's refugee registration and population data management requirements. *proGres* is now used in over 75 countries and has become the main repository for the storing and management of personal data of persons of concern to UNHCR. *proGres* databases would-wide contain records of some 4.8 million individuals, of which 2.8 million records are active. The latest version of *proGres* is version 3. The "*proGres* in Partnership" project developing version 4 of the software will take *proGres* to a new level of population data management, and is expected to be released in 2012. Although *proGres* has been upgraded through the release of new versions, the application is unable to cater to new business requirements, from both the Field and Headquarters and from UNHCR's partners. Some of the improvements foreseen for version 4 include a centralized data structure, data sharing and exchange among UNHCR offices and with external partners, and functionalities to enhance fast and efficient registration during emergencies and in urban settings.

COORDINATION AMONG RSD, COMMUNITY SERVICES, PROTECTION, AND OTHER UNHCR STAFF

Internal and external coordination and cooperation with partners is vital. Partners in identification include:

- different units in the UNHCR office
- NGOs
- refugees

Identifying resettlement needs, gaps, and capacities can be enhanced in many operations. Given UNHCR's focus on strengthening accountability and performance indicators, efforts to improve identification of resettlement needs are likely to increase. The responsibility of identifying refugees at risk, however, does not rest with resettlement staff alone, nor should resettlement be the only party pushing for enhanced identification efforts. Internal colleagues, external partners such as NGOs, and refugees themselves may have important information and access that can support identification of those at risk and in need of protection intervention.

RSD and resettlement

As discussed in the last Unit, there should be a clear separation between RSD and resettlement, not least because it adds an additional safeguard to manage expectations and risks associated with fraud and abuse. Colleagues undertaking RSD, however, are likely to have information not only about who is a refugee, but also information that is important to resettlement-related identification, including who might have suffered from torture, trauma, or other special vulnerability. Ensuring rational decisions on refugee status in submissions to resettlement States is vital to ensure the credibility of UNHCR and the resettlement process, so close cooperation is essential.

Information for protection profiling or mapping of the refugee population where refugees have been recognized on a *prima facie* group basis

Where refugees have been recognized on a *prima facie* group basis, field protection colleagues will likely have information on persons with particular vulnerabilities that will be useful for initial mapping and protection profiling of the refugee population for resettlement purposes. An individual status determination for resettlement will, however, be required at some point.

Information on which refugees are at particular protection risk

Resettlement needs are not predicated on refugee status alone, but also on specific protection needs in the host country. Cooperation with protection colleagues is thus needed to identify, for example, which vulnerabilities cannot be dealt with in the host country, or which refugees may be at heightened risk.

Community services staff may be very helpful in profiling, identification, and providing information on vulnerabilities

Where community services units or officers exist, they may be useful in helping identify problems faced by people with specific needs, and types of vulnerabilities that are particularly problematic. They may also be useful in identifying specific cases for resettlement, and may have access to information useful for mapping the protection needs or risks within a refugee population.

Differences between smaller and larger UNHCR operations

In small operations, there are no distinct units dealing with protection, community services and resettlement. It is still useful to understand the links between the different sectors of UNHCR's protection work in order to ensure attention to the larger context and avoidance of negative impacts of one activity on the other. In a larger operation, where separate units exist for each activity outlined above, good communication and cooperation between the different staff involved is particularly important.

PARTNERSHIP WITH EXTERNAL PARTNERS

External partners

External partners, such as non-governmental organizations (NGOs), also have access to refugees and potentially important information. These include implementing partners, non-traditional partners such as religious or charitable organizations and local foundations. Information from organizations not necessarily targeting refugees, especially those working with women, children, medical and social services, may also be very useful.

NGOs may be engaged as implementing partners specifically for the purpose of identification or may have identification included in their

sub-agreement with UNHCR as a secondary protection function because their main activity is likely to bring them in close contact with persons who are likely in need of resettlement. In other cases, NGOs may be unwilling to enter into a formal arrangement with UNHCR, but may be willing to share information informally and thus may help identify people at risk. In any arrangement, it is important to remain cognizant of the kinds of community pressures NGOs may face should refugees become aware that they are conducting any resettlement identification activities, particularly if any of the NGO staff are also members of the refugee community, and this should be addressed in developing a referral system.

Refugees themselves are an important source of information both for profiling and mapping, as well as identifying specific persons for resettlement. Care should be taken to ensure that the most vulnerable are identified.

Refugees themselves are an important source of information, both for initial profiling and mapping and for identifying specific refugees for resettlement purposes. The refugees who are most vulnerable are often the least visible and the least vocal, so while it is important to utilize existing structures within a refugee population, it is also important to ensure mechanisms that allow refugees fair and equitable access to the identification process. This may require specific activities such as participatory assessments or community consultations to be undertaken with refugees who experience difficulty in having their voice heard.

Referral systems bridge gaps in resettlement identification

Ensuring that refugees most in need of protection and resettlement have access to those services is a fundamental aspect of UNHCR's mandate responsibility. Such access for refugees who have 'hidden' protection problems is particularly important, as they may be especially vulnerable. It is therefore essential for UNHCR to have effective referral systems in place that involve internal and external partners who bridge gaps in protection and resettlement delivery. Referrals are sourced internally, externally, and directly from the concerned refugee (i.e. self referral). The most effective and responsive resettlement procedures will consider referrals from all three sources and will encourage proactive identification. Regardless of the referral source, to ensure consistency and reduce possibilities for fraud, all referrals should be considered in line with the baseline SOPs.

Age, gender, and diversity mainstreaming

Age, gender and diversity mainstreaming (AGDM) is a strategy to promote gender equality and the rights of all persons of concern regardless of age or background. The strategy calls for the meaningful participation of displaced girls, boys, women and men, so that their problems, initiatives and solutions can be incorporated into all of UNHCR's programmes and policies. AGDM is based on participatory assessments undertaken by a multi-functional team. It is intended to identify vulnerabilities specific to age, gender or other diversity characteristics, such as ethnicity, by recognizing challenges such as discrimination and power relations, as well as possible strengths within the community to help resolve such challenges. AGDM helps ensure that representatives incorporate issues related to age, gender and other diversity into planning and operations.

Participatory assessments

AGDM is useful for identification purposes in two ways. Participatory assessments done under AGDM may help identify individuals in urgent need of intervention and/or may uncover specific types of vulnerabilities that have not previously been understood or considered.

A participatory assessment is a process of building partnerships with refugee women and men of all ages and backgrounds through structured dialogue. Participatory assessment includes holding separate discussions with women, girls, boys, and men, including adolescents, in order to gather accurate information on the specific protection risks they face, the underlying causes, their capacities to deal with the risks, and their proposed solutions. Participatory assessment forms the basis for implementing of a rights- and community-based approach and helps mobilize communities to take collective action to enhance their own protection. Participatory assessment is also a phase of a comprehensive situation analysis.¹⁵

The Heightened Risk Identification Methodology

Another methodology which is useful for identifying individuals and groups in need of protection intervention is the *Heightened Risk Identification Tool (HRIT)*. The Heightened Risk Identification Tool (HRIT) and User Guide have been developed to enhance UNHCR's effectiveness in identifying refugees at risk by linking community-based / participatory assessments and individual assessment methodologies. They have been designed for use by UNHCR staff involved in community services and/or protection activities (including resettlement) and partner agencies. The HRIT was initially developed in 2007: (i) to implement ExCom Conclusion 105 on Women- and Girls-At-Risk and UNHCR's Global Strategic Objectives for 2007-09; (ii) to strengthen needs-based planning, identification methodologies and case management systems; and (iii) to promote AGDM.¹⁶

This methodology, involving a multidisciplinary team approach to identification, was developed to enhance UNHCR's effectiveness in identifying refugees at risk by linking community-based and participatory assessments with individual assessment methods. It can be used by UNHCR staff involved in community services and protection, including resettlement, and by implementing partners to identify individuals at risk who require immediate intervention. The tool should be used comprehensively and not only for resettlement identification.

The HRIT is designed to be flexible and simple, yet comprehensive. It can be used in different ways and operational contexts, including: (i)

¹⁵ UN High Commissioner for Refugees, *The UNHCR Tool for Participatory Assessment in Operations*, First edition, May 2006, p. 1-2
<http://www.unhcr.org/refworld/docid/462df4232.html>

¹⁶ The concept of 'diversity mainstreaming' implies that the significant participation of refugee girls, boys, women and men of all ages and backgrounds is integral to the design, implementation, monitoring and evaluation of all UNHCR policies and operations so that these impact equitably on people of concern.

prior to and following RSD; (ii) in conjunction with a participatory assessment exercise; (iii) as a stand-alone methodology involving community-based consultations and individual assessments; (iv) as a tool to sample survey the refugee population to measure risk levels; (v) as an interview format or checklist for case workers; and, (vi) as a checklist tool for roving officers to use in refugee camps or in urban settings.

Since the issuance of its first edition in 2008, the HRIT has been widely used and field tested in UNHCR operations worldwide. The second edition HRIT, released in mid-2010, has a number of improvements based on feedback from HRIT users in 2008 and 2009, simplifying the tool and reflecting a number of improvements. The second edition is more user friendly with easy references to UNHCR's registration database proGres to enhance case management.

Referral of individual cases for resettlement

TYPES OF REFERRALS

Internal referrals

Internal referrals occur through UNHCR staff. Staff members working in protection areas, the field, RSD, or community services are well-placed to identify and refer individuals for resettlement consideration. In principle, however, all UNHCR staff members, who come into contact with refugees, including colleagues working with health issues and food distribution, may identify individuals and families with protection issues or specific resettlement needs.

External referrals

External referrals are usually made by NGO partners assisting UNHCR with implementation, NGOs who are otherwise involved in refugee work and other external partners such as governmental agencies. Some NGOs make resettlement referrals directly to resettlement States and/or to UNHCR for its assessment and submission to the resettlement country.

UNHCR supports the active involvement of NGOs and international organizations in protection delivery in general and in resettlement in particular

UNHCR supports the active involvement of NGOs and international organizations in protection delivery in general, and particularly in resettlement. Given their expertise and knowledge of the refugee population, NGOs are particularly well-suited to make important contributions to the identification of vulnerable refugees facing protection problems.

External referrals are an important means of expanding access to resettlement and increasing capacity for identification, but they should not negate UNHCR's own efforts to proactively identify refugees in need of resettlement. UNHCR should maintain a central role in the resettlement process. As the internationally mandated agency for seeking solutions to refugee problems, UNHCR should retain responsibility for analyzing the protection context to ensure that resettlement is integrated into a larger protection and durable solutions strategy. NGO partnerships in resettlement must be coordinated in order to be effective, to prevent fraud and malfeasance, to ensure

transparency and a consistent application of UNHCR resettlement criteria, and to ensure that refugees' expectations do not result in protection problems in the field. Involving and counselling refugees has also been, and will continue to be, an integral part of resettlement work and its strategic use.

The relationship between UNHCR and external partners generally follows three primary arrangements through which partners play an active role in identifying potential resettlement cases. The local situation and the availability and willingness of partners to engage in the process determine which arrangement is used. A combination of approaches may be most useful in any operation.

Types of arrangements with external referrals

Formal arrangements: Through a specific project sub-agreement or a Memorandum of Understanding, NGOs or governmental agencies may run projects to assess protection and other needs in refugee populations. These formal arrangements usually include a framework for cases to be referred to UNHCR for appropriate follow-up, including for resettlement intervention. Given the complexities involved in operational projects and the need for cohesion with UNHCR's protection work, especially in large, protracted *prima facie* refugee situations, such arrangements usually involve consultation with UNHCR Headquarters.

Partnerships with secondary protection functions: Refugee assistance programmes benefit greatly from the contribution of partners who, by the terms of their sub-agreements with UNHCR or other less formal arrangements, provide services in refugee camps and settlements. The possibility of writing protection and heightened risk identification functions into these sub-agreements, especially in the case of NGOs working with particular groups of vulnerable refugees, may be explored. The development of any such arrangement must, however, involve the officer accountable for resettlement in addition to other protection staff and senior management, including the UNHCR country representative, and the NGO's country representative, where applicable.

Case-by-Case NGO referrals: In many field operations, NGOs working with refugees may not wish to incorporate formal protection components or resettlement referral systems into their programmes for fear of compromising the purpose of the original programme. In such cases, mechanisms may exist to facilitate informal referrals on a case-by-case basis.¹⁷

Specific roles and responsibilities should be put in writing

To ensure accountability and oversight, all arrangements should specify in writing the roles and responsibilities of the NGO and UNHCR, using the UNHCR Resettlement Handbook in guiding decisions. NGO and UNHCR representatives should meet regularly to discuss activities and concerns and should conduct regular spot-checks (i.e. inspection of casework) to ensure compliance.

Self-referrals

Self-referrals are approaches directly to UNHCR, generally in writing, by refugees, their relatives or friends, or refugee groups or committees. Extensive reliance on self-referrals may raise a number of concerns in resettlement identification: (i) bias against refugees who cannot express

¹⁷ *Resettlement Handbook*, Chapter 6, Section 6.3.3, *supra* note 7.

their protection needs in writing, or who otherwise have difficulty accessing UNHCR; (ii) lack of control over the type of information received affects whether informed decisions on resettlement eligibility can be made; (iii) credibility of self-referrals may be more questionable; and, (iv) possibility of fraud, such as brokers charging fees to present written claims to UNHCR. Heavy reliance on self-referrals as a means to identify resettlement needs may thus be indicative of systemic problems or gaps in the protection framework of the operation.

Dealing with unsolicited requests can also prove to be a time-consuming task. Offices should ensure that time dedicated to unsolicited requests does detract from internal and external referrals. Refugees may request resettlement in response to a need that can and should be met by other units within UNHCR, typically protection or community services staff; thus, self-referrals are ideally reviewed by a protection officer before submission for resettlement consideration.

Despite the uncertainties, unsolicited requests for resettlement can play an important role in identifying resettlement needs, if clear and standardized mechanisms—including claims verification and expectations management—for dealing with such requests exist.

PROCEDURES FOR REFERRALS

Standardized information and presentation

Standard procedures should apply for all types of referrals. Referrals should be made **in writing** and contain, at minimum:

- basic bio-data of the refugee and all dependents;
- reason for the referral;
- type of intervention required and urgency of the need;
- steps already taken to address the need;
- date of the referral;
- for internal and external referrals and indirect self-referrals, name, title, and relationship to the refugee of the referrer.

Standard referral forms

Standard referral forms, as provided for in *proGres*, should be used for internal and external referrals to ensure that the required information is provided. For external referrals, the “Resettlement Consideration Referral form” should be relied upon.

A focal-point should be appointed to receive referrals

Each office should identify or appoint a **focal point** for receiving referrals. Different focal points may be appointed for different types of referrals, and more than one person may be assigned a particular type of referral or the same person may be responsible for all three types of referrals, particularly in smaller operations. The focal point will be responsible for:

- raising preliminary queries for internal and external referrals;
- pre-screening self-referrals to examine whether the cases are initially better handled by protection or community services staff;
- entering referral details in a logbook;
- verifying that an entry in the database for resettlement

consideration of the refugee in question does not exist; where proGres has been introduced, verification should be done in the proGres database and duplicate information from the referral should be merged;

- retrieving any file or documentation held by the field office on the refugee in question (if an individual file does not exist at this stage, steps should be taken to inform the referral source and refer the individual for registration); documenting the referral in the case file;
- verifying registration details with regard to documentation and family composition (which should be verified in a non-resettlement context, either by registration data, home visits, or reports from other staff members);
- verifying that the person has been recognized as a refugee and that the initial assessment is still valid;
- forwarding the referral and documentation to the designated officer responsible for granting a resettlement assessment; and
- for external referrals, liaising with the external sources throughout the resettlement process and providing the referral source with regular status reports/updates, as appropriate and in accordance with confidentiality considerations.

Identification for purposes of the group methodology

The focus until now has been on identification of individuals or small groups, such as families. Group methodology may, however, be appropriate when considering the lack of durable solutions criterion. This methodology should be seen as a tool that supplements regular individual methodology, and should only be relied upon when the required additional resources are provided. It is most useful in a comprehensive approach to durable solutions, often with respect to a protracted refugee situation.

Identifying a group means identifying a finite number of persons that share specific characteristics

The individuals who comprise the group should share key characteristics that determine their membership in the group. The group might be defined by the situational context (e.g. all persons in a camp) and/or specific characteristics that define the group, such as nationality, refugee claim, flight history, experience in the country of origin or host country, or political, ethnic, or religious background, that might help easily distinguish the group from other refugees present in the country or region. The group must also be clearly delineated and must present a finite number of persons who are in a known location and capable of being identified.

Methodology

The same considerations and safeguards apply in group and individual methodologies, although the steps for processing differ. For purposes of identification, the principles on mapping and profiling apply for group methodology. As with identification on an individual basis, a combination of methods should be used, including accurate and (ideally) detailed registration data.

External sources may provide important information to assist in identifying a group for resettlement. In some cases, the proposal to consider a specific group for resettlement is initially raised by partners at the ATCR or the WGR. This usually results in further investigation by UNHCR at the field-level to determine the merits of the proposal and to supplement this with additional data.

Resettlement Criteria

Once vulnerable individuals or groups potentially in need of resettlement have been identified, it is necessary to assess eligibility and needs of resettlement. We have already introduced the resettlement criteria in Unit 2; here, the criteria will be examined in more detail:

LEGAL AND PHYSICAL PROTECTION NEEDS, for the refugee in the country of asylum (this includes a threat of *refoulement*);

SURVIVORS OF TORTURE AND VIOLENCE, where repatriation or the conditions of asylum could result in further traumatization and/or heightened risk; or where appropriate treatment is not available;

MEDICAL NEEDS, in particular life-saving treatment, that is unavailable in the country of asylum;

WOMEN AND GIRLS AT RISK, where there is a real risk of exposure to sexual or gender-based violence;

FAMILY REUNIFICATION, when resettlement is only means to reunite refugee family members who, owing to refugee flight or displacement, are separated by borders or entire continents;

CHILDREN AND ADOLESCENTS, where a best interests determination supports resettlement;

ELDERLY REFUGEES who may have specific needs and for whom resettlement is the most appropriate solution, generally due to family links;

LACK OF LOCAL INTEGRATION PROSPECTS, which generally is relevant only when other solutions are not feasible in the foreseeable future, when resettlement can be used strategically, and/or when it can open possibilities for comprehensive solution strategies.

Importance of distinguishing between whether a person is a refugee, and whether s/he meets one of the criteria indicating a need for resettlement

It is important to distinguish between a refugee claim and a need for resettlement. Persons to be considered for resettlement must meet each of these requirements separately.¹⁸ Protection or eligibility staff will normally determine whether a person is a refugee; this is easily done if UNHCR has already undertaken refugee status determination (RSD) under its mandate. However, a refugee may often be recognized on a *prima facie* basis, but his or her continued need for protection must be confirmed.

Resettlement staff, in consultation with others as required, should determine whether one or more of the resettlement criteria applies to the individual, indicating a potential need for resettlement. The fact that a refugee has a particular need that falls within a resettlement criterion does not necessarily mean that s/he has a need for resettlement, because the vulnerability may be addressed in some other manner. Vulnerabilities must be considered in the context of the situation in the country of asylum, in the country of origin, and in the country where resettlement is being considered as a durable solution. Resettlement officers should cooperate closely with protection and community services colleagues, as well as with external partners, to evaluate the protection situation in the host country and understand all the options to address the specific needs of people of concern. See Chapter 4 of the *Resettlement Handbook*¹⁹ for further details.

Frequently, multiple criteria may apply to any one individual, depending on the individual's protection needs, vulnerabilities, and situation in the country of asylum. Choosing the most applicable, relevant, and compelling primary criterion, and properly supporting this choice with clear and coherent evidence, strengthens the individual's case and increases his or her chance of being accepted for resettlement. A secondary criterion can and should also be identified if it is applicable.²⁰

LEGAL AND PHYSICAL PROTECTION NEEDS

This criterion is frequently relied upon in individual (non-group) resettlement submissions.²¹ It may encompass aspects of one or more of the following:

- immediate or long-term threat of *refoulement* to the country of origin or expulsion to another country from where the refugee may be *refouled*;
- threat of arbitrary arrest, detention or imprisonment;
- threat to physical safety or human rights in the host country that renders asylum untenable.²²

Types of threats to legal or physical security

¹⁸ There are just very few exceptions outlined in Unit 3.

¹⁹ *Resettlement Handbook*, Chapter 4, Section 4.2.2, *supra* note 7.

²⁰ Note that planned changes in proGres 4 include the possibility of recording secondary criterion for resettlement.

²¹ In 2009, 41 percent of the resettlement submissions were made under this criterion.

²² See *Resettlement Handbook*, Chapter 4, Section 4.2.2, *supra* note 7.

The threat must be real and direct although it may target more than one person

The responsibility for ensuring the legal and physical safety of refugees remains first and foremost with the host State

The threat or risk must be real and direct rather than accidental or collateral; it may, however, be directed at either an individual or a group. Refugees may require emergency resettlement but may also need other short-term protection interventions.

In principle, it is the responsibility of the country of asylum to ensure the safety of a refugee on its territory or at its borders. UNHCR's first aim, therefore, should be to work with the authorities of the host country to ensure that they provide such protection in line with international standards. The host State may, however, be unable or unwilling as a matter of policy to improve the protection situation. In such cases, UNHCR may be compelled to fill the protection gap.

Once the possibilities for effective protection by the host country have been exhausted, or an evaluation has taken place in an individual case, in close consultation with protection colleagues and evidencing a *real, direct* and *imminent* threat, then resettlement may be considered. The fact that threats may impact refugees differently, depending on their age, sex, or specific needs, is to be considered in this evaluation. As with most criteria, the fact that resettlement *may* be pursued does not mean that UNHCR should cease efforts to address underlying problems or explore alternative solutions.

SURVIVORS OF TORTURE AND VIOLENCE

The publication *Mental Health of Refugees* provides useful guidance in recognizing victims

Refugees who have survived torture or violence may have specific needs that warrant resettlement consideration because the trauma they have endured may have a serious detrimental affect on their mental and physical wellbeing. The situation in the country of asylum may not be conducive for effective recovery (due to, for example, the inaccessibility of appropriate counselling services or health care) and may compound the trauma. Unless refugees inform UNHCR about having experienced torture or violence, or show clear signs of trauma, they may not be easily identified. The specific form of torture or violence inflicted upon them may also vary depending on age, sex and particular vulnerability and may in some cases include witnessing such violence towards a close family member. A joint-publication by UNHCR and the World Health Organization (WHO), *Mental Health of Refugees*²³ provides guidance on how to better recognize such cases.

Definition of torture

The **1998 Rome Statute** establishing the International Criminal Court defines **torture** as "intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions"²⁴

²³ UN High Commissioner for Refugees, *Mental Health of Refugees*, 1996, available at: <http://www.unhcr.org/refworld/docid/4a54bc010.html> ; Chapters 8 and 9 in particular concern survivors of torture and other violence, including rape.

²⁴ Rome Statute of the International Criminal Court, Article 7(2)(e).

The **1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** provides a similar definition of torture, but with key additional stipulations, such as a requirement that the torture be committed “at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”²⁵ Although torture is frequently committed by individuals in such an official capacity, this is not always the case.

It is also important to note that the “lawful sanctions” referenced in both definitions refers to sanctions which are in accordance with international human rights law, whose standards national law may or may not achieve. There are many instances where UNHCR has determined that sanctions under national law may in fact amount to persecution.

An assessment by
medical/psychological
expert will be required

When refugees are identified as having suffered torture or violence, this should be medically documented, as they will require coordinated medical care, counselling and other assistance. Such refugees may suffer even more if treatment is not available in the host country. In contexts where psychosocial assessment services are available, such assessments can determine whether follow-up treatment is required. Where they are not available, it is important to document that the refugee is a survivor of violence and would benefit from such an assessment in the resettlement country and any follow-up treatment recommended. Conditions of asylum in the host country may also result in further traumatization for the victim or social ostracism (in cases of sexual violence, for example) of survivors and their families by the refugee community.

While efforts must be made to ensure the availability of appropriate treatment in the resettlement State, there is no guarantee that a refugee will be able to receive the treatment and counselling s/he requires. Close consultation between Headquarters, the Regional Hub, community services staff and relevant NGOs, where available, is useful in such cases.

MEDICAL NEEDS

Resettlement intervention by UNHCR based on medical needs requires careful assessment because few places are specifically reserved for resettlement on this basis. To determine whether resettlement is the appropriate solution to the medical needs of a refugee, the following conditions must be met:

²⁵ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, Article 1, available at: <http://www.unhcr.org/refworld/docid/3ae6b3a94.html>.

Requirements in order for resettlement on medical needs to be considered

- the health condition is life-threatening without proper treatment; there is a risk of irreversible loss of functions; or the health condition presents a significant obstacle to leading a normal life and achieving self-sufficiency; and
- adequate treatment is not available in the country of asylum due to lack of medical facilities and/or expertise; adequate treatment cannot be ensured through temporary medical evacuation; or, in the case of a disability, the situation in the country of asylum prevents the individual from becoming well-adjusted and from functioning at a satisfactory level; and
- treatment and/or residence in the country of resettlement would likely address the health problem successfully and, if possible given the expected state of health after treatment/relocation, enable the individual to gain partial or total independence; or the particular situation in the country of asylum causes or significantly worsens, the health condition; and
- individual, after having been counselled with regard to the social, cultural and psychological adaptation required in a new community, expresses a wish for relocation.²⁶

A medical condition in and of itself is not sufficient to warrant resettlement; an expert assessment is required on the severity of the condition and the impact of stay in the country of asylum. If medical treatment is not available in the country of asylum, UNHCR should consider whether a long-term solution such as resettlement is required. Where the medical condition relates to HIV/AIDS, UNHCR must be particularly careful, because HIV/AIDS is not normally considered sufficient grounds for resettlement in and of itself; in fact, in some countries, HIV/AIDS may be a bar to resettlement. Further, while all medical information must be kept confidential, particular criteria apply with respect to HIV/AIDS information, in line with international standards.²⁷

As with the above criteria, close consultation with community services staff, relevant NGOs, and medical experts is useful here, where available. Coordination with the Regional Hub, as applicable, and Headquarters is also needed, since medical submissions normally must be made through the Resettlement Service at Headquarters or where authority has been delegated to Regional Resettlement Hubs, under the Hub Project, to submit a limited number of emergency, urgent, and medical cases directly to resettlement countries.²⁸

²⁶ See *Resettlement Handbook*, Chapter 4, Section 4.2.1, *supra* note 7.

²⁷ *Ibid.*, at Chapter 4, Section 4.4.6

²⁸ See UN High Commissioner for Refugees, *Delegation of Authority to the Field: Guidelines on Resettlement Dossier Case Submissions and Family Reunification Procedures*, August 2010. This annual document is available upon request from the Resettlement Service.

WOMEN (AND GIRLS) AT RISK

Although there is overlap with other criteria, this is recognized as a distinct category and resettlement States thus provide priority processing and specialized care

Refugee women and girls can face risks of sexual and gender-based violence (SGBV), and a number of resettlement States have, as a consequence, provided priority processing and accelerated departure for such women and girls at risk. Such programmes may also ensure specialized care and appropriate support upon arrival, if needed. Refugee women and girls may also qualify for resettlement under other criteria as well.

Women's risk that arises from past trauma and persecution may be compounded by the situation in the country of asylum. Refugee women and girls may be more vulnerable to threats to their person, and social and cultural attitudes may make it more difficult for them to obtain the protection they require. In some cultures, for example, a woman or girl who has survived sexual violence or rape may face community rejection. Precarious social and economic status (for example, being a lone woman or a single head of the household) may expose her to even greater risk of abuse, exploitation or rejection from her own community and kinfolk. Women and girls at risk, therefore, face compounded gendered problems and risks.

The increased vulnerability may exist even if females are accompanied by male family members; in some situations, in fact the risk may come from within the family, such as with forced marriage or genital mutilation. Domestic violence is also a specific risk faced by women and girls.²⁹

Despite their specific needs for protection, resettlement is not the most appropriate solution for all women or girls at risk. The *urgency* and *intensity* of the risk must be assessed before a decision can be made, but resettlement of refugee women and girls may be considered when the individual is faced with:

Types of risks faced by women or girls which may warrant resettlement

- precarious security or physical protection threats that are sexual or gender-based;
- specific needs arising from past persecution and/or trauma;
- circumstances of severe hardship resulting in exposure to exploitation and abuse, rendering asylum untenable;
- a change in the social norms, customs, laws and values that results in the suspension of or deviation from traditional protection and conflict resolution mechanisms, combined with the lack of alternative systems of support and protection. Resettlement is appropriate under such circumstances if this places the refugee woman or girl at such risk that it renders asylum untenable.³⁰

Close cooperation and consultation with protection and community

²⁹ See also UN High Commissioner for Refugees, *Conclusion on Women and Girls at Risk*, 6 October 2006, No. 105 (LVII), available at:

<http://www.unhcr.org/excom/EXCOM/45339d922.html>

³⁰ See *Resettlement Handbook*, Chapter 4, Section 4.5.7, *supra* note 7.

services colleagues, NGOs that serve women, and other bodies will be useful. Short-term protection interventions may also be required.

FAMILY REUNIFICATION

Separation of families is unfortunately a common occurrence during refugee flight. Family separation can take many forms, such as when some members have fled while others remain in the country of origin, or when families have fled to different parts of the same country, or to different countries of asylum or temporary refuge entirely. In some cases, parts of the family may have been resettled, while others remain in different countries of asylum or temporary refuge or in the country of origin.

Definitions of family

While States and UNHCR agree on the need to respect the principle of family unity, the definition of the family in the context of resettlement is an area where UNHCR and States have not necessarily seen eye to eye. There is no single, universally agreed-upon definition as to what constitutes a family; in some jurisdictions and cultures the term 'family' is interpreted relatively broadly to include extended relatives, spouses in polygamous marriages, or same sex or common law couples, but in others, the term is restricted to 'nuclear' family members. Almost all national and international authorities have accepted that the members of the nuclear family, that is, the spouse and dependent children, are included in the concept of 'family'.

UNHCR's **definition of a family** includes:

- nuclear family members, including persons engaged to be married or in long-term partnerships
- all dependent members of the same family unit, whether dependency be of an economic, social or emotional nature

UNHCR aims to respect the culturally diverse interpretations of family membership, as long as they are in accordance with human rights standards. Its definition of family for the purposes of resettlement includes the concept of dependency. Unlike some resettlement States, UNHCR includes as part of the family unit individuals who are engaged to be married, who have entered into a customary marriage, or who have otherwise established long-term partnerships (including same-sex partnerships). UNHCR's definition also includes persons who may be dependent on the family unit, particularly economically, but also socially or emotionally dependent. This potentially includes children beyond the age of 18 or who are married (if they remain dependent on the family unit) or children or older people who are under foster care or guardianship arrangements but are not biologically related.

The Resettlement Handbook provides guidance on determining family composition

The criteria and policies set out in UNHCR's *Resettlement Handbook* (Section 4.6) are to be followed by UNHCR staff in managing family reunification and determining the family composition on resettlement cases. However, UNHCR's policy may not always correspond with those applied by the State to which the case is submitted. Resettlement States decide whom to admit on the basis of national policies and

requirements, which may narrowly interpret the term ‘family’ for migration purposes, or may impose certain requirements that limit resettlement admissibility by some members of the family.

The discrepancy between UNHCR’s interpretation of family for the purposes of resettlement and the somewhat more restrictive approach of many resettlement States constitutes a protection gap that limits access to resettlement for some refugees and their family members. UNHCR therefore urges States to take relations of dependency into account when interpreting family membership and to adopt flexible policies and procedures to protect family unity.

UNHCR’s efforts to facilitate family reunification

UNHCR has a mandate responsibility to protect refugees and to promote and facilitate the reunification of refugee families; that is, to assist family members of a refugee to join her or him in the country of asylum / resettlement. Except for certain special programmes, eligibility for UNHCR assistance with family reunification requires that at least one person within the family unit to be reunited be a refugee under UNHCR’s mandate or a person otherwise of concern to UNHCR.³¹ A ‘person otherwise of concern’ may include someone whose refugee status was determined by a competent government authority (i.e. through its asylum procedures) and not directly by UNHCR under its mandate, or the refugee’s family members in their country of origin. In cases where a non-refugee is being assisted to join a refugee family member, UNHCR considers the refugee to be the recipient of the Office’s assistance. If one family member is being considered for resettlement (e.g. on protection grounds), UNHCR will seek to ensure, where possible and in line with the principle of family unity, that all of her / his family members, including dependent family members, are resettled together to the same resettlement country.

Family composition and reunification are common areas of fraud

Given that family composition and reunification are common areas for fraud, it is important to assess the genuine composition of families, ideally outside the resettlement context. It is always better to make early identification of all family members, even if these members are not present in the same location. When family members are declared for the first time at the time of, or subsequent to, a resettlement interview, the fraud risk is higher. Early identification also aids in coordinating eventual reunification, so clarifying the status and precise familial relationship of the family members is essential.

It is important to note that, though family reunion may be achieved through UNHCR resettlement submissions, many resettlement countries have satisfactory alternative processing channels.

³¹ *Resettlement Handbook*; Chapter 4.6.4, *supra* note 7.

CHILDREN

The 1989 Convention on the Rights of the Child (CRC) as the normative framework

Definitions of
 - a child
 - an unaccompanied child/minor
 - a separated child
 - an orphan

Unaccompanied or separated children and orphans should be a priority in terms of identification, albeit not necessarily for resettlement purposes

In line with the definition provided in the 1989 Convention on the Rights of the Child (CRC), UNHCR considers anyone up to the age of 18 to be a child, and thus in need of special attention and care.³² Children who are unaccompanied, separated or orphans are of particular concern. These terms are not synonymous and are defined as follows:

A child, in line with the definition contained in Article 1 of the CRC, means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier. (When considering resettlement, however, the age determined by national legislation is of less relevance).

Unaccompanied children (or **unaccompanied minors**) are children who have been separated from both parents and relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

Separated children are those separated from both parents or from their previous legal or customary primary care-giver, but not necessarily from their relatives. These may therefore include children accompanied by adult family members other than their parents.

Orphans are children whose parents are both known to be dead. In some countries, however, a child who has lost one parent is also considered an orphan.³³

The identification of children who are separated, unaccompanied or orphans should be made a priority, to ensure an appropriate and timely response.³⁴ Resettlement of such children should, however, be considered carefully and should occur only when alternative solutions are not possible. Even in such cases, these children should be resettled only after all organizations involved in the process adhere to strict procedural guidelines. Experience has shown that unaccompanied or separated children and supposed orphans often have parents or other relatives who can be located and who may be willing to care for the child. Family tracing is thus essential in these situations. However, it is important to note that family tracing does not automatically raise the durable solution of family reunification. In conducting family tracing, it is important to take into account any risks that such tracing efforts might pose to the family or the child.

³² See in this regard, *inter alia*, UN High Commissioner for Refugees, *Refugee Children: Guidelines on Protection and Care*, 1994, available at:

<http://www.unhcr.org/refworld/docid/3ae6b3470.html>

³³ UN High Commissioner for Refugees, *UNHCR Guidelines on Determining the Best Interests of the Child*, May 2008, available at:

<http://www.unhcr.org/refworld/docid/48480c342.html>.

³⁴ See also UN High Commissioner for Refugees, *Conclusion on Children at Risk*, 5 October 2007, No. 107 (LVIII) - 2007, available at:

<http://www.unhcr.org/refworld/docid/471897232.html>

The "best interests of the child" as a guiding principle in all actions relating to a child

Regardless of the options available, the best interests of the child should be the primary consideration, in line with the CRC³⁵; therefore each officer responsible for taking actions or making decisions that will affect children should always undertake best interest assessments for those children. These assessments are not necessarily one-time events, but rather are part of a continuous process in which the best interest of the child is the basis from which all interventions made on his or her behalf should be planned.

Continuing assessment of the best interests of the child vs. a formal best interests determination (BID)

Where a decision may have a serious impact on a child – such as identifying the appropriate durable solution for orphaned, unaccompanied, or separated children or establishing temporary care arrangements in particularly complex situations – an officer should undertake a formal best interests determination (BID). A BID is a formal process with specific procedural safeguards and documentation requirements that may also need to be done when considering a child's reunification with parents or other relatives willing to care for him or her. Normally, actions that would separate a child from his parents or other legal or customary care-giver should not be taken, but if such actions are being considered, then a BID is mandatory.

The BID involves gathering and weighing all relevant information gleaned through interviews of the child, persons within the child's network, and experts. The rights and obligations recognized in the CRC and other human rights instruments are given particular weight so that a comprehensive decision that best protects the rights and development needs of children may be made.

Only competent bodies, including an experienced child welfare officer who is primarily responsible for gathering relevant information, should complete the BID. These bodies should counsel children on the process and on their options, and should ensure the children's effective participation to the level possible, given their age, education and emotional maturity. Many older children are capable of taking independent decisions, and even younger children should be able to express their views and preferences in a BID process.

UNHCR Guidelines on Formal Determination of the Best Interests of the Child

Normally, States are responsible for BIDs, and UNHCR plays a subsidiary role. UNHCR will, however, assume responsibility where the State is not willing or able to undertake BIDs. UNHCR has released *Guidelines on Formal Determination of the Best Interests of the Child*³⁶, which should be consulted for this purpose.³⁷

³⁵ See Art. 3 of UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b38f0.html>.

³⁶ *UNHCR Guidelines on Determining the Best Interests of the Child*, supra note 33.

³⁷ See also International Committee of the Red Cross, *Inter-agency Guiding Principles on Unaccompanied and Separated Children*, January 2004, available at: <http://www.unhcr.org/protect/PROTECTION/4098b3172.pdf>. The Guiding Principles were developed jointly with the International Rescue Committee, Save the Children/UK, World Vision International, United Nations Children's Fund (UNICEF), and UNHCR.

Close cooperation with protection and community services colleagues, as well as other international organizations, such as the United Nations Children's Fund (UNICEF) or NGOs working with children and child welfare authorities and experts is required when dealing with unaccompanied, separated, or orphaned children. While UNHCR has some capacity for family tracing, the International Committee of the Red Cross (ICRC) is the leading agency for tracing issues.

OLDER REFUGEES

There is no clear definition of “older refugee,” because the definition depends on culture, life experience and an individual's physical and mental health. The UN, however, has historically referred to older people as those above 60 years of age.

Resettlement of older refugees should be considered in very limited circumstances only, primarily in the context of family reunification unless one of the other criteria also applies

In many cultures, older people enjoy great respect. However, old age may lead to increased vulnerability in ability to deal with the demands and stresses of flight and exile, which can be compounded by reduced mobility, health challenges and reduction of economic productivity. In most situations, older refugees should be reunited with their family members, but an appropriate foster family may be an alternative if family reunification is not a viable option. Where households are headed by an older person, UNHCR should ensure that the household can satisfy its basic needs and that tracing activity reunites family members back into the original household structure.

Workers must also be aware of cultural sensitivities that relate to protection options for older persons. Foster family arrangements, for example, may undermine the older person's leadership role and associated self-esteem. At the same time, many older-person-headed households are at double protection risk – both for the older persons and for any children under their care.

In the absence of compelling reasons for resettlement on protection or family reunification grounds, resettlement should not normally be considered for all people over age 60. In fact, the resettlement of older persons should be considered carefully, given their specific need for social, familial and community support. Resettlement of older persons, therefore, is often most appropriate in the context of family reunification or if the remainder of the family is being resettled (dependent older people should be considered part of the family unit in line with UNHCR's definition of the family).

As with children, the preferences, needs and views of older persons must be considered with respect to any decision relating to them. Cooperation with protection and community services colleagues, relevant external partners, and ICRC (with respect to family tracing) will be vital.

LACK OF LOCAL INTEGRATION PROSPECTS

An assessment of this criterion requires a look at the possibility of voluntary repatriation as well as local integration

This criterion actually means ‘lack of alternative durable solution,’ and is considered in conjunction with voluntary repatriation and local integration, and is best undertaken as a comprehensive approach. As we have emphasized, the three solutions are complementary and not exclusive. Thus, even where voluntary repatriation and/or local integration possibilities exist, there may nonetheless be refugees for whom resettlement is the best durable solution. Mapping and profiling the refugee population will generally help identify particular profiles which may face problems with both voluntary repatriation and local integration, even if those durable solutions are appropriate for most refugees in their group.

In cases where there are no indicators for improvement in the foreseeable future for any category within a refugee population in their country of origin, meaningful prospects for local integration, going beyond simple self-reliance, must be examined. This determination must be undertaken against the basic benchmarks of legal protection, conditions of asylum, as well as socio-economic and psycho-social considerations.

Factors to be considered include:

Some factors to consider

- the duration of stay in the country of asylum without proper legal status or access to fundamental freedoms and rights that equate to opportunities for local integration;
- whether the situation is a protracted one (i.e. more than 5 consecutive years);
- the conditions of living; for example, whether refugees are restricted to life in camps or in sub-standard living conditions outside the camp;
- how these conditions compare to that of other refugees and to those of the local population, taking certain minimum standards and cultural and religious context into consideration;
- respect of basic rights and access to fundamental services, including schools or vocational training schemes, medical services, work, and property;
- the presence of support from family or the refugee community in each case; e.g. whether the individual is excluded from the predominant social, economic or community networks or is entirely dependent upon UNHCR's assistance and is inactive for reasons outside her/his control;
- the impact of historical persecution; e.g. whether there are compelling reasons for not repatriating to her/his country, even though voluntary repatriation would be feasible;
- where the refugee has spent extended periods in multiple flight situations, and if it has affected her/his ability and psychological capacity to establish social and economic stability.³⁸

³⁸ See *Resettlement Handbook*, Chapter 4, Sections 4.9.2.1 to 4.9.2.4, *supra* note 7.

Refugees should generally be encouraged to participate in developmental programmes (e.g. vocational training), to build self-esteem and self-reliance and to improve their willingness and capacity to reach a durable solution, such as resettlement.

UNHCR uses indicators for measuring the scope for voluntary repatriation and local integration. The assessment of these indicators should be future-oriented and must make evident why voluntary repatriation and local integration are not feasible. Any inadvertent effects, such as secondary movements, must also be considered, however, so there must be a balance between the needs of refugees and the impact on other durable solutions. Resettling a small group of refugees from a population with similar lack of local integration prospects may dissuade other refugees from considering opportunities for local integration or voluntary repatriation. In some cases this may be an argument for delaying resettlement until refugees have made decisions about other durable solutions.

As this criterion can often affect a large number of refugees, group resettlement may be an appropriate methodology. Any further processing of individuals for resettlement where this criterion is the primary ground for resettlement, however, should be considered only in close consultation with the Regional Offices, if applicable, and Headquarters. Accurate information about the country of origin is also important, and thus coordination with the UNHCR office in that country is essential. Other factors to consider may include the potential for fraud and security incidents, pull factors and their impact on secondary movements, and any on-going voluntary repatriation operations. Identification efforts must be conducted neutrally, and not with the express purpose of choosing persons for resettlement. Where the same refugee population is present in different countries, coordination between the offices in the respective countries is vital to ensure equity and to avoid unwittingly creating a regional disparity that leads to pull factors.

Under the group resettlement methodology, a multilateral approach is most often successful. Assessing the scope and potential interest of resettlement States is a key element of the advance planning, but further steps should be planned in consultation with all the actors concerned, including experienced NGOs and resettlement States that may be interested in admitting the refugees. Planning for this type of approach is likely to be time-consuming, but it may allow quicker processing when large numbers of refugees are involved.

In principle, refugees for whom lack of local integration prospects is the only reason for resettlement are unlikely to require emergency or urgent processing. Any cases falling within any of the other criteria (e.g. survivor of violence or women-at-risk) should take precedence over cases falling within this criterion, and refugees should be processed individually under that criterion.

The use of the group methodology can be considered for this criterion, but must always be considered as part of a comprehensive or strategic approach

Use of this criterion requires a process of internal and subsequent external consultation

4 Assignments

Essential reading

Please read the following additional documents:

- UN High Commissioner for Refugees, *Resettlement Handbook (country chapters last updated September 2009)*, 1 November 2004, chapter 4, available at: <http://www.unhcr.org/refworld/docid/3ae6b35e0.html>
- UN High Commissioner for Refugees, *The Heightened Risk Identification Tool*, June 2010, Second Edition, available at: <http://www.unhcr.org/refworld/docid/4c46c6860.html>; *User Guide* available at: <http://www.unhcr.org/refworld/docid/46f7c0cd2.html>
- UN High Commissioner for Refugees, *UNHCR Tool for Participatory Assessment in Operations*, May 2006, First edition, available at: <http://www.unhcr.org/refworld/docid/462df4232.html>

Exercise 4.1:

Please provide responses in your own words to the following questions:

1. In your operation, which resettlement criteria are most often used, for which groups, and why?
2. After reviewing the *Heightened Risk Identification Tool*, what opportunities and challenges do you see in effectively using the methodology in your country of operation?
3. How does your office identify resettlement needs? To what extent does it rely on a multi-functional team? Do regular meetings with both internal and external partners occur? Elaborate.
4. Please identify gaps or areas of improvement of identification in your office. For each gap or shortcoming you identify, suggest an improvement.

Please submit your responses to the designated Learning Program administrator.

Exercise 4.2:

You will be asked at random to make a 10 minute (maximum) presentation on one of the resettlement criteria at the workshop, in order to emphasize the importance of training internal and external partners. You may wish to practice speaking about each of the criteria, using the information in this and previous Units and the additional reading.

5

Processing of resettlement submissions

Learning Objectives

In the last Unit we reviewed the first, and arguably most challenging, stage in the resettlement process: identification. However, identifying a refugee in need of protection does not necessarily mean that s/he will be considered for resettlement. This Unit will examine in greater detail the various factors in determining whether or not resettlement is an appropriate response. While the main focus will be on individual processing, we will also examine group resettlement methodology.

At the end of this Unit, you should be able to explain as well as follow in greater detail the steps relating to each of the following stages of the resettlement process:

- assessment of eligibility/need for resettlement;
- preparation of documentation and a Resettlement Registration Form (RRF);
- making submission decisions;
- actual submission of the RRF to a resettlement country;
- pre-departure processing.

The designated Learning Programme administrator will recommend the time allotment for completion of this Unit.

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General principles in resettlement processing

Resettlement submissions should be processed in line with a number of key principles. In particular, they should:

- follow Standard Operating Procedures (SOPs) and consistently apply the global resettlement criteria;
- take into account the 'universal imperative' principle; and
- ensure transparency, oversight and accountability.

The Baseline Standard Operating Procedures should be followed

The **Baseline SOPs**¹ were introduced in Unit 2. As noted, these are a minimum standard and can be heightened or adjusted to include office-specific procedures. As explained in the last Unit, the specific steps for identification purposes should be included in the SOPs; the baseline SOPs set out these steps but each office may need to adjust the steps to suit their specific operation. The examination of the various steps in processing resettlement submissions is drawn from the baseline SOPs as well as from Chapter 6 of the *Resettlement Handbook*.²

In some areas, the baseline SOPs, as a most recent document, will reflect updated procedures and integrate new tools. You should always check that you have the latest version of the SOPs. In case of doubt, you can contact the Regional Resettlement Hub / Regional Office, as applicable, or the Resettlement Service at Headquarters.

Processing must be transparent and allow retracing of each step

Transparency of the process: A refugee's case file should clearly indicate why each step and decision was taken; documenting each step in the resettlement process is vital. Staff should rely on *proGres*, where it is in place and all documentation should be signed, dated and kept in the refugee's physical case file.

Transparency is also important vis-à-vis resettlement partners. UNHCR should hold regular meetings in which resettlement partners are consulted and informed of the resettlement process, albeit while fully respecting principles of confidentiality.

Each step should be appropriately accounted for and authorized

Authorization and accountability: We referred in the last Unit to a designated accountable resettlement officer who should oversee and coordinate all resettlement activities. This officer will not undertake all steps in processing resettlement submissions alone, but will be

¹ UN High Commissioner for Refugees, *Baseline Standard Operating Procedures on Resettlement*, 1 January 2008, available at: <http://swigea56.hcrnet.ch/refworld/docid/48b6997d2.html>.

² UN High Commissioner for Refugees, *Resettlement Handbook*, 2004 (Country chapters revised July 2009), Chapter 6, available at: <http://www.unhcr.org/refworld/docid/3ae6b35e0.html>

responsible for overseeing all resettlement activities and ensuring effective management and compliance with SOPs. This oversight function may include random checks of different cases at different stages in the process. We shall discuss in more detail issues of office management and accountability in Unit 6.

Assessment of resettlement need

The stages that follow identification, as outlined in Unit 4, are:

- verification of registration and refugee status, and
- resettlement needs assessment in line with global resettlement criteria, UNHCR guidelines, priorities and policy considerations.

The officer accountable for resettlement should nominate a staff member with designated resettlement responsibilities to undertake this assessment. In the case of referrals, the staff member who conducts this verification and assessment should be different from the person who referred the case. This serves to strengthen objectivity, bridge gaps in quality assurance, reduce perceptions of individual bias and safeguard against fraud.

Verification of registration and refugee status

There should be a database entry for each person identified for possible resettlement, where possible in *proGres*

Refugee status must be verified. Where *proGres* is available and used, it can provide this confirmation.

For each refugee who is identified for resettlement consideration, an entry should exist in the database and *proGres* should be used when available. The data should be checked for accuracy, including information on family composition, such as biodata and photographs. If necessary, family composition may need to be confirmed with the refugee; ideally in a non-resettlement context. Any inconsistencies or problems with the case file should be identified, including any evidence of tampering.

Refugee status ideally will also be verifiable through *proGres*. However, additional checks of the physical file and with protection or eligibility staff may be required. If status determination has been undertaken by UNHCR under its mandate, all steps should be fully documented, including the decision, the grounds on which the individual has been recognized, a credibility assessment and any exclusion considerations as applicable. Any such determination should be undertaken by protection or eligibility staff, but it is important that resettlement staff have a good understanding of the requirements for refugee status determination (RSD), which were examined in the previous Unit.

Individual RSD will normally be required for the resettlement where a person has been recognized on a *prima facie* basis

Individual RSD is normally required for purposes of resettlement. It is important to ensure that any exclusion and other considerations have been taken into account. Where a refugee has been recognized on a *prima facie* basis, it may be useful to complete first the initial assessment of the need for resettlement and then to request individual RSD, as appropriate. If RSD has been undertaken by the country of asylum, this fact should be entered in *proGres* and in the physical case file.

SPECIAL CASES

Exceptions to the requirement of being a refugee:

- family reunification
- stateless persons
- returnees

There are a few notable exceptions to the requirement that persons considered for resettlement must be refugees, but they apply only in extraordinary cases:

In cases of **family reunification**, at least one of the parties – either the individual requesting the reunification or the family member with whom he or she is seeking to be reunited – should be a refugee, though it is not necessary that all parties are refugees. The submission is thus based on the refugee status of the family member who is already in the country of resettlement or asylum. As a rule, wherever a separate refugee claim might exist, it is useful to undertake RSD of family members in their own right. As noted in Unit 1, “membership in a particular social group” may apply, since the family link to the resettled refugee may itself lead to persecution. In all such cases, guidelines on family reunification, as provided in the UNHCR Resettlement Handbook and the annual *Delegation of Authority to the Field*³, should be closely followed.

Another ‘special case’ concerns **stateless persons who are not refugees**, who, as we saw in Unit 1, fall under UNHCR's mandate. UNHCR's Executive Committee (ExCom) in 2003 agreed that:

States are encouraged "...to cooperate with UNHCR on methods to resolve cases of statelessness and to consider the possibility of providing resettlement places where a stateless person's situation cannot be resolved in the present host country or other country of former habitual residence, and remains precarious".⁴

Stateless persons may be considered on an exceptional basis if these criteria are met. Close consultation with Headquarters is required

In line with this Conclusion, UNHCR may make exceptional resettlement considerations for [non-refugee] stateless persons:

- who may be subject to persecution or violation of their basic human rights in the State in which they currently reside (which may be their country of habitual residence); or

³ UN High Commissioner for Refugees, *Delegation of Authority to the Field: Guidelines on Resettlement Dossier Case Submissions and Family Reunification Procedures*, August 2010. This annual document is available upon request from the Resettlement Service.

⁴ UN High Commissioner for Refugees, *General Conclusion on International Protection*, 10 October 2003, No. 95 (LIV) - 2003, para. (v), available at: <http://www.unhcr.org/refworld/docid/3f93aede7.html>

- for whom no solution that guarantees their basic human rights is possible in any of their countries of habitual residence or in their present State of residence.⁵

Close consultation with the Regional Resettlement Hub / Regional Office, as applicable, and/or the Resettlement Service at Headquarters is required prior to any submission. UNHCR seeks from resettlement States assurance that they will provide a status similar to that of resettled refugees, or at a minimum one in line with the 1954 Convention relating to the Status of Stateless Persons.

Returnees who are at serious and imminent risk of serious harm to their life or person, and for whom no other solution is available, may be considered for resettlement

Close consultation with Headquarters is required

Another exceptional situation concerns **returnees**. Returnees by definition are not refugees, as they are not outside their country. As discussed in Unit 1, UNHCR may, however, become extensively involved in returnee-monitoring operations, and may thus encounter persons who are at risk of serious human rights violations. In principle, the responsibility to protect would fall on the national government, and UNHCR's priority would be to ensure that local or central authorities and/or, as applicable, regional or international actors intervene to provide protection. However, where the life or security of the person cannot be ensured, and the threat is serious and imminent, the appropriate steps may have to be taken to ensure that the person concerned can flee again. In special cases, this may include considering resettlement, although this would generally be preceded by evacuation into another country. Close consultation with the Regional Resettlement Hub / Regional Office and the Resettlement Service is required.⁶

Preliminary assessment of the resettlement need

A preliminary assessment of resettlement needs is made against agreed global resettlement criteria and UNHCR policies and based on available information

A preliminary assessment of an individual's need for resettlement is based on available information and the resettlement criteria outlined in Unit 4 of this Learning Programme and in Chapter 4 of the *UNHCR Resettlement Handbook*. This includes an assessment of:

- prospects for voluntary repatriation;
- quality of asylum, including respect for basic human rights in the host country and the possibility of local integration;
- applicable resettlement criteria, such as whether the person is a woman at risk or a survivor of violence and torture, etc.;
- whether resettlement is appropriate, considering the universal imperative and/or possible strategic dividends; and
- prioritization of the case, i.e. whether the individual requires urgent or emergency protection intervention.

The preliminary assessment includes checks that determine if sufficient information, such as reports by independent experts (e.g. medical assessments, psychosocial reports and best interests determination [BID] in specific cases involving children), is available to make a proper

⁵ See also *Resettlement Handbook*, Chapter 5.1, *supra* note 2.

⁶ *Ibid.*, at Chapter 5.2.

assessment on the need for resettlement. In many cases, when more than one resettlement criterion may be applicable, this should be noted, indicating both primary and secondary criteria (the former being the criterion most applicable and most likely to afford the case the greatest priority).

WHERE VOLUNTARY REPATRIATION IS BEGINNING OR ON-GOING

As previously noted, when considering an individual for resettlement, UNHCR should carefully assess his or her prospects for voluntary repatriation and/or local integration. The broader context of resettlement vis-à-vis other solutions and the overall protection strategy and framework within the country of operation should also be considered.

Resettlement in a repatriation context requires a calibrated and targeted approach. Mapping and profiling activities should continue, however, albeit strictly de-linked from resettlement

Where voluntary repatriation is beginning or on-going, resettlement activities should continue as a matter of principle, but resettlement delivery must be carefully calibrated so as not to detract from the voluntary repatriation itself. As UNHCR becomes or is actively involved in promoting and facilitating voluntary repatriation, resettlement should be limited to individual processing to address critical protection needs. Proactive and large-scale resettlement should be diminished, to ensure a clear focus on voluntary repatriation. As we have seen in the previous Unit, however, mapping and profiling the dynamics within the refugee population (i.e. understanding who might be at heightened risk) should continue, albeit outside of a resettlement context; the information obtained will allow early strategic planning for dealing with any residual refugee population.

The following table gives an example of such a calibrated and targeted approach:

Parameters for the use of resettlement during voluntary repatriation operations ⁷		
Stage of voluntary repatriation operation	Recommended mode of resettlement	Applicable resettlement criteria
1. Spontaneous returns	Individual / group processing	All resettlement criteria
2. Facilitation by UNHCR	Individual processing	Legal / physical protection and/or specific needs
3. Promotion by UNHCR	Individual processing	Legal / physical protection and/or specific needs
4. Residual population	Individual / group processing	All resettlement criteria

⁷ UN High Commissioner for Refugees, *UNHCR Policy and Strategy Approach on the Resettlement of Sudanese Refugees in a Repatriation Context*, 25 October 2005, available at: <http://swigea56.hcrnet.ch/refworld/docid/4ad311b22.html>

Preparation of a written needs assessment

Preparation of a needs assessment in writing based on available information is required. Particularly in cases of referrals, this process should occur within two weeks of the initial referral

Once the preliminary assessment is completed, ideally within two weeks of initial identification, a needs assessment must be prepared **in writing** and **based on available information**. It should include:

- source, date and reason for the recommendation, according to the resettlement criteria;
- name, date, place of birth and the nationality of the applicant(s);
- family size and composition;
- confirmation of registration and refugee status, and a summary of the refugee claim;
- remarks on the protection environment in the country of asylum;
- assessment of the eligibility for resettlement and in relation to the relevant resettlement criterion (in some cases there may be more than one which is applicable);
- recommended follow-up action and priority of the case; and
- name of the assessing officer, the interpreter used during any interviews and the date of the interviews and assessment.

On the basis of the assessment, the designated staff member should also recommend one of the following options:

Decision on whether to proceed based on an analysis of the written needs assessment.

- need for resettlement appears well-founded and should proceed to a formal resettlement consideration stage;
- additional information is required, perhaps from the referral source, prior to finalizing the resettlement assessment;
- resettlement intervention appears unfounded or lacks merit according to UNHCR guidelines and priorities.

Follow-up

A secondary review is required for the preliminary assessment

The refugee file, the assessment, and the recommendation should all be handed to a supervising officer for review. For normal priority cases, the supervising officer should review the recommendation within two weeks of receipt.

In some offices, the secondary review may be conducted by a committee that includes protection and community services staff. Primary responsibility remains with the case officer and his or her supervising officer.

If **the resettlement need is considered well-founded**, this should be documented in *proGres*, the physical case file, and the written needs assessment. The case officer may then schedule an interview with the refugee for a more detailed resettlement assessment as well as to gather information required for completing the RRF.

If a preliminary assessment finds the resettlement need to be well-founded, the next step is to conduct a more detailed interview with all concerned individuals and dependant family members. The refugee should bring any relevant documentation. Staff should be careful to manage refugees' expectations.

When scheduling an interview, the case officer should clearly inform the refugees of the purpose of the interview, ask the individual to be accompanied by family member and dependants (to be interviewed separately) and to bring any relevant documentation, including identity documents. The officer who conducts the interview should preferably be of the same sex as the refugee, unless otherwise appropriate in the individual case. If this is not possible, then the interpreter should be the same sex as the refugee, unless otherwise requested by the refugee.

Where the refugee was identified through a referral, it is important to inform the referral source that the forwarding of a resettlement needs assessment for further processing does not necessarily mean that it will be submitted for resettlement. It is important to **manage expectations** in this regard.

Where **additional information is required from the referral source**, the officer accountable for resettlement should be consulted and, if approved, a written request should be sent to the referral source. Full and complete documentation of this should be maintained in *proGres* notes and the physical case file.

If the **resettlement need appears unfounded**, the referral source should be notified in writing that the refugee cannot be considered for resettlement at that time. A copy of the notification should be kept in the refugee's file and *proGres* updated. It is important to note, however, that this decision should be based on UNHCR guidelines and not on criteria expressed by States.

In some cases, a mechanism may need to be established to consider requests for reconsideration

Should a referral source request **reconsideration**, such a request should also be made in writing. The officer accountable for resettlement should then determine, in consultation with her/his supervisor and/or other protection staff, the mechanism for considering such requests; for example, it might involve a dossier review of the case file by a senior officer not previously associated with the case.

In all cases, these steps and decisions should be recorded in *proGres*, and copies of the needs assessment, any notifications and exchanges should be included in the physical case file.

Resettlement assessment interviews

Interviews should be undertaken in all cases to allow a more thorough assessment of the resettlement need

Interviews should always be conducted as part of the resettlement submission preparation to ensure a thorough assessment of whether an individual should be submitted for resettlement. The baseline SOPs provide detailed instructions on how to conduct the interview, as does the *Resettlement Handbook*. Reading the *Training Module RLD4*:

*Interviewing Applicants for Refugee Status*⁸ is also required before conducting interviews. Although it is geared towards interviewing for RSD, the guidelines in the module are equally applicable to interviewing for resettlement purposes. Only a few features of the resettlement interview will be mentioned herein.

The purpose of the interview is to allow for a more thorough assessment of the resettlement need, verification of any information and clarification of any inconsistencies or doubts. This will require that the interviewer is well –prepared.

To allow for a thorough assessment, the interviewer should be familiar with the details of the case as well as with the conditions in the country of origin and in the country of asylum. To prepare, the interviewer should carefully review the contents of the case file and make sure that it contains all relevant information, including information relating to RSD. The interviewer should also check *proGres* to ensure all data is complete and up-to-date and should note any gaps and/or questions that arise with regard to, for instance, the individual's situation, refugee claim or documentation. If necessary, the interviewer should also consult with the relevant units and have documents translated.

USE OF INTERPRETERS

Interpreters play a key role, and interviewers need to be aware of how to conduct interviews through a third person.

In most cases, interviewers will have to rely on interpreters to communicate with refugees. Interpreters do not replace the interviewer, but serve to facilitate communication with the refugee. The interviewer should thus address the refugee directly and not rely on the interpreter in any manner for advice or guidance, either during or outside the interview.

Interpreters require adequate training and briefing

The role of interpreters is important, so they must be adequately trained to ensure professionalism, integrity and confidentiality in their tasks. One tool to help ensure this is the *Self-study Module 3: Interpreting in a Refugee Context*.⁹ Some important considerations when working with interpreters include:

- The interpreter must be fluent in a language the refugee fully understands and must be able to interpret accurately; this will also need to be assessed prior to and at the beginning of an interview.
- If UNHCR is unable to provide an interpreter who speaks the language primarily used by the refugee, the refugee may be permitted to identify an interpreter. The interviewer must brief the interpreter, and the refugee must provide a confidentiality waiver. The interpreter should not be related to the refugee in any way, and the ability of such an interpreter to interpret neutrally and accurately must be assessed prior to and at the opening stage of the interview;
- The refugee should feel confident that the interpreter is

⁸ UN High Commissioner for Refugees, *RLD4 - Interviewing Applicants for Refugee Status*, 1995, RLD4, available at: <http://www.unhcr.org/refworld/docid/3ccea3304.html>

⁹ UN High Commissioner for Refugees, *Self-Study Module 3: Interpreting in a Refugee Context*, 1 January 2009, available at: <http://www.unhcr.org/refworld/docid/49b6314d2.html>

providing effective service without prejudice, which can be affected by the interpreter's cultural and ethnic background. Depending on the sex and age of the refugee, an interpreter of the same sex and with experience interpreting for children should be selected.

- As interpreters may not share any information obtained during an interview or through documents with others, confidentiality requirements should be emphasized to them.
- The interpreter's role should be clarified for them; in particular, it should be clear that they should interpret only what is said and not engage in discussion or elaborate on what is said by the refugee or the interviewer. The interpreter should, however, intervene if there are clear misunderstandings, for example, due to language or cultural differences.
- Interpreters should remain neutral, both during and outside the interview. They should not under any circumstances provide advice outside the interview.
- Interpreters should treat refugees with dignity and respect and maintain the highest standards of integrity;
- The interpreter should be briefed adequately on the purpose of the resettlement interview;
- The interpreter should also be asked if s/he knows the refugee or otherwise sees any reason why s/he should not interpret during the interview (e.g. conflict of interest). If there are reasonable objections to using one particular interpreter, another interpreter should be used and, if necessary, the interview should be postponed pending the availability of another interpreter.¹⁰

Interpreters may be subject to considerable pressures; appropriate safeguards are required to prevent fraud.

Since interpreters may be of the same origin as the refugees and may even be of the same clan or tribe, they may be subject to considerable pressures from the refugee community. To safeguard against such pressure and the resulting risk of fraud, the interviewer and interpreter should ideally differ from the ones used for previous interviews, including in particular interviews for RSD purposes, with a particular refugee. It is also useful to avoid using refugee interpreters, when possible. Prior to being engaged, the interpreter's credentials and accreditation should be checked and a copy of the interpreter's identity documents should be on file together with their signed copies of the *UNHCR Interpreter Undertaking of Confidentiality and Impartiality*¹¹ and the UNHCR Code of Conduct. Staff should consult the UNHCR Guidelines for the recruitment, training, supervision and conditions of service for interpreters.¹² Additional considerations are covered in Unit 6.

¹⁰ *ibid.*

¹¹ See UN High Commissioner for Refugees, *Guidelines for the recruitment, training, supervision and conditions of service for interpreters in a refugee context*, IOM/005-FOM/005/2009, available at:

https://intranet.unhcr.org/intranet/unhcr/en/home/executive_direction/official_policies/iom-foms/2009/iom05fom05_2009.html

¹² *ibid.*

THE INTERVIEW

As with identification, it is important to manage expectations

The resettlement interview is not in itself indicative of a positive decision to submit the case for resettlement, but rather is intended to help complete a thorough assessment and help verify information that may be unclear or missing. The interview is also intended to help clarify any inconsistencies and doubts identified by the interviewer during the preparatory stage. Staff should clarify this purpose prior to and during any interview to help manage refugees' expectations.

It is important to establish a relationship of trust and respect. This also means that appropriate measures must be taken where sensitive issues might be raised.

At the same time, the interviewer must foster a relationship of trust and respect with the refugee, because s/he will be asking about sensitive issues of a personal nature. Care should be taken to approach such issues in a culturally respectful, gender- and age-sensitive way and to allow for a relaxed atmosphere, because misunderstandings are likely to arise due to different cultural contexts. As with interpreters, the interviewer, when possible, should be of the same sex as the refugee being interviewed, particularly where sensitive issues may be raised. Although women and men are more likely to feel comfortable with an interviewer and interpreter of their same sex, this should not be assumed. In addition, staff should be aware of any particularly vulnerable persons, including survivors of violence (e.g. of sexual or gender-based violence), because particularly sensitive questioning will occur, and it is important to be prepared for emotional responses.

Many of the specific instructions included in the *Baseline SOPs* and the *Training Module*, including guidance on how to open and close the interview, are intended to help the interviewer achieve these objectives. In addition, the Annex to this Unit contains more tools, including an "Interview Checklist for RRF Preparation" to help guide the interview. These should be reviewed in detail.

All family members should be present and interviewed separately

As noted earlier, the principal refugee applicant should arrive to the interview with all members of his or her family and dependents. They should all be seen prior to the interview and their identities rudimentarily checked; if they are not present, and unless there is reason for urgency, the interview should be postponed. While all members of the family can be briefed together, all adult members are to be interviewed separately; children, particularly adolescent children, may also be interviewed separately with the consent of the parent or guardian. Family members not being interviewed should remain in a waiting area during and immediately after the individual interviews. Separate waiting areas should be used for persons prior to and after the interview as an anti-fraud measure, to prevent collusion. Small children should preferably remain in the waiting area with relatives or caregivers.

Conducting the interview

The refugee needs to be fully aware of the purpose of the interview and his or her rights and obligations. The interviewer should inform the refugee of the following:

- their obligation to tell the truth and not conceal information;
- that fraud, including forged documents or any other false information, may lead to legal action, including criminal prosecution and rejection of resettlement;
- the purpose of note-taking;
- for families, that the spouse and adolescent children may be asked questions separately;
- that the interview can be ceased and/or rescheduled and medical attention can be sought if s/he feels unwell.

Verifying and assessing family composition will be an important part of the interview

An important part of the interview is dedicated to bio-data and family composition **verification**. This verification not only ensures that the data available to UNHCR is correct, but also helps maintain the unity of the family and the prospects for future family reunification. As family composition should be previously verified in a non-resettlement context, any inconsistencies should be clarified in a respectful and neutral, rather than accusatory, fashion. The following can help guide you in verifying family composition:

- Staff should verify bio-data, photographs, signatures, and the family relationship for each individual; they should also clarify whether children and parents are related biologically, or through adoption, and what type of dependency exists, whether it is based on economic, social and/or emotional grounds. These relationships can be cross-checked with each of the family members when separately interviewed;
- Staff should confirm which family members remain in the country of origin, and which are present in the country of asylum; confirm which family members are living and which are deceased; record the parents of the principal applicant and his / her spouse; and verify that both father and mother are the biological parents.
- Staff should check whether the principal applicant and his / her spouse have had any prior marriages, or are in polygamous relationships. If either has more than one partner, staff should record the names of all partners, as well as whether the marriage is legal or informal. This information can also be cross-checked at separate interviews with other family members;
- For siblings, staff should confirm that they have both the same father and mother. If the parents are not the principal applicant and his / her spouse, or if a child has a different biological parent, staff should record all bio-data and relationships, including that of the other biological parent(s); they should also ensure that information concerning the location of the other parent and how the child came to live with the applicants is recorded. They can verify this with the registration database and community service records.
- Staff should ask women of child-bearing age whether they are pregnant and should ask unmarried women and men of marriageable age if they are engaged or otherwise in a serious relationship;
- Staff should establish whether any others were living in the

refugee's household in the country of origin or asylum, noting whether that means under the same roof, in the same compound, or as part of the household economic unit. They should also establish whether persons who were living in the same household in the country of origin are part of the household in the asylum country, and if not, where they are;

- Staff should ask the refugee about relatives living in other countries than the country of origin; distant relatives should also be noted if they live in a resettlement country.

The focus throughout the interview should not be so much on obtaining basic facts but rather verifying and assessing the available information and its credibility.

One aspect of the interview will be dedicated to confirming the refugee's **eligibility under resettlement criteria**. The interviewer should be guided by the resettlement criteria and requirements as set out in the *Resettlement Handbook*.¹³ As noted, it is important to verify whether it is possible for a particular vulnerability to be dealt with in the country of asylum or whether voluntary repatriation to the country of origin is a viable option. It is also essential to resolve any doubts or inconsistencies relating to specific vulnerabilities. The Annex to this Unit includes a questionnaire that can be used as a tool to help guide the interview about family composition.

An interviewer must exercise particular care when questioning survivors of violence; s/he is not a medical or psychological expert and should not seek to see scars or other wounds that are not normally visible. Refugees should be informed that, if necessary, medical experts will be consulted to verify this.

The role of the resettlement interview is not to undertake RSD. Where serious inconsistencies arise or issues that have not been dealt with in the RSD procedure, the file should be referred to the relevant protection officer.

With respect to the **refugee status** of the principal claimant, the role of the resettlement interview is not to conduct RSD. Instead, the interviewer may wish to clarify any details or inconsistencies that may give rise to questions by resettlement States. This may include completing information that is missing or unclear, checking chronology gaps, or verifying the credibility and accuracy of UNHCR records. The claim need not be examined in every detail or necessarily in chronological order, but the interviewer should take note of any significant discrepancies, especially those relating to the core aspects of the refugee claim and issues of exclusion.¹⁴

The resettlement officer should check whether the refugee continues to fear persecution in his / her country of origin. If that is not the case, and voluntary repatriation is feasible, this durable solution must be explored. Should any major inconsistencies that cannot be explained during the interview, or any other shortcomings in the RSD, such as the credibility analysis (as distinct from the legal analysis) or any information that might trigger cessation or exclusion concerns become evident, the

¹³ See *Resettlement Handbook*, Chapter 4, *supra* note 2.

¹⁴ The Unit 3 introduced RSD in greater detail. Additionally, the materials on interviewing referenced in this Unit should be helpful on challenging topics such as how to record dates according to traditional calendars. For example, care will need to be taken to ensure the proper translation of different national calendars; the original dates should be noted as well for the sake of clarity and cross-referencing.

The file should be complete, including all required supporting documents.

Reviewing the interview notes is an important way of ensuring full understanding of the facts. It also serves as a quality assurance measure.

Additional safeguards are required when interviewing persons in detention

In case of "No Show", attempts should be made to contact the refugees and obtain the reason

interviewer should not necessarily seek to resolve them, but may rather refer the case file back to the Protection or Eligibility Officer for review of the original decision.

The interviewer should also seek to ensure that all documentation in the file is accurate and that the file is complete. If any additional **supporting documents** are required or available, the interviewer should request the refugee to provide them or indicate a date by which they can be provided.

To the extent possible, the interviewer should review his / her notes of statements made during the interview with the refugee, who can then add information or correct misunderstandings. The changes proposed by the refugee should be incorporated where they clarify previous information provided by the refugee. This also provides an opportunity to clarify any discrepancies or gaps in the statements made.

Special situations

Interviews may need to be conducted in places of **detention**. While this is not ideal, and therefore alternative venues should be explored, it is not always possible to gain the release of a refugee for a UNHCR interview. The same general principles apply as for other interviews, but some specific precautions should be taken:

- proper identification for the interviewer and interpreter should be provided to the detention centre and authorization sought;
- the refugee should be informed of the interview prior to the appointment;
- the interpreter should be briefed appropriately;
- the interviewer should make extra efforts to establish a reassuring and calm atmosphere;
- the interview should be conducted in a private room, or at least in as private a setting as possible;
- note-taking should be undertaken keeping in mind that notes may be confiscated or copied by the authorities. To the extent possible, brief notes and key words should be utilized during the interview, with full notes being prepared immediately following the interview.

A refugee may not appear for a scheduled interview and thus be a "**No Show**". This needs to be documented in *proGres*, but attempts should be made to contact the refugee and to seek a reason for the no-show. The *Baseline SOPs* provide detailed instructions on what to do in such situations.

Home visits may be a useful means to get a better understanding of the situation of the refugee, as well as to avoid fraud. Special safeguards are required.

Resettlement officers may wish, in select circumstances, to supplement the interview with **home visits**. These may be useful to better understand the refugee's situation, to verify information, and to undertake spot-checks that help avoid fraud. Privacy concerns, the desire to avoid harm to the refugee(s) of concern, and the existence of a power differential between refugee applicants and UNHCR require that field offices use certain safeguards in implementing home visits as an effective tool. Please refer to the *Baseline SOPs* for more specific instructions.

Preparation of a resettlement submission

On the basis of the resettlement needs assessment, including the interview report, the designated officer accountable for resettlement may authorize the preparation of a resettlement submission. This process includes preparing the RRF and appropriate documentation, depending on the applicable resettlement criterion. The RRF is not an interview template and should not be used as such; rather, it records the data required by a resettlement country in order to consider a UNHCR submission. In this sense, however, it does provide an indication of the data to be gathered.

It is important to ensure that RRFs are completed to a high standard, as they are used to judge the standard of UNHCR's work and decide solutions for refugees.

The RRF is the document that is submitted to resettlement States. It is the main tool for advocating for a refugee's resettlement, and is an important indicator of UNHCR's performance. It is thus important to ensure a high quality RRF that is:

- clear and easy to read, without jargon;
- concise enough to be interesting and understood in one reading;
- complete, with all relevant information included;
- consistent and without contradictions; and,
- factually correct, objectively presented and checked.

COMPLETING THE RRF

UNHCR staff (including affiliate workforce such as deployees under direct UNHCR supervision) must always complete the RRF and, in principle, rely on *proGres* to prepare the RRF. Detailed instructions on this are provided in the document *Resettlement Registration Form (RRF): Using ProGres to Generate the RRF*.¹⁵ Where *proGres* is not installed in the Office, the instructions for completing an RRF for non-*proGres* users

The RRF must be completed by UNHCR staff. No input or corrections should be made by hand.

¹⁵ UN High Commissioner for Refugees, *Resettlement Registration Form (RRF): Using proGres to Generate the RRF*, October 2009, available at: <http://swigea56.hcrnet.ch/refworld/docid/4ad30352.html>

should be followed.¹⁶ There should be no corrections by hand on the final submission.

The RRF requires that detailed information be provided on family members of the applicants, including information on the nature of their dependency. Where dependency is based on economic, social and/or emotional factors, it should be direct and substantial, regardless of the precise nature, and must be assessed and explained carefully. Information on any distant family members who reside in resettlement countries should also be provided.

Cases of Polygamy

Detailed information will be required on family composition and an assessment of credibility. Polygamous families will require special attention.

A person engages in polygamy when he or she is legally married to more than one spouse at the same time, regardless of whether they are at present living together.¹⁷ Where UNHCR has confirmed that the marriage is valid and there is a relationship of dependency, a polygamous family will be eligible for assistance.¹⁸ Determining whether to refer a polygamous family for resettlement requires special attention to several important considerations:

As noted in Unit 2, most resettlement States have domestic legislation prohibiting polygamy and will recognize the polygamous partner as having only one legal spouse (the “legally recognized spouse”).¹⁹ This

¹⁶ UN High Commissioner for Refugees, *Resettlement Registration Form (RRF) for Non-ProGres Users: User Guide*, March 2007, available at: <http://swigea56.hcrnet.ch/refworld/docid/4ae579692.html>.

¹⁷ This includes (1) a person who is currently living with more than one spouse and (2) a person who marries one spouse, then separates from but never legally divorces that spouse, and then marries and resides with another spouse; see also UN High Commissioner for Refugees, *UNHCR Handbook for the Protection of Women and Girls*, January 2008, section 5.2.2, p. 193, available at: <http://www.unhcr.org/refworld/docid/47cfc2962.html>.

¹⁸ See Unit 2 and the forthcoming Guidelines on Family Unity for UNHCR’s position with respect to polygamous marriages. UNHCR’s definition of a family includes not only the members of the nuclear family (husbands, wives, minor children, and minor siblings), but also persons who are engaged to be married, who have entered into a customary marriage, who have otherwise established long-term partnerships, or who may be fully or partially dependent on the family unit, be it socially, emotionally, and/or economically.

¹⁹ Polygamy is also considered a violation of the principle of equality of men and women in marriage under international law: The Human Rights Committee determined that polygamy violates a woman’s dignity and is an inadmissible discrimination and should be abolished (UN Human Rights Committee [HRC], *CCPR General Comment No. 28: Article 3 [The Equality of Rights Between Men and Women]*, 29 March 2000, CCPR/C/21/Rev.1/Add.10, para. 24, available at: <http://www.unhcr.org/refworld/docid/45139c9b4.html>). The Committee on the Elimination of Discrimination Against Women determined that polygamy is a violation of Article 5 of CEDAW and that it has further serious implications for the emotional and financial well-being of a woman and her dependents (UN Committee on the Elimination of Discrimination Against Women [CEDAW], *CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations*, 1994, para. 14, available at: <http://www.unhcr.org/refworld/docid/48abd52c0.html>).

Most resettlement States prohibit polygamy and will recognize only one legal spouse.

legally recognized spouse is usually either the first person to whom the polygamous partner was married or any other spouse, provided that the polygamous partner has divorced all other spouses prior to the resettlement referral.²⁰

However, this requirement will often result in the subsequent separation or abandonment of dependent family members for purposes of resettlement, which may leave them more vulnerable to protection risks and which contravenes the right to family unity and the rights of the child. Therefore, in principle, UNHCR would not split the family by requiring that one spouse be chosen over the other in order for a polygamous partner and only his/her chosen family members to be submitted for resettlement unless there are compelling reasons for doing so and/or it is the wish of the other spouse(s).²¹

Where UNHCR determines that one family member should not be accepted for resettlement without all the others, in order to promote family unity, UNHCR will explore the possibility of resettling the additional spouses and their children in the same country as the polygamous partner and the legally recognized spouse.

However, in some cases, a polygamous family may have an acute resettlement need, such as when resettlement is the only option for preventing immediate *refoulement* or other serious human rights violations. In such cases, where UNHCR determines that one family member should not be accepted for resettlement without all the others, in order to promote family unity, it is important to explore with resettlement countries the possibility of resettling the additional spouses and their children in the same country as the polygamous partner and the legally recognized spouse.²²

States may, albeit very rarely, consider such cases for resettlement if a polygamous family is split into two or more separate cases to suit their specific requirements. If such flexible approach exists, UNHCR may explore the possibility of submitting the polygamous partner and the legally recognized spouse *on the condition* that the other spouses and their children will also be submitted for resettlement to the same country as linked cases.

Splitting and submitting linked cases of a polygamous family for resettlement should only be done with the full cooperation of the resettlement country to suit their specific requirements and after making thorough assessments, including a Best Interests of the Child Determination (BID), to determine the appropriate case configuration; assessing whether each potential Principle Resettlement Applicant has their own refugee claim; fully counselling the family regarding the legal,

²⁰ Note that marriage or divorce may be difficult to obtain or document in the refugee's current country of asylum. Therefore, it is important to consult with the resettlement country to determine whether evidence of a formal marriage or divorce is required. Also, most resettlement countries are reluctant to consider referrals of any person who previously engaged in polygamy, but then sought a divorce solely for the purposes of resettlement, unless this person had already considered her/himself separated or no longer married and was not living with the other spouse at the time of the official divorce.

²¹ See *UNHCR Handbook for the Protection of Women and Girls*, at section 4.3.4, p. 170, *supra* note 17.

²² *Ibid.*

psychological, and social consequences of splitting a case; and obtaining the informed consent of each member of the family. Consultation with Regional Resettlement Hubs / Regional Offices and Headquarters is useful in considering such complex submissions.

The BID is a precautionary measure and a procedural safeguard to ensure both that family unity is maintained and that the rights and best interests of the child are the central consideration.

In the context of splitting cases and resettling the children of polygamous marriages, children risk being separated from either their mother or their father.²³ Therefore, UNHCR should conduct a **BEST INTERESTS OF THE CHILD DETERMINATION (BID)** to determine first, whether to submit a polygamous family for resettlement, and second, whether and how to split the family into linked cases for submission. The BID is a precautionary measure and a procedural safeguard to ensure both that family unity is maintained and that the rights and best interests of the child(ren) are the central consideration.

In order to protect each family member, UNHCR must ensure that each principal applicant of the linked cases of a polygamous family be able to present her/his own refugee claim.

In splitting and linking cases of a polygamous family, usually each non-legally recognized spouse will become the Principal Resettlement Applicant (PRA) of each linked case. The resettlement State will make the final decision on whether each PRA may be recognized as a refugee and accepted for resettlement under that State's domestic legislation. Therefore, there is a risk that one spouse will be accepted for resettlement, while another will not, and the whole family must be counselled and informed of this possibility. Thus, in order to protect each family member, UNHCR must first ensure that each principal applicant be able to present her/his own refugee claim in order to be accepted for resettlement, and second reiterate clearly to the resettlement State the UNHCR's position that one linked case should not be resettled without the other(s).

In order to ensure that they make an informed decision, the family should be thoroughly counselled.

The decision to split a family into linked cases for purposes of resettlement should be the prerogative of the family wherever possible. In order to ensure that they make an informed decision, the family should be thoroughly counselled about the consequences of the resettlement country's specific domestic legislation regarding the legality of their relationships, the separate assessment of their claims and possibility that one of the spouses may be rejected for resettlement, any legal requirement that they not co-habit in the resettlement country, and the rights of their children.²⁴

Each member of the family should be *separately advised* and consulted to obtain his or her individual informed consent to splitting a case into linked cases before they can be submitted for resettlement. It is very

²³ Under the Convention on the Rights of the Child, Articles 7, 9, and 10, children have the right to know and be cared for by both parents, should not be separated from their parents against their will, and have the right to maintain relations and direct contact with both parents unless it has been determined contrary to their best interests. See UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b38f0.html>.

²⁴ See *UNHCR Handbook for the Protection of Women and Girls*, at section 4.3.4, p. 170, *supra* note 17.

Each member of the family should be separately advised and consulted to obtain his or her individual informed consent.

important that these cases are carefully evaluated to determine that no issues of coercion are influencing each family member's decision. In addition, UNHCR must counsel each family member that their decision will remain confidential so as to alleviate potential concerns about repercussions from other family members should the individual not consent to splitting the case, and the case not be submitted for resettlement.

SUPPORTING DOCUMENTATION

It is critical to attaching all supporting documentation to the RRF. Supporting documentation includes electronic photographs, copies of any identification documents or certificates and country of origin information reports supporting the claim. Depending on the resettlement criterion relied upon, specific documentation will be required as follows:

Overview of required supporting documentation for each resettlement criterion

Legal and Physical Protection Needs

- protection reports;
- police reports related to any incidents;
- any statements by witness(es);
- medical reports relating to any injuries or conditions relating to legal and physical protection needs.

Survivors of Violence and Torture

- medical records relating to any injuries;
- psycho-social assessment;
- a detailed report of the psychological state of the refugee, and the effects of the torture on the refugee in his or her daily life.

Medical Needs

- a Medical Assessment Form²⁵, including medical history, diagnosis, prognosis, recommended treatment and required follow-up (no older than six months);
- X-Rays, CT scans, photographs, etc.

Unaccompanied and Separated Children

- a report of a BID as outlined in Unit 4 and UNHCR guidelines.²⁶ In exceptional circumstances, if practical operational constraints do not allow the establishment of a BID panel, justification for the need to reduce the procedural safeguards should be documented in advance and kept on file. More than one

²⁵ See UN High Commissioner for Refugees, *Revised UNHCR Medical Assessment Form (MAF) and Guidance Note*, IOM/044-FOM/044/2010, available at: https://intranet.unhcr.org/intranet/unhcr/en/home/executive_direction/official_policies/iom-foms/2010_iom-foms/iom04410.html

²⁶ See Unit 3 of this Learning Programme with respect to children, as well as the *Guidelines on Determining the Best Interests of the Child*, p.5, *supra* note 11.

qualified person should be involved in making the determination.

Women at Risk

- protection reports;
- police reports relating to any incidents; statements by witness(es); medical reports relating to injuries; and psycho-social assessment as available / relevant.

Older People

- details of the difficulties the refugee is facing owing to his/her status as an older person;
- description of the relationship the applicant has with the relative proposed to assist him / her in the resettlement country;
- medical reports relating to any condition(s).

SIGNING THE RRF

Once the RRF and all supporting documentation are completed, the "Declaration Page" must be signed by the resettlement officer, the interpreter, the principal refugee applicant and any adult family members included in the same RRF. The Declaration Page is a waiver of confidentiality by the refugee and other adult applicants, and thus allows UNHCR to share and receive information relating to the resettlement submission with resettlement States.

Signing the "Declaration Page" is equivalent to signing a waiver of confidentiality. It is an important opportunity as well to pass on key messages to help manage expectations.

The signing is an important opportunity to manage expectations, and address fraud concerns. Important messages include:

- the refugee is responsible for the information contained in the RRF, and the case may be rejected if that information is found to be fraudulent;
- the refugee can correct or clarify information given during the interview and included in the RRF, before signing the declaration;
- the refugee is responsible for informing UNHCR as soon as possible of any changes in family composition or circumstances that would be important for their case. This should be done in writing whenever possible;
- the fact that UNHCR submits the application to a resettlement State does not guarantee resettlement; the final decision remains with the resettlement country and it may be negative, even if there are compelling reasons for resettlement;
- the country of resettlement to which UNHCR may submit a case may not necessarily be the refugee's country of choice;
- the process can take a lengthy period of time;
- the office will inform the refugee of new developments in the case, and the refugee can also contact the office for information;
- the process is free of charge; any individual requesting money to process a case should be reported in confidence to the office;

- the fact that the declaration is a waiver of confidentiality requirements and what this means.

If the refugee is in agreement, s/he, other adult members of the family included in the same RRF, the UNHCR interviewer and the interpreter should all sign the declaration page on the same occasion.

The RRF is not normally shared with the refugee at any stage in the resettlement process

Refugees are entitled to receive copies or original versions of documents that they provided, or of which they are the source. Information generated or obtained by UNHCR (such as interview transcripts, case assessments, instructions or legal opinions from UNHCR offices, correspondence with UNHCR offices and external parties, medical and social counselling records and the RRF) are, however, not normally shared with the refugee.²⁷

QUALITY ASSURANCE

All RRFs should be reviewed for their quality by the officer accountable for resettlement and the Regional Hub as applicable. In some cases, Headquarters may also review RRFs.

As noted, resettlement States will judge UNHCR's resettlement work by the quality of the RRFs. High quality RRFs thus serve to increase the efficiency of the process. The *Baseline SOPs* provide detailed instructions for review first by a supervising officer or the officer designated accountable for resettlement, as well as by the Regional Resettlement Hub / Regional Office as applicable. You should read these carefully.

Reviewers should check for completeness of the file and the submission, that the proper procedures have been followed and each step has been documented, the quality of the information and the claim, whether all criteria are fully met, and whether the supporting documentation is complete and does not raise doubts as to authenticity. In some cases, an additional review may be undertaken by Headquarters. In the process, issues may be identified which require further clarification; in some cases, it may be found that the refugee is not eligible for resettlement. In such cases, the refugee in question will need to be informed and counselled. In all cases, *proGres* should be updated accordingly.

The decision to submit a resettlement case

As outlined above, quality assurance will confirm whether a case should be promoted for resettlement. The decision should be based principally on UNHCR resettlement criteria, policies and priorities, not on the policies and criteria of resettlement countries or on the availability of

²⁷ UN High Commissioner for Refugees, *Confidentiality Guidelines*, 1 August 2001, IOM/071/2001 - FOM/068/2001, available at: <http://swigea56.hcrnet.ch/refworld/docid/3be17dfd4.html>. This will be examined also in Unit 6.

places. The officer accountable for resettlement should make the final decision based on a thorough review of the submission's quality.

Once this decision has been made, the officer accountable for resettlement will have to decide:

- the prioritization of the submission; and
- the selection of the resettlement country.

Prioritization of submission

Submissions can be made at three priority levels:

The next step is to decide the priority of submission: normal, urgent or emergency.

- **Normal priority:** for all cases where there are no immediate medical, social or security concerns that would merit expedited processing. The majority of cases fall within this category.²⁸ They are presented for submission after pending urgent and emergency cases have been submitted; prioritization may still occur within the normal priority cases, e.g. for families with young children in difficult situations. UNHCR expects decisions and departure within 12 months in such cases.
- **Urgent priority:** for refugees who have compelling reasons for expedited processing, but for whom there are no immediate medical or security concerns. This category might include women at risk, persons with psycho-social needs, unaccompanied children, survivors of violence and torture, and persons with specific medical needs. UNHCR requests a decision within six weeks in such cases, although further delays may occur. Urgent cases should be prepared and submitted within two weeks of referral or identification.
- **Emergency priority:** for cases in which the immediacy of security and/or medical threat faced by the refugee necessitates his / her removal from the threatening conditions within a few days, if not hours. Emergency cases should be discussed with the officer accountable for resettlement and the responsible Protection Officer, and should be processed, with a decision reached, within a maximum of five days. Pending resettlement, the office should take temporary protective measures and should notify the Regional Resettlement Hub / Regional Office (as applicable) and Headquarters.

The processing of urgent and emergency categories requires rapid action from both UNHCR and resettlement countries. Only a few places are available for such submissions, so it is imperative that these categories are used only when necessary.

Headquarters normally coordinates submission of emergency cases in particular, and such submissions normally must also be routed through

²⁸ In 2009, 90% of submissions (and 91.1% of departures) were of normal priority, compared to 9.2% of submissions (and 8.1% of departures) of urgent priority, and 0.8% of submissions and departures of emergency priority.

Headquarters²⁹. The Regional Resettlement Hub / Regional Office and Headquarters should therefore be informed as quickly as possible of an emergency submission, and the details of the case should be sent with the justification for the emergency submission; in addition, information should be provided on travel documents, exit visa requirements, the refugee's current health conditions (in case of medical emergencies) and whether an escort is required. A focal point should be identified for each case to ensure effective tracking and follow-up. Should such a submission exceptionally be made at the field level, Headquarters must be kept informed.

Evacuation Transit Facilities may offer an additional means for channeling urgent cases. "Flash appeals" could also be considered.

As noted in Unit 2, UNHCR has established Evacuation Transit Facilities (ETFs) where persons in urgent need of resettlement can be evacuated pending final resettlement. The evacuation of some refugees to countries providing an ETF would enable UNHCR to submit these cases for resettlement under 'normal' conditions and not in the acute context caused by threats of *refoulement* and other serious protection problems. The evacuation itself would have to be carried out under emergency conditions and out-processing from the ETF would need to be expeditious to allow space for other cases.

The refugees at risk and in need of evacuation to an ETF would include:

- Refugees at immediate risk of *refoulement* (based on a strict interpretation and verified by the Resettlement Service) or other acute, life-threatening situation;
- Refugees kept in prolonged detention (although not for the commission of a crime / offence) who can only be released if resettled;
- Sensitive / high profile refugees at risk (e.g. political and human rights activities, journalists and individuals of certain nationalities);
- Refugees in need of resettlement for whom a resettlement country and / or UNHCR requires that their final destination for permanent resettlement not be disclosed to the country of first asylum;
- Refugees who might be victims or witnesses of concern to the International Criminal Court or other international tribunal.

UNHCR uses the transit evacuation mechanism essentially for emergency and urgent cases. However, it may on a case-by-case basis use the evacuation option for refugees in need of resettlement who are living in places not accessible by resettlement countries.

In processing cases through ETF, close and rapid communication and coordination with Headquarters (Resettlement Service and Bureaus) as well as Regional Resettlement Hub / Regional Office where applicable. Detailed Standard Operating Procedures (SOPs) on processing cases for

²⁹ See *Delegation of Authority to the Field: Guidelines on Resettlement Dossier Case Submissions and Family Reunification Procedures*, *supra* note 3.

ETF are currently being finalized at Headquarters and will be distributed by the Programme Administrator once they have been officially issued.

For further details on emergency resettlement and the use of ETF, please refer to Information Note and Recommendations from UNHCR – Emergency Resettlement and the Use of Temporary Evacuation Transit Facilities (UNHCR, July 2010)– included in the Annex of this Unit.

In addition, particularly where it concerns a group of persons in similar circumstances and in need of urgent or emergency resettlement, the Resettlement Service may issue a "flash appeal" to alert a number of resettlement States simultaneously.

Selecting the resettlement country

As a general rule, individual cases are submitted to one country at a time

At this stage, UNHCR must make a decision as to which resettlement country a submission should be made. In principle, only one resettlement State should be selected at a time, but this does not prevent resubmission to another State if the first State provides a negative decision. UNHCR's credibility, however, is at stake if a submission is made and accepted by more than one country. An exception is possible only in rare cases, where protection problems of an emergency nature may lead an office to decide to make a submission to a second country while a first one is still pending. This situation will be examined in the next section.

Country chapters in the *Resettlement Handbook* will need to be consulted when selecting a resettlement country

Unlike the earlier decision on whether the resettlement case meets established international standards, the selection of a resettlement State will be driven in part by the criteria of the resettlement countries. For example, a country will not be considered for an urgent submission, if the country does not provide for such a category and regular processing times for the country take considerably longer than would be desirable for an urgent submission. The Country Chapters in the *Resettlement Handbook* provide much greater detail on the official policies and criteria of each State and will help guide this decision. They are in principle updated each year, and the most recent updates should be consulted.

Additional factors outside the formal criteria to be considered include the integration prospects and the availability of places and/or sponsors for the refugee in the resettlement country. Using integration prospects as a consideration is not meant to limit refugees from resettlement, but rather to guide UNHCR's decision as to which State might offer the best durable solution.

Elements to consider from an integration perspective include:

Elements to consider when identifying a suitable resettlement country

- family links or other connection, particularly in resettlement countries;
- language and culture;

- medical and/or specific needs and availability of treatment and support;
- education, background, work experience and skills;
- family composition and size;
- the refugee's expressed preference for a resettlement country (although it should be made clear to refugees that while their preference can be considered, they do not have a *right* to resettlement).

The following will also need to be considered with respect to the resettlement State:

- availability of places and indications by the State to receive specific case profiles;
- selection criteria and priorities;
- admissibility priorities of countries;
- timelines for processing and travel;
- the country's capacity for urgent processing and the availability of services for refugees with specific vulnerabilities;
- whether a selection mission is planned or whether dossier consideration is a possibility; and
- the presence of a supportive community.

Where there are family links or other personal connections to a particular country, efforts should be made to the extent possible to promote the admission to that country. This is useful not only in promoting family unity, but also in supporting integration.

Special intervention may be required where family members are split over different countries of asylum

Family reunification may be more challenging when one or more members of the same family have reached a country of asylum and have obtained a legal status there, if the country concerned does not accept refugees for resettlement and has restrictive policies with respect to family reunification. Efforts should be made to pursue reunification in that country. Family members of refugees are normally refugees, so when reunification is possible under legislation separate from resettlement, the status and protection granted to the family members may need to be considered (i.e. the extent to which the status provided to family members protects them against the risk of *refoulement*). When a family member is not a refugee, this issue is less of a concern. UNHCR may nonetheless provide assistance to non-refugee family members, because they are linked with a refugee. If it is not possible to reunite the family in such a country, intervention may be required to allow the family to be reunited in another resettlement country.

In addition to family reunification, there may be other factors which pose resettlement challenges, a number of which have been examined in Unit 2. All offices should use every opportunity in their dialogue with officials from resettlement countries to promote flexibility in selection decisions. In particularly challenging cases, consultation with the Regional Resettlement Hub / Regional Office and Headquarters is useful because it permits intervening with resettlement States at that level.

DETERMINING THE ROUTING OF THE RESETTLEMENT SUBMISSION

Routing of resettlement submissions is determined by States and UNHCR policy and may be through Headquarters, Regional Hubs or locally.

As we saw in Unit 2, submissions may be made on a dossier basis or via a selection mission, depending on the resettlement State. The Country Chapters of the *Resettlement Handbook* will indicate what routing States will accept. Emergency cases generally need to be routed through Headquarters³⁰. Depending on the country, other cases may also need to be routed through Headquarters while local submission may be possible for some countries. The U.S., Canada and Australia, for example, allow submission directly by field offices. Where Regional Hubs have been established, submissions to these countries should be coordinated and undertaken by the Regional Hubs. This provides an additional safeguard for the quality and consistency of the submissions.

Selection missions require considerable planning, preparation of submissions and logistical support

Selection missions are an important opportunity for States to consider a large number of cases at the same time. They require good planning, as they call for considerable effort not only to prepare the required number of submissions ahead of time, but also to manage logistics and support during the mission itself. As described in Unit 2, the selection missions are agreed upon by Headquarters and resettlement States in consultation with the field. A pre-mission checklist and questionnaire have been developed to be completed by States, which should provide field offices valuable information for preparation. A post-mission questionnaire has also been developed for completion by states after a selection mission.³¹

FINALIZATION OF THE SUBMISSION

A cover memo is required for submissions to each resettlement State

Once the resettlement State has been selected and the submission procedure is known, the officer accountable for resettlement must write a cover letter that provides a brief description of the case. It should specify, *inter alia*:

- the recognition date of the refugee;
- the composition of the case;
- the submission criteria;
- the prioritization of the submission;
- any specific needs of individuals in the case;
- any recommendations to the resettlement country.

The same cover letter may be used to describe all submissions that are being made at the same time, with a table explaining the specificities of

³⁰ See *Delegation of Authority to the Field: Guidelines on Resettlement Dossier Case Submissions and Family Reunification Procedures*, *supra* note 3.

³¹ See UN High Commissioner for Refugees, *Pre-Mission Checklist for Resettlement Interview Missions*, available at: <http://www.unhcr.org/refworld/docid/49631d2e2.html>; UN High Commissioner for Refugees, *Pre-Mission Questionnaire for Resettlement Interview Missions*, available at: <http://www.unhcr.org/refworld/docid/49631d782.html>; and UN High Commissioner for Refugees, *Post-Mission Questionnaire for Resettlement Interview Missions*, available at: <http://www.unhcr.org/refworld/docid/49631dcb2.html>

the different cases. A copy of this memo should be kept in the refugee's file along with the original signed RRF. Only photocopies of the RRF, photographs of all individuals in sections 1 and 2 of the RRF and the required supporting documentation should be used for the submission. No additional information should be provided, in particular internal UNHCR assessments, without consultation and approval by the Resettlement Service. Any decisions must be made in line with the UNHCR Guidelines on Confidentiality.³²

The submission of the RRF to a resettlement country

Once the decision has been made to submit the case and all documentation has been prepared, reviewed and signed off by the officer designated as accountable for resettlement, the case can be submitted to the selected resettlement State in accordance with the routing required; *proGres* should be updated accordingly.

Follow-up

It will be important to maintain regular and open lines of communication with the refugees, the referral sources and resettlement States

UNHCR may continue to advocate with resettlement States for flexibility in their approach with specific cases. However, the ultimate decision rests with resettlement States, and is usually taken in line with their own laws, regulations, procedures and priorities. UNHCR has no decision-making powers in this regard, but it does have a duty to ensure appropriate communications with all parties.

COUNSELLING OF REFUGEES

It is vital to continue managing expectations and ensuring accurate information is conveyed to refugees. They should be clearly informed that the submission by UNHCR has been made, and that the decision rests with the resettlement State. Refugees should further be counselled on the process involved, including realistic timelines by which they can expect a decision by resettlement States. They should also be prepared for a negative decision, even if there are compelling reasons for acceptance, such as family links in the selected resettlement State. They also need to be counselled on UNHCR's policy concerning family reunification and what follow-up or support they might expect from UNHCR.

³² UNHCR Guidelines on the Sharing of Information on Individual Cases: "Confidentiality Guidelines", *supra* note 27.

In most cases, resettlement States do not base their decisions on the dossier alone, but require interviews by an immigration officer with the refugees, such as during a selection mission. All refugees to be interviewed should thus be briefed regarding such upcoming interviews and what will be expected of them, e.g. to be able to articulate their claim both as refugees and with respect to their resettlement need.

ENSURING UPDATED INFORMATION RELATING TO THE CASE

It is vital that all parties are kept apprised of any changes in the family composition or in the situation of the refugees. In case of changes in family composition, credibility verification will be particularly important.

UNHCR further retains responsibility for ensuring that information that has been submitted to resettlement States remains valid. UNHCR should thus remind refugees to inform promptly of any changes in situation, whether in general circumstances or in family composition. Relevant changes may include births, deaths or divorces. In certain situations, the change may indicate a need to review the resettlement eligibility.

Since family composition is one of the most frequent areas of fraud, any such changes must be carefully examined and verified by UNHCR. Any family composition changes should be discussed with the principal applicant, and any 'new' adult family members should be interviewed. Original supporting documents (e.g. birth certificates, marriage certificates, divorce papers) should be provided by the refugee and examined by the UNHCR staff responsible for the case. UNHCR staff should keep copies of the documents in the physical file and prepare a note for the file describing the situation that includes an analysis of the legitimacy / credibility of the shift in circumstances and resettlement criteria.

If the office sees a pattern of family size changes in cases under consideration for resettlement, the office should consider the possible underlying motives. If necessary, it should take measures to prevent fraud or abuse in the refugee community. Where family changes appear doubtful, the officer accountable for resettlement may choose – after consulting the Head of Office, the officer responsible for protection, and perhaps even Headquarters and the Regional Resettlement Hub / Regional Office, if applicable – to put such cases on hold, if they are not of an urgent nature. Issues relating to fraud, including identifying and combating fraud, are discussed further in Unit 6.

WITHDRAWAL OR SUSPENSION OF SUBMISSIONS

Withdrawal or suspension of submissions may be considered in the following circumstances:

Circumstances requiring withdrawal or suspension consideration

- when the refugee disappears and can no longer be contacted in the country of asylum, despite repeated attempts;
- when urgent protection problems that require upgraded priority / swift resolution and departure of a pending case arise (unless a State allows urgent processing, such that upgrading a case may be an option);

- when decisions on emergency or urgent cases take an excessive amount of time, UNHCR should seek a clear explanation and an indication as to when a decision is expected and use the answer in considering whether the case should be withdrawn. In some cases, upgrading a submission from urgent to emergency status may be considered, but only if emergency criteria are truly met;
- when allegations of fraud concerning the case (for example, with respect to changes in family composition) arise;
- when the reasons for the submission substantially change or cease to exist; (for example, when there are changes in the family situation for a person formerly considered at risk due to separation, or when there are fundamental changes in the country of origin).

In some cases, the need to consider withdrawal or suspension may be identified by an office that is not responsible for coordinating the particular submission or responsible for the case. In such cases, those respective offices should be consulted and informed immediately. A decision to suspend or withdraw will require the authorization of the officer accountable for resettlement, the UNHCR Representative, the Regional Resettlement Hub / Regional Office as applicable and/or the Resettlement Service at Headquarters.

Once such a decision has been made, the officer accountable for resettlement should assign a staff member to ensure a timely resolution for the particular reason for suspension / withdrawal.

PARALLEL OR MULTIPLE SUBMISSIONS

As noted above, submissions should ideally only be made to one State at a time. In rare cases, however, parallel submissions may be warranted. For example, UNHCR requires that emergency cases normally be decided within five days, but this time period may be extended where there are reasonable grounds. Any emergency submission that is pending for more than two weeks, however, should be considered for possible parallel submission, which requires the explicit authorization of the Resettlement Service at Headquarters. Another exceptional case may be where considerable delays in the processing of an urgent case leads to an 'emergency' situation that requires a rapid resolution. If the criteria for such a prioritization are met, the same process described above would occur.

Parallel submissions can be considered in exceptional cases only

FOLLOW-UP WITH RESETTLEMENT STATES

The officer accountable for resettlement should ensure regular follow-up on all submissions either directly with resettlement States, where they are made locally, or through the Regional Resettlement Hub / Regional Office and/or Headquarters as appropriate. This includes following up when deadlines for emergency, urgent and normal submissions have passed without decisions, or when there are excessive

delays (i.e. more than 60 days) in scheduling interviews for locally submitted normal priority cases.

If there has been any change in the circumstances of a case or in family composition, or a decision has been made to suspend or withdraw a submission, the officer accountable for resettlement must ensure that the resettlement country is informed as follows:

- in cases of changes to the family composition, the resettlement country should be informed once the legitimacy of the new addition is confirmed;
- in the exceptional situation where a parallel submission is made, the resettlement States concerned must be informed that the same case has been submitted consecutively and to which other State(s) the submission has been made;
- in cases of suspension or withdrawal, a written explanation should be provided to the resettlement country explaining the grounds for the withdrawal / suspension. If the reason is an allegation of fraud or corruption, the resettlement country should be provided with a broad outline of the situation and advised of the timeframe by which UNHCR expects to close investigations. However, the details of the allegations are subject to confidentiality considerations. The Regional Resettlement Hub / Officer and/or the Resettlement Service at Headquarters should be consulted for guidance and advice prior to communicating with the concerned State.

In all cases, *proGres* and the physical file should be updated.

Resettlement country decision

As soon as a UNHCR office receives a decision on a submission, it must inform all offices concerned with the case. The field office is then responsible for informing the refugees concerned in a prompt manner, unless this is done directly by a local embassy or IOM, another important resettlement partner, particularly with respect to pre-departure processing and departure. UNHCR's registration database *proGres* should also be updated.

Where the decision is an acceptance, the next step is pre-departure processing. Where the decision is a decline, follow-up will be required by UNHCR in considering resubmission to another resettlement State. When possible, UNHCR should seek the reason for rejection and record it in *proGres* and the refugee's file.

In case of decline by a resettlement State, UNHCR will need to assess whether the case should be resubmitted to another State, which will consider the reason for decline as well as the elapsed time.

Mandatory action required in all cases considered for resubmission

Reasons for decline of the submission by a State – prejudicial or non-prejudicial.

RESUBMISSION

The term “resubmission” refers to the submission of a case for resettlement to a State after the case has been declined by another State. In exceptional cases, a resubmission can be made to the same State that previously declined the case. For example, in the event that the factors that led to the State’s decision to decline the case are subsequently addressed or no longer exist, a resubmission to the same State can be made subject to the agreement of the concerned State to reconsider the case.

Generally, UNHCR should resubmit following a decision by a State to decline after the following conditions are reconfirmed: (i) the applicant is a refugee who remains eligible for resettlement according to UNHCR policy; and (ii) resettlement remains the most appropriate and viable option for the individual.

All resettlement cases – prior to resubmission – should be checked for accuracy in case of changed circumstances (e.g. situation in country of refuge, family composition, etc.) and need for resettlement. These checks should be undertaken regardless of the reason for decline of the earlier submission. However, depending on the time elapsed since the RRF was finalized / submitted and the reason for the decline of the submission, these checks might include:

- reviewing the case dossier to confirm that everything is in order and remains applicable; or,
- interviewing the Principal Applicant to confirm that family composition and other basic details are correct; or,
- reviewing the case more thoroughly – involving an interview with the Principal Applicant and her/his family and dependents – to check all aspects of the case, including aspects pertaining to eligibility for resettlement.

In all cases where resettlement delivery is unduly delayed for any reason, including negative State decisions, resettlement staff should update *proGres* and liaise with protection staff to ensure attention is given to the on-going protection needs of the individual(s).

The Applicant(s) should be informed about any significant developments affecting their case, including decline decisions by States and the possibility of their case being resubmitted.

UNHCR officers should always seek a written explanation from a State when a submission is declined. This information is a key element in evaluating whether to resubmit a case. It is important to assess whether or not the reason for decline by a resettlement country is prejudicial or non-prejudicial to the case vis-à-vis UNHCR’s resettlement decision. State decisions are prejudicial if the reasons for declining a case are indicative that the individual should not qualify for resettlement under UNHCR’s resettlement guidelines. All other reasons for declining a case should be regarded as non-prejudicial, including where reasons are not provided by the State upon request.

A State decision to decline resettlement for reasons specific to its particular immigration laws would be non-prejudicial if those grounds are not relevant to UNHCR's own resettlement criteria. For example, a State may deny resettlement based on "integration potential" or HIV status, grounds which would not be relevant to UNHCR resettlement criteria. In these circumstances, the review called for is necessarily limited and a prompt resubmission should be made to a country which does not have the same limitations. It would, nevertheless, be necessary to check for any changed circumstances prior to making a resubmission.

In some cases, a State may decline resettlement for a reason that calls into question UNHCR's own grounds for seeking resettlement. For example, the State expresses doubts about credibility, the RSD assessment, or the family composition. UNHCR would consider the reason for decline to be prejudicial. If so, the case should normally be re-checked and re-interviewed by UNHCR to see whether resettlement remains appropriate solution. If upon rechecking the case UNHCR is of the view that resettlement remains an appropriate response, then the case may be resubmitted.

In some cases, a review of the case may reveal a cause not to resubmit the case. In such cases, this decision should be fully documented in the refugee's file. The refugee should be appropriately advised as to the status of her/his case and that UNHCR will not be resubmitting the case to additional resettlement countries.

Recording the decline decision of States

UNHCR's policy is that unless exceptional reasons merit otherwise, past decisions of resettlement States, and the reasons for those decisions will be recorded in *proGres*, but not on the RRF. The rationale for this is that information on the RRF about previous State decisions may create a biased view of the case leading to further and potentially unjustified refusal. This is particularly the case when resettlement States have not provided UNHCR with the full reasons for declining a case. If a case has been properly reviewed after a previous State decline, and corrections or amendments made to the RRF as required, this should suffice to reassure a State receiving the RRF that UNHCR has accurately and fully reflected all known information. For further detailed information, please see UNHCR's resubmission guidelines.³³

³³ UN High Commissioner for Refugees, *Guidelines on the Resubmission of Individual Resettlement Cases*, 28 January 2009, available at: <http://swigea56.hcrnet.ch/refworld/docid/49818ae73a6.html>

Pre-departure processing

Pre-departure should involve the following activities:

- cultural and pre-departure counselling and orientation;
- medical screening and follow-up;
- exit visa and travel arrangements;
- escort and transit arrangements (particularly for medical cases).

It may also include arrival services and integration support, including:

- reception arrangements;
- on-arrival accommodation;
- initial arrival support services (e.g. medical or psychological)
- language training and cultural orientation;
- on-going support for settlement and integration.

As noted earlier, IOM is an important partner for UNHCR with regard to pre-departure processing and travel. Various NGOs may also be significantly involved in preparing refugees for departure.

UNHCR's role in pre-departure processing will vary considerably depending on the arrangements in that particular country

UNHCR's specific responsibilities with respect to pre-departure processing may vary considerably depending on the extent of IOM's presence, the resettlement State's presence and arrangements with IOM and/or other resettlement partners, as well as UNHCR's partnership with IOM and/or other resettlement partners. The *Baseline SOPs* and the *Resettlement Handbook* provide more details for cases in which UNHCR's more extensive involvement with pre-departure processing is required, including, for example, when UNHCR is required to hold or transfer passports or travel documents on behalf of refugees. For more information, you may consult the *Guidance Note on Co-operation between IOM and UNHCR in the Transportation Sector*.³⁴

UNHCR remains responsible for all protection aspects of departures

Even if UNHCR's specific role, particularly with respect to logistics and pre-departure orientation, is fairly limited, UNHCR remains responsible for refugees until the resettlement State is able to extend effective protection to them. In particular, this means ensuring that any protection-related concerns are taken into account in the pre-departure preparations.

A staff member should be identified as a focal point to follow these preparations and intervene if necessary, in close coordination with the local IOM office, any other resettlement partners, the authorities in the host country and the resettlement country. Focal points should also watch for any departure delays and, particularly for emergency and urgent cases, should immediately notify the officer accountable for

³⁴ UN High Commissioner for Refugees, *Guidance Note on Co-Operation between IOM and UNHCR in the Transportation Sector*, IOM/76/2002-FOM/72/2002, available at: <http://swigea56.hcrnet.ch/refworld/docid/4a54bc020.html>

resettlement of such delays as well as any important protection-related concerns. The accountable officer is then responsible for ensuring follow-up with Headquarters and resettlement States that have accepted the refugees regarding any delays and protection-related concerns.

Once the refugees have departed, all relevant UNHCR partners, the Regional Resettlement Hub / Regional Office as applicable and Headquarters, where appropriate, should be informed; *proGres* and the physical files should be updated and closed.

Group Resettlement Methodology

Group processing differs considerably from individual processing, although the same safeguards apply.

Application of the group methodology requires extensive consultation with and clearance from the Regional Resettlement Hub as applicable, and the Resettlement Service and the relevant Bureau at Headquarters.

The group resettlement methodology should not impinge on individual identification and processing, but should always supplement it. Therefore, adequate resources and measures need to be made available for this purpose. Although similar safeguards apply to the group methodology as to the individual one in principle, processing differs considerably for the two, and is subject to context-specific adaptation. In all cases, however, proposals to apply the group methodology must be discussed with the Regional Resettlement Hub / Regional Office if applicable, as well as both the Resettlement Service and the relevant Bureau at Headquarters. Their clearance is required prior to finalization and consultations should begin with the Regional / Country Operations Planning exercises. Detailed steps are included in the Baseline SOPs, and Chapter 7 of the *Resettlement Handbook*, which should be consulted wherever this methodology is to be applied.

In Unit 4, we examined the common characteristics that a 'group' should ideally have for application of the group methodology. Should the Head of Office feel that initiation of a preliminary proposal for group processing is warranted, the concerned office should prepare a short proposal containing:

- a basic description of the potential group (including estimated size);
- the protection rationale for proposing group resettlement;
- identification of the group members' common characteristics;
- possible constraints to successful resettlement;
- preliminary resource implications for UNHCR and resettlement countries;
- recommended processing modality (e.g. a verification exercise to determine membership and obtain consent from members of the group, proposed timeline for implementation, etc.);
- suggested country(ies) of submission.

This preliminary proposal should be submitted to the Regional Resettlement Hub / Regional Office if applicable and both the Resettlement Service and the relevant Bureau at Headquarters for clearance. The Resettlement Service will then provide a substantive and consolidated response from Headquarters within one month.

More extensive Group Profile and Proposal Document, albeit without individual documentation

Should the response be positive, more detailed information and a detailed plan in the form of a "**Group Profile and Proposal Document**" (GPPD) will be required.³⁵ This should be submitted to Headquarters (Resettlement Service and relevant Bureau) together with a shorter abstract for final clearance. The abstract should set out:

- a readable, compelling summary of the group proposal tailored as necessary to individual resettlement countries;
- an identification of resources required by all partners involved (funds, deployees, technical assistance);
- a clear (though preliminary) timeline for processing *and* out-processing the group.
- procedures that are in place to mitigate risks (e.g. fraud and staff safety) and manage refugee expectations.

Initial consultations with key stakeholders

If the GPPD is approved by Headquarters, the Resettlement Service will undertake **initial consultations with key stakeholders**, in coordination with the relevant office in the field, to discuss the group. Normally, no individual documentation will be provided at this stage, although an indicative list of the individuals belonging to the group may be provided if it is available and a waiver of confidentiality has been signed by the concerned individuals.

The *Group Resettlement Plan of Action* specifies procedures to be followed. General principles apply, although details will vary depending on the local situation and the requirements of resettlement States. It must specify appropriate safeguards and measures to deal with challenges which may arise, including logistics, security, fraud, and complex cases.

If UNHCR receives positive indications from the resettlement States consulted, the office in the field will need to establish an implementation plan for processing and verification of bio-data and family composition, and prepare a final submission. The "**Group Resettlement Plan of Action**" should be based on consultations with the Regional Resettlement Hub / Regional Office as applicable, and Headquarters (both the Resettlement Service and the relevant Bureau), resettlement countries, and other partners. Although details may vary considerably depending on local circumstances, they will include:

- processing modalities (an agreement concerning the contents of individual files and an agreement with resettlement countries concerning the definition and process for dealing with dependency issues);
- procedures to mitigate risks (e.g. fraud) and to manage refugee expectations;
- a detailed description of the type and form of documentation to be provided in the submission;

³⁵ See attachment to the UN High Commissioner for Refugees, *Methodology for the Resettlement of Groups*, IOM/67/2003//FOM/67/2003, 16 October 2003, available at: https://intranet.unhcr.org/intranet/unhcr/en/home/executive_direction/official_policies/iom-foms/2003iomfoms/iom_067-fom_067_2003.html .

- respective roles and responsibilities;
- timelines and work plan for a verification and consent exercise;
- resources needed (number and nature of personnel, logistical support including transportation and other arrangements, costing and budget);
- problem resolution mechanisms (including a strategy for handling declined cases, strategies for ensuring the best interests of children and integration issues specific to the group); and
- basic assumptions upon which processing will proceed.

In preparing this Plan, challenges that are likely to arise in initial processing are likely to multiply in group planning, because far larger numbers of refugees are involved and the resources required must increase accordingly. As with individual processing, group processing should consider issues such as risk mitigation, confidentiality maintenance, security measures, staff and training requirements, logistics, site design for verification and interviewing on a large scale, *proGres* maintenance and update, cooperation and partnerships, quality assurance, and expectations management.

Additional challenges that must be considered include: how to ensure the integrity of *proGres*; how to identify and deal with fraud or misrepresentation; how to manage or adjudicate complex cases, such as an unregistered or undocumented spouse or children, marriage with a local citizen, or cases where a BID is required; the impact on resources, including staffing and time; possible pull factors, particularly given the scale of the operation; impact on assistance and services provided to refugee communities; and ensuring cooperation of stakeholders and flexibility of resettlement countries.

If the Plan of Action is approved, it must be implemented with special attention to verification and obtaining informed and voluntary consent from the refugees concerned. Confidentiality waivers must be obtained for all refugees.

The actual implementation of the Plan is the next stage. As with individual processing, it is important in the **verification process** to ensure that the refugees meet the criteria identified for the group, that there are no questions raised as to identity or family composition, and that difficult cases are dealt with or set aside for subsequent follow-up. At the same time, the refugee's consent and a **waiver of confidentiality must** be obtained. The timing, methodology, and degree of comprehensiveness of verification and consent exercise may vary significantly, and offices may need to develop specific SOPs for this stage to ensure that all necessary steps are completed. Any such process will likely need to be preceded by mass information campaigns that provide general information on eligibility, the resettlement country, the proposed resettlement and verification process, information-sharing, and other important information that allows the refugees to prepare as well.

Once all data have been verified, the submission can be made

Following verification, the field office should inform the Resettlement Service of the final number of persons to be submitted for resettlement, and forward the materials constituting the case files for each individual/case in the group to the resettlement State(s) in accordance with the **submission procedures** that have been implemented.

Refugees should be informed of any decision concerning their case only once all decisions have been made about:

- eligibility;
- case composition;
- BIDs for children, if applicable;
- identification of cases for priority consideration; and
- resettlement country.

Continued monitoring and follow-up will be required, including for any complicated cases. Once the processing is completed, a post-submission analysis should be prepared.

Following the transfer of case files to resettlement countries, field offices should remain involved in monitoring the results of the processing, and should handle issues associated with rejected or complicated cases involving issues that could not be resolved immediately. This may require setting up special follow-up interviews with the concerned refugees. As with individual processing, regular counselling and information sessions with refugees may also be required. A **post-submission analysis** of the operation should also be undertaken.

5 Assignments

Essential Reading:

Please review the following additional documents:

- UN High Commissioner for Refugees, *Baseline Standard Operating Procedures on Resettlement*, 1 January 2008, sections relating to processing, available at: <http://swigea56.hcrnet.ch/refworld/docid/48b6997d2.html>.
- UN High Commissioner for Refugees, *Resettlement Handbook*, 2004 (Country chapters revised July 2009), Chapter 6, Sections 6.4 to 6.9 as well as Chapter 7, available at: <http://www.unhcr.org/refworld/docid/3ae6b35e0.html>
- As applicable:
 - ...if ProGres has been rolled out in your office: UN High Commissioner for Refugees, *Resettlement Registration Form (RRF) for Non-ProGres Users: User Guide*, March 2007, available at: <http://swigea56.hcrnet.ch/refworld/docid/4ae579692.html>
 - ...if ProGres is not available in your office: UN High Commissioner for Refugees, *Resettlement Registration Form (RRF): Using proGres to Generate the RRF*, October 2009, available at: <http://swigea56.hcrnet.ch/refworld/docid/4ad303552.html>
- UN High Commissioner for Refugees, *Guidelines on the Resubmission of Individual Resettlement Cases*, 28 January 2009, available at: <http://swigea56.hcrnet.ch/refworld/docid/49818ae73a6.html>

OPTIONAL:

You may also wish to review:

- UN High Commissioner for Refugees, *Self-Study Module 3: Interpreting in a Refugee Context*, 1 January 2009, available at: <http://www.unhcr.org/refworld/docid/49b6314d2.html>
- UN High Commissioner for Refugees, *RLD4 - Interviewing Applicants for Refugee Status*, 1995, RLD4, available at: <http://www.unhcr.org/refworld/docid/3ccea3304.html>
- UN High Commissioner for Refugees, *Resettlement Handbook (country chapters last updated September 2009)*, 1 November 2004, Chapter 10 on "Partnership and Liaison", available at: <http://www.unhcr.org/refworld/docid/3ae6b35e0.html>
- UN High Commissioner for Refugees, *Guidance Note on Co-Operation between IOM and UNHCR in the Transportation Sector*, IOM/76/2002-FOM/72/2002, available at: <http://swigea56.hcrnet.ch/refworld/docid/4a54bc020.html>
- UN High Commissioner for Refugees, *Pre-Mission Checklist for Resettlement Interview Missions*, 5 January 2009, available at: <http://www.unhcr.org/refworld/docid/49631d2e2.html>
- UN High Commissioner for Refugees, *Pre-Mission Questionnaire for Resettlement Interview Missions*, 5 January 2009, available at: <http://www.unhcr.org/refworld/docid/49631d782.html>
- UN High Commissioner for Refugees, *Post-Mission Questionnaire for Resettlement Interview Missions*, 5 January 2009, available at: <http://www.unhcr.org/refworld/docid/49631dcb2.html>

Exercise 5.1:

Please provide brief yet complete responses in your own words to the following questions (approximately one page total for questions 1 and 2; questions 3 and 4 are to be completed on the attachments):

1. Assess your office's resettlement procedures against the standards and procedures set out in the Baseline SOPs. Are these standards and procedures followed in your office? Where do they fall below the standards? Where are the standards in your office higher than set out in the Baseline SOPs? Explain in detail. Also explain where efforts are being made to correct any shortcomings, or make suggestions as to how this could occur. You may wish to discuss with colleagues, and use this as an opportunity to complete the Baseline SOPs with office-specific information.
2. Is proGres used in your office? Is it used to its full potential? Explain any shortcomings and challenges faced in this regard by your office. Make suggestions as to how the use of proGres could be improved.

Exercise 5.2:

Review the attached list of cases and indicate the priority of submission that the cases should receive. Explain your reasoning concisely (To be completed on the attachment).

Exercise 5.3:

Review the attached RRF. In track changes, mark in detail how this RRF could be improved in order to increase the likelihood of acceptance by States (To be completed on the attachment).

Please submit your responses to the designated Learning Program administrator.

6

A well-managed resettlement operation

Learning Objectives

In this Unit, we will examine issues such as the reception of persons of concern and handling enquiries, file management, confidentiality issues, security and anti-fraud measures, as well as the concept of accountability in relation to resettlement.

At the end of this Unit, you should be able to:

- understand the responsibility of each staff member, including but not limited to senior managers, to contribute to a well-managed resettlement operation;
- outline the principles of accountability and authorization and how these can be ensured;
- explain how related factors, such as reception facilities for persons of concern, contribute to a well-managed resettlement operation;
- describe how enquiries by persons of concern should be handled;
- explain the principle of transparency and outline important principles related to file management and maintenance of confidentiality of information;
- explain how fraud can occur; outline what preventive actions and post-fraud responses can be taken.

The designated Learning Programme administrator will recommend the time allotment for completion of this Unit.

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Responsibility for a well-managed resettlement operation

Responsibility for a well-managed resettlement operation lies with all staff members, who should carry out their functions with integrity and to the highest standard

It is important to recognize that a well-managed resettlement operation is not solely an issue for senior managers, although some aspects will clearly require their involvement and leadership. The functions outlined in this and previous units contribute to a well-managed resettlement operation and are the responsibility of different staff. It is thus incumbent upon all persons involved with resettlement, regardless of status, to contribute to a well-functioning operation. Each staff member is, individually and collectively, responsible for ensuring that protection, including resettlement, is conducted with the highest possible standards by properly discharging his or her respective functions. This is reflected in the *UN Staff Regulations*¹ and the *UNHCR Code of Conduct*² and is part of official policy with respect to management of protection activities in general.³

Senior managers, in particular Representatives and Heads of Office, have a clear role to play in ensuring that resettlement operations are well managed. This includes creating a supportive environment by:

Senior managers do have an important role to play as well

- ensuring that all functions and operations – such as assistance, registration, RSD and resettlement – are carried out appropriately to the highest standards (Representatives are accountable to Headquarters for this);
- ensuring that the office as a whole recognizes the links between resettlement and other functions and makes resettlement an integral part of the overall office strategy on protection, not only in the context of the operations planning process but also in everyday teamwork;
- encouraging close cooperation and communication between different units;
- ensuring, to the extent possible, that appropriate resources are made available to maximize the efficiency of each activity, such as when more detailed registration or follow-up verification is required to support RSD and resettlement; this may include

¹ See UN Staff Regulations 1.2 and 1.3. *Staff Regulations of the United Nations and Provisional Staff Rules*, ST/SGB/2009/7, 31 August 2009; available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=ST/SGB/2009/7>.

² *UNHCR Code of Conduct & Explanatory Notes*, UNHCR/IOM/60/2002//FOM/56/2002, 14 October 2002; available at: <http://www.unhcr.org/405ac6d27.html>.

³ See also: UN High Commissioner for Refugees, *Management of Protection Activities - Responsibilities of UNHCR Staff*, 15 March 2002, IOM/025/2002 - FOM/024/2002, available at: <http://swigea56.hcrnet.ch/refworld/docid/3d4524a52.html>.

reliance on affiliate workforce, such as under the deployment schemes introduced in Unit 2;

- ensuring appropriate reporting and transparency in all actions;
- providing an appropriate accountability framework;
- maintaining healthy staff relations and appropriate stress management;
- ensuring that measures to maintain security and safeguard against fraud and abuse are high on the agenda; and
- leading by example.

All staff involved in resettlement must, however, help ensure that actions they undertake are done conscientiously and in line with their responsibilities, the UNHCR Code of Conduct and appropriate policy and procedural guidelines.

Integrated approach to resettlement

As we have seen already, a well-managed resettlement operation does not stand alone, but rather is well-integrated into protection operations. Indeed, as we have emphasized in Units 3 through 5, successful resettlement is dependent on good cooperation with colleagues involved in other areas of activity (e.g. RSD, protection and community services) and field staff dealing with registration, voluntary repatriation or local integration, as applicable, and also relies on a number of important external partners. It is also in the interest of the office to incorporate resettlement in the overall protection strategy, since resettlement may have an important impact, both positive and negative, on other activities. The strategic use of resettlement will ideally maximize any positive impact, whereas effective planning and risk management can help avoid negative impacts as much as possible.

Appropriate coordination and cooperation with the Regional Hubs / Offices, as applicable, and the Resettlement Service and Bureaus in Headquarters is equally important. This cooperation goes not only to general policy and practice, but often also includes operational follow-up in individual cases. Good cooperation also allows sharing of good practices and lessons learned with other offices.

This integrated approach should be reflected not only in the context of the operations planning process, but also in the regular daily work of the office. The importance of regular resettlement meetings to coordinate resettlement activities cannot be over-emphasized. These should involve internal as well as external partners, and may at times include resettlement States and the host country, depending on the nature of issues to be discussed. Regular updating on practical and operational aspects of protection delivery and assistance is also required of all relevant partners. It is also important to involve protection colleagues closely in all resettlement activities.

In addition to general coordination, the officer accountable for resettlement must ensure that regular reports on resettlement activities are shared appropriately. This includes reporting on the number of assessment interviews conducted, the number of cases approved for submission, a breakdown of submissions by resettlement countries and departures, and other issues including fraud.

A well-integrated approach to resettlement will also use reception facilities for refugees and handle enquiries effectively, ensure the security of the facilities and staff, and properly manage files.

Reception facilities

Throughout Units 4 and 5, we have highlighted the importance of managing expectations and appropriately counseling and informing refugees on resettlement and on the status of their particular case. While such communications can take various forms – such as mass information campaigns, meetings with refugee leaders, communities and refugee women, as well as individual letters and notifications – depending on the specific message, it is important always to have a receptive environment to allow enquiries by refugees at UNHCR premises.

All persons of concern, especially vulnerable persons, should be able to access UNHCR premises

All persons of concern, especially vulnerable persons such as women and children, should have access to UNHCR. In terms of physical access to UNHCR premises, there must be appropriate reception facilities, including a waiting area that provides protection against natural elements, access to drinking water and toilets, appropriate security procedures, and fair and efficient reception procedures. UNHCR reception, registration and security staff should be trained on how to respond to persons of concern seeking access to UNHCR colleagues, and, on how to identify individuals with priority needs.

Standard Operating Procedures (SOPs) should govern the access of persons of concern, including how enquiries are handled and to whom they should be referred. To the extent possible, persons of concern should make appointments to see relevant UNHCR staff, but there should be fixed times for persons of concern to arrive without a prior appointment. Provisions should also be made outside of these time periods for drop-in visits of an urgent nature, or those which concern persons with specific vulnerabilities.

The SOPs should include effective and age, gender and diversity sensitive mechanisms that ensure that women, whether alone or accompanied by their families, receive information on UNHCR and the resettlement process and have the opportunity for a separate and confidential interview with UNHCR staff. Children who are separated from parents or primary caregivers should receive priority in reception and should be referred without delay to the appropriate staff member.

Information on how to access UNHCR should be widely publicized

Information on how and when to access UNHCR, including after hours in an emergency, should be widely disseminated to persons of concern. They should be informed that access to UNHCR premises and all services are free of charge.

An easily accessible complaints mechanism should as well be established and widely publicized

A confidential complaint mechanism should also be established so that persons of concern can report problems in accessing UNHCR and protection, whether these complaints concern UNHCR staff, implementing partners or other actors. Means to submit complaints need to be easily accessible to persons of concern. Paper and writing utensils and a writing platform need to be made available in addition to a box for complaints. Complaints boxes should be locked, with only designated persons having access to the key, which should be kept in a secure place. The mechanism may also involve telephone hotlines and confidential e-mail addresses. Information on this mechanism needs to be publicized widely.

Details of these procedures are incorporated into the Baseline SOPs⁴.

Handling resettlement enquiries

Procedures for enquiries in person

Ideally, staff should maintain a logbook of all counseling sessions, which records the name, file number, date and time, nature of the enquiry and the response provided, as well as any follow-up action to be taken. Where needs of a social, medical or financial nature, which would be better dealt with by community services or protection staff, are raised, the enquiry should be recorded and referred as appropriate. A copy of this record should be kept in the individual's physical file.

Procedures for enquiries by telephone

Where enquiries are made by **telephone** or **email**, it is particularly important to honor the principles of confidentiality, as it is more difficult to confirm the identity of the person through these media. In principle, no case-specific or sensitive information should be given over the telephone or by email, although procedural advice and general information may be provided if this does not breach confidentiality. Otherwise, the officer must be convinced that the telephone or email enquirer is the concerned individual.

For telephone enquiries, one way of confirming the identity of the inquirer might include a series of questions that only the concerned individual could answer correctly (e.g. case file number, name and birth place of parents, date and nature of last correspondence with UNHCR). Such enquiries should not be handled by interpreters, untrained or junior staff. Another option is to make an appointment for the individual to discuss the matter at the UNHCR office.

⁴ UN High Commissioner for Refugees, *Baseline Standard Operating Procedures on Resettlement*, 1 January 2008, available at: <http://swigea56.hcrnet.ch/refworld/docid/48b6997d2.html>.

UNHCR may wish to invite the enquirer to provide additional information in writing, by letter or email. If relevant information is passed by telephone, a record of the conversation should include the date and time of the call, the names of all involved, the file number, the main points of the conversation and any action that was agreed or recommended. This record should be included in the appropriate case file.

Procedures for enquiries in writing

Enquiries in **writing** should be reviewed by the officer accountable for resettlement before being passed to the appropriate resettlement officer for further action. Some documents may require translation before being passed on. In all cases, the case officer should check the letter against information in the case file.

Managing expectations and security risks

With the expansion of resettlement activities in recent years, the management of refugees' expectations has become a critical part of effective resettlement delivery

Problems will be kept to a minimum if resettlement is properly conceived and managed

Resettlement needs to be managed with the understanding and support of refugees.

With the expansion of resettlement activities in recent years, managing refugees' expectations has become a critical part of effective resettlement delivery. The protracted nature of some refugee situations, where local integration and voluntary repatriation are not foreseeable options, makes resettlement opportunities highly sought-after, which can escalate the risk of fraud, corruption, violence among refugees and concerns for staff security.

Problems can be minimized if resettlement is properly conceived and managed. A 'resettlement only' approach to durable solutions, regardless of the resettlement processing location, may have a concomitant negative impact (e.g. secondary movements and pull-factors from countries of origin) that can be difficult to manage. Indeed, in many protracted refugee situations around the world, resettlement is the only viable durable solution, or is perceived as such, which can create enormous and often unrealizable expectations within the refugee community. These expectations, combined with frustration and possible trauma from prior experiences, can be a source of anxiety and tension that may ultimately lead refugees to extreme measures, such as organized protests or violence.

Since UNHCR is instrumental in determining resettlement interventions by States, it is understandable that refugees direct their resettlement-related concerns and frustrations toward the Office. However, the source of such concerns is not necessarily 'resettlement' per se, but rather how refugee situations and solutions are managed, the extent to which refugees are able to participate in the process of making decisions that affect their lives, and their access to information about resettlement and other possible solutions. Indeed, resettlement often serves to alleviate concerns of refugees because it is a protection tool and a durable solution. Whether or not resettlement is viewed favorably by refugees, the challenge for UNHCR and the international community

is to manage its use in a way that can be understood and supported by the refugees without giving rise to conflict.

Triggers for potential security risks

The presence of tension-inducing factors – such as a wide disparity between perceptions of resettlement and of other alternatives, or when needs for resettlement exceed opportunities – may make refugees more susceptible to anxiety, frustration and violence, especially when catalyzed by certain ‘triggering factors’. Such factors, which often underlie aggressive behavior in different operational contexts, are not the only ones associated with resettlement, but include:

Management has a responsibility to ensure regular oversight and proactive intervention, where necessary, in a timely fashion

- **PERCEPTIONS OF ABUSE OF POWER, CORRUPTION OR UNETHICAL BEHAVIOR EXIST.** Research by UNHCR’s Emergency and Security Service (ESS) suggests that these perceptions exist in a high number of cases in which refugees have resorted to violent or aggressive behavior. Sadly, UNHCR’s experience illustrates that it is not always just a matter of perception. The desperation of many refugees and the limited availability of resettlement opportunities can provide an environment for exploitation and unethical behavior by refugees and those who interact with them. This fact emphasizes the managerial responsibility to ensure regular oversight and timely proactive intervention where necessary.
- **POLICIES ARE NOT CLEAR OR FULLY UNDERSTOOD OR PERCEPTIONS OF UNEVEN OR UNFAIR POLICY APPLICATIONS EXIST.** Problems often result from a combination of these (e.g. lack of participatory assessment mechanisms or similar methods to identify refugees for referral to resettlement).
- **REFUGEES ARE TREATED WITH INSENSITIVITY OR LACK OF RESPECT.** This is a particular concern in offices where a small number of protection staff must interface with hundreds of refugees without opportunities for breaks, risking the onset of fatigue, indifference and burnout.
- **A REFUGEE’S CASE IS ASSOCIATED TOO CLOSELY WITH ONE STAFF MEMBER.** This can invite the perception that a decision was based on personal factors rather than the impartial application of universal policies.
- **REFUGEES HAVE BEEN GIVEN REASON TO BELIEVE THAT VIOLENT OR COERCIVE BEHAVIOR WILL BE EFFECTIVE IN OBTAINING A DESIRED RESULT FROM THE OTHER PARTY (OFTEN UNHCR).** This is perhaps most commonly the trend in protracted group disturbances experienced by UNHCR, and it underscores the importance of avoiding sending mixed messages, and maintaining a position that does not tolerate violence and unlawful behavior.
- **A REFUGEE EXPECTS THAT RESETTLEMENT IS “GUARANTEED” OR “DUE” TO HIM / HER.** These perceptions may arise, for example, from seeing many others with similar protection problems in the country of asylum leave for resettlement, from undergoing a lengthy interview process or simply from misinterpreting statements or signals from officials.

- **POLICIES CHANGE ABRUPTLY OR FASTER THAN REFUGEES CAN UNDERSTAND OR ABSORB THEM.** UNHCR is particularly vulnerable in the case of resettlement because sudden and far-reaching policy changes can come from the countries of asylum and/or resettlement, where UNHCR may have little control.
- **THERE IS A SENSE THAT TIME IS RUNNING OUT.** UNHCR might experience this phenomenon where a cessation clause is implemented or due to take effect, but conditions in the country of origin remain doubtful in refugees' eyes.
- **PEOPLE ARE TIRED OF WAITING.** The actual impact of this factor on violence is debated, and strictly speaking, it is not a trigger because it is a lack of activity rather than a specific event. Nevertheless, many of UNHCR's experiences with violence from refugees have occurred among populations in protracted refugee situations where voluntary repatriation and local integration in the country of asylum remain untenable after some years.

Physical standards of premises

Where resettlement programmes constitute a large part of the workload, the security phase⁵ may not be an accurate indicator of the real risk to staff. The document "Safety Guidelines for Handling Sensitive Individual Refugee Cases in an Urban Context"⁶ examines some of the physical requirements, many of which are not considered by UN country Minimum Operational Safety Standards (MOSS) requirements, of offices facing the possibility of aggressive behavior from refugees. Given the tension factors outlined above, **UNDERTAKING RESETTLEMENT RESPONSIBILITIES ADDS URGENCY TO THE MAINTENANCE OF APPROPRIATE SAFETY STANDARDS.**

Staff should take special care in cases where a refugee has any record of violent behavior. Wherever an individual shows signs of serious distress or threatening behavior, appropriate security measures should be in place and security staff alerted.⁷

The officer accountable for resettlement should consult the designated Field Security Advisor to identify precautions against violence. Security guards, reception staff and other staff likely to have contact with refugees should be trained appropriately.

Security measures are also important for interview locations

Security arrangements are particularly important for interview locations. In principle, interviews should be done by prior appointment and should

⁵ Level of security and threats are determined by the office and communicated to staff.

⁶ UN High Commissioner for Refugees, *Safety Guidelines for Sensitive Individual Refugee Cases in an Urban Context*, 4 September 2002, available at: <http://swigea56.hcrnet.ch/refworld/docid/3dca8ead4.html>.

⁷ See also Units 2.3 and 2.4 of: UN High Commissioner for Refugees, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, available at: <http://www.unhcr.org/refworld/docid/42d66dd84.html>.

be held in a specially designated interview room, not in the interviewer's office. Considerations include:

- separate refugee reception areas, divided from other activities by at least a wall and lockable door;
- separate entrance for refugees with appropriate access control;
- dedicated reception spaces that are appropriately outfitted;
- sufficient presence of specifically trained and sensitized guards;
- interview locations that allow privacy and that do not attract undue attention;
- interview spaces that protect confidentiality and have sufficient space for family members and an interpreter;
- interview rooms that have been cleared of breakable objects or any items that could be used as weapons (including heavy paper weights, letter openers, and electrical wires);
- seating for the interviewer and interpreter that has unhindered access to the exit;
- at camp or out-of-office interview sites, staff access to security staff, proper means of communication with the office and ground transportation that always remains on stand-by;
- constant access to a proper means of communication for staff.

It is also useful to consult the safety standards outlined for refugee status determination purposes, as contained in the *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*,⁸ because the same standards should prevail here.

File management

Proper file management, particularly of files related to individual refugee cases, is an essential component of a well-managed resettlement operation. Proper maintenance of UNHCR records, including the *proGres* database, is crucial to good decision-making and accountability and helps prevent fraud and breaches of confidentiality.

Individual case files

A single file that contains all information related to the individual and is appropriately signed, dated and maintained should be created for each refugee in the office

An individual case file is the central repository for all information relating to specific asylum-seekers and refugees. The filing system should be centralized and each refugee should have only one file in the office. Different functional units should avoid using multiple case files for the same individual and, ideally, protection, community services and resettlement should share the same filing system. This will ensure cohesion between units and make all relevant information to be considered in any action taken with respect to the refugee more accessible.

⁸ *Ibid.*

An individual case file should be opened as soon as possible after registration with UNHCR to ensure that all documents and developments relating to the individual are duly recorded and retained thereafter. Each individual who is registered with UNHCR will be assigned a unique identification number by *proGres*. Offices can also issue separate file reference numbers, particularly those offices without *proGres*.

All documents relating to the individual should be added to the file; including:

- an action sheet that provides a record of all actions taken in relation to the individual and the case file;
- a fully-completed registration form, if registration has occurred;
- a copy of any passports and/or other identity documents;
- if the individual has gone through RSD, a copy of the letter of recognition and of the actual claim, along with all supporting documentation, including interview notes;
- all relevant correspondence regarding the case, including referrals;
- supporting evidence or documents provided by the individual;
- any documents related to particular vulnerabilities;
- the resettlement needs assessment;
- notes for the file related to the individual; and
- any records of conversations and interviews with the individual and others related to this case.

All notes should be dated, signed and paginated, with the name and title of the staff member involved clearly marked. Records of any resettlement submissions and subsequent correspondence, including e-mails and copies of notifications to the individual, should also be included; copies of documents – and copies of copies – should be marked as such. Where photographs of individuals and family members are not digital, they should be included in a tamper-proof fashion. This may involve dry or wet seal stamps, the use of which should also be restricted and subject to specific SOPs as a safeguard against misuse. The name and registration number of the individual and the date the photograph was taken should be written on the back of each photograph. In addition, restricted information may be kept in a sealed and tamper-proof envelope within the physical file.

Ensuring file security

There should be a procedure to check in and out files with appropriate safeguards

Ensuring individual case file security is important, not only as a safeguard against fraud and abuse, but also to protect the physical integrity and confidentiality of the information in the files.

The Representative and Senior Protection Officers are responsible for ensuring that there is a clear procedure to check files in and out of the central registry. Access should be limited to designated staff members. Individual case files should not be kept in staff offices in the absence of the staff member, and should be returned to the central repository

when the task is completed. The only exception is when the office of the staff member can be considered a secure location.

Individual case files should not be kept in the interviewing room unless the officer is present. Files should not normally be removed from office premises; only in special and strictly monitored circumstances, where it cannot be avoided because of, for example, an out-of-office interview or investigation, may a supervisor give written permission to remove files from the office.

A designated filing clerk should be in charge of signing files in and out, registering the file number, date and the initials or name of the staff member requesting or returning the file in a file movement log. This log should be stored electronically in *proGres*. Some offices have introduced an electronic bar-coding system to assist in monitoring file movements.

Storage should be in a safe place with restricted access

File storage should be done in secure, fire-resistant metal cabinets that should be kept locked unless files therein are being checked in or out by the designated filing clerk. The cabinets should be located in a central filing room, which should be lockable, and access to the keys should be restricted. Measures should be in place to ensure the security of the files and the filing room in case of an evacuation or disaster. Additional measures may be suggested by the designated Field Security Advisor.

Electronic files should be password-restricted and maintained on *proGres* and/or network drives. Differentiated access should be accorded only to designated staff, depending on their functions. Information related to individuals should not be stored on personal drives but only in the designated file on the network drive.

Only current files should be maintained locally. Older files deemed to be closed should be forwarded to Headquarters for storage as permanent records in accordance with UNHCR Archives and Records policy, which is set out in the "Field Guide on Identifying and Shipping Permanent Records to the UNHCR Archives".⁹

Special procedures should be in place if UNHCR is required to store and transmit travel and identity documents as part of pre-departure preparations

In some cases, UNHCR may be requested to **store and transmit refugees' travel and identity documents** as part of pre-departure preparations. This is normally the responsibility of the resettlement State or IOM, where it has the authority and capacity. Special procedures governing pre-departure (e.g. visa issuance) should be established in consultation with the host country and resettlement State. All travel documents should be kept in a safe with restricted access and, as with case files, a designated staff member should maintain a central registry that records who has access to the safe and which documents have been deposited or withdrawn. Before

⁹ Field Guide on Identifying and Shipping Permanent Records to the UNHCR Archives: Annex 4 of UNHCR/FOM/67/2000, 17 September 2000; available at: https://intranet.unhcr.org/intranet/unhcr/en/home/executive_direction/official_policies/iom-foms/2000iomfoms/fom_67_2000_-_field.html. You may also wish to consult the Records and Archives Section at Headquarters at: archives@unhcr.org.

transmitting the documents to a refugee, her / his identity must be verified as the rightful holder of the document. A copy of the document should be made, and the refugee should be requested to sign it to confirm receipt. The signed copy should then be counter-signed and dated by the staff handing over the document. As with other relevant documents, this should be added to the refugee's physical file as proof of delivery.

File tracking

A tracking system and database facilitates following up and monitoring

In addition to maintaining and storing individual case files, each office should develop and maintain a tracking system for the files to facilitate follow-up and monitoring of individual resettlement cases. Regular tracking of cases is important to ensure follow-up and deadlines are respected. Regular case tracking should also help identify bottlenecks and highlight areas where further support or improvements are needed. It can also help ensure appropriate follow-up should the responsible person be absent for any reason.

Normally, *proGres*, or another database where *proGres* is not available, should permit such tracking. It is thus important that the accuracy of *proGres* is maintained by systematically and timely recording each step and action in a particular case. Ensuring that data in *proGres* is up-to-date also helps provide systematic feedback to refugees, colleagues in the region, Headquarters, and resettlement countries. It also facilitates statistical reporting.

To help with tracking, *proGres* permits searching by a wide range of data fields, such as the applicant's name, date and place of birth, nationality, family composition, source of resettlement referral, stage in the resettlement process, most recent decision and its date, any pending action and the caseworker responsible for it. Any other system that is used in the absence of *proGres* should provide similar tracking features.

Authorization and accountability

Proper authorization and accountability are essential to resettlement processing and a well-managed operation overall.

Transparency

Designation of an officer accountable for resettlement activities

The concept of transparency has already been introduced in Unit 5. Transparency has both an internal and external dimension. Internally, it requires probity at all levels and stages of the resettlement process; that each decision with respect to refugees and others is clearly documented; that *proGres* (or other database, as applicable) is conscientiously updated with the physical file; and that it is clear on what basis each

step and decision was taken. It should also be clear who authorized and undertook various actions and when they did so. Internal transparency requires clear rules and procedures as to what should be documented and included in an individual case file, such as outlined above with respect to enquiries, and how to ensure accountability. External transparency means that refugees and other partners are properly informed about UNHCR's decisions and actions, subject to appropriate policies and confidentiality guidelines.

Designated officer accountable for resettlement

Designation of an officer accountable for resettlement activities

A senior officer in each country office should be designated the officer accountable for resettlement. Where there is no Senior Resettlement Officer, this should be a Senior Protection Officer. The designation should occur in writing by the Representative, and staff within the office, the Regional Hub / Office, as applicable, the Resettlement Service, and Bureau at Headquarters should be informed of the designation and contact details. This officer will be responsible for ensuring appropriate authorization and follow-up in all cases and will be accountable that proper procedures are followed¹⁰.

The officer accountable for resettlement is not responsible for undertaking each step, just as the Representative, who is accountable overall for all activities of the office, is not responsible for undertaking each step. S/he should, however, undertake oversight activities, including checks on cases at different stages of the procedure. This helps ensure quality as well as respect of the standard procedures; it also allows searching for signs of fraud and abuse, as well as gaps or room for improvement. The accountable officer should also keep watch for signs of stress and burn-out on the part of staff members and ensure they have access to information and support to manage stress.

Job descriptions and terms of reference

There should be clear job descriptions and terms of reference for all staff, including guidance on limitations in authority

In effect, however, responsibility does not rest with the designated officer accountable for resettlement alone, but also with each staff member involved in resettlement. In this regard, the rapid expansion in resettlement operations will lead to the involvement of a wide variety of 'staff,' including UNHCR regular staff, temporary staff, secondees and deployees.¹¹ Each staff member's responsibilities and reporting lines should be clearly set out in their job descriptions, terms of reference and performance objectives. There should be a clear division of tasks and

¹⁰ See also Annex 5 of the Baseline SOPs which provide guidance on Accountability Designation for Resettlement Officer: UN High Commissioner for Refugees, *Baseline Standard Operating Procedures on Resettlement*, 1 January 2008, available at: <http://swigea56.hcrnet.ch/refworld/docid/48b6997d2.html>.

¹¹ As noted in Unit 2, for the purpose of this Learning Programme, unless specified otherwise, all persons are referred to as staff members, although their actual status may differ.

responsibilities, including decision-making responsibilities. All staff should, moreover, receive clear guidance on the specific procedures for which they are responsible, and limitations in their authority, and be appropriately briefed and trained. Training should also encompass security measures as well as anti-fraud safeguards, particularly measures which are directly relevant to their work.

Ideally, the job descriptions or terms of reference of staff in other units which directly affect resettlement should reflect any roles and responsibilities linked to resettlement. Such an approach will also help reinforce inter-linkages and required cooperation.

Standard Operating Procedures (SOPs)

The Baseline SOPs should not be a one-time requirement but an active tool to be implemented on a daily basis

Standardized procedures that can be verified are an important part of accountability and transparency and are thus a cornerstone of fraud prevention. SOPs not only help ensure that each staff member is aware of the specific responsibilities and steps that they should respect in all actions, but also facilitate oversight and accountability. SOPs in general, and the Baseline SOPs in particular, should thus not be seen as a one-time effort prepared to fulfill a reporting requirement, but rather as an active working tool to be adapted to reflect office-specific procedures applied on a daily basis. As noted earlier, the Baseline SOPs only represent minimum standards, and need to be supplemented by office-specific procedures in a number of areas. Their introduction represents an important opportunity to review existing office procedures, and to clarify where shortcomings that should be addressed exist. At the same time, reporting back to Headquarters on the SOPs is an important means for exchanging good practices, improving the Baseline SOPs as well as ensuring global oversight. In line with UNHCR guidelines, the SOPs should be reviewed and updated on an annual basis.

Respecting confidentiality of information

Each staff member is responsible for ensuring the confidentiality of refugees' personal information

Confidentiality of information about refugees requires staff accountability and proper authorization procedures. The need to respect the UNHCR guidelines on confidentiality¹² as regards personal information related to refugees is paramount. Personal information may include basic biodata, information about family members, origin, any RSD information and any other information that is specific to the refugee and his or her family members.

The need to respect confidentiality of information is rooted in the right to privacy and protection from unlawful interference in one's private life, as set out *inter alia* in international human rights law. In principle,

¹² UN High Commissioner for Refugees, *Confidentiality Guidelines*, 1 August 2001, IOM/071/2001 - FOM/068/2001, available at: <http://swigea56.hcrnet.ch/refworld/docid/3be17dfd.html>.

when a person provides personal information, they only give authorization to use that information for a particular purpose. All persons have a right to know what personal information is being collected, on what basis and for what purpose, and what is being done with this information. They should have access to it, and be able to correct any wrong information.

UNHCR staff, in the course of their work, often have privileged access to personal information that relates to refugees and other persons of concern. This is true of resettlement, where staff may enquire in considerable detail about the refugees' personal situation, and have access to medical and psycho-social assessments. The access to such information is based on UNHCR's mandate to provide international protection and find durable solutions for refugees.

UNHCR staff must ensure that any such information is used for these purposes only, and must obtain specific consent from the refugee before sharing any such information with others. UNHCR staff must also take strict measures to protect confidentiality. This means appropriate care must be taken when passing on such information, both internally within UNHCR and when sharing such information externally with third parties, including resettlement partners. All UNHCR staff – including interpreters, secondees and deployees, staff of UNHCR implementing partners, and other external experts working for UNHCR – are bound by the confidentiality guidelines, regardless of their formal status.

As noted above, measures should be taken to ensure that only authorized persons have access to information such as individual case files or specific fields in *proGres*. Staff, including interpreters, who have no reason to access such information for work purposes should be prevented from gaining such access. Such measures are also an important safeguard against fraud and abuse because it is a useful security measure for refugees to know that some staff, such as interpreters, do not have access to case file information.

When personal information on refugees is shared with third parties, waivers of confidentiality are required

In the interest of furthering international protection and identifying durable solutions for refugees, UNHCR must share information with third parties. With respect to resettlement States, refugees are required to sign the RRF, which allows limited sharing of individual case information. Sub-agreements UNHCR signs with NGOs should also contain specific provisions on handling confidential information. Resettlement States or other partners may, however, have legitimate wishes for further information. Specific guidance is contained in the UNHCR 'Confidentiality Guidelines' with respect to information that can be provided to resettlement States, NGOs, host States and others, so they should be reviewed and followed carefully.

Fraud and anti-fraud measures

We have already highlighted that fraud and measures to prevent and address fraud have become serious concerns of resettlement States and UNHCR alike. We have also referred repeatedly throughout the Learning Programme to different safeguards against fraud. These safeguards are an important part of any framework to combat fraud. Identifying and helping prevent fraud is not only the responsibility of management, but also of all staff. In this section we will take a closer look at what fraud is and the forms it can take, as well as some additional measures to safeguard against it.

Broadly speaking, fraud is the misrepresentation of fact for personal gain.

Definition of resettlement fraud

RESETTLEMENT FRAUD is fraud committed in the context of resettlement processing, and may include ongoing fraud that was initially committed at an earlier stage of refugee processing. This can be defined for operational purposes as *'the intentional misrepresentation or concealment of facts or evidence material to the resettlement process with the intent of obtaining a resettlement or other benefit for the refugee concerned or for another individual who otherwise would not be entitled to be resettled or to obtain such a benefit'*.¹³

Fraud can occur at any time during the individual case cycle, from the first registration onwards, and is thus a cross-cutting issue. It may affect the resettlement process itself or take the form of exploitation outside the formal resettlement process; and it may involve UNHCR directly or any of the resettlement partners, the host country, refugees, as well as local community. It is thus important to take a holistic approach in addressing fraud.

Types of resettlement fraud

It is useful for UNHCR to distinguish between internal resettlement fraud and external resettlement fraud, though combinations of the two may arise.

INTERNAL RESETTLEMENT FRAUD

Internal resettlement fraud occurs when UNHCR staff:

- draft false refugee claims or false needs assessments for resettlement;
- add, alter, substitute, or delete or remove information / documents on file; or add or remove photographs on file;

¹³ See page 3 of: UN High Commissioner for Refugees, *Policy and Procedural Guidelines: Addressing Resettlement Fraud Perpetrated by Refugees*, March 2008, available at: <http://www.unhcr.org/refworld/docid/47d7d7372.html>.

- deliberately enter incorrect information or alter information or photos in proGres;
- ensure preferential processing or access to the procedure;
- deliberately lose or destroy a case file;
- report a false or embellished claim based on known 'successful' claims rather than reporting / interpreting what the refugee says;
- coach refugees and others of concerns prior to the interview;
- provide false medical attestations;
- charge a fee to enter a UNHCR office or to be put on an interview list or to receive information.
- Such fraudulent actions are frequently undertaken for a fee, favor or gift. Fraud may, however, also involve preferential treatment where there is a conflict of interest (e.g., when there is a personal relationship with the beneficiary), or even in the absence of a malicious motive.¹⁴

EXTERNAL RESETTLEMENT FRAUD

External resettlement fraud may be perpetrated by refugees, asylum-seekers, criminals, host government officials, resettlement government officials, NGO or IOM staff, or others and may relate to:

- Identity fraud occurs when an identity is either invented, or the identity of another real person is assumed by an impostor. Supporting documents may be missing, or fraudulent documents provided. This may occur at any stage during the process, if one refugee 'purchases' an interview slot or a departure slot and takes the place of a refugee who has been identified as in need of resettlement. Identity fraud may also take the form of a substituted medical assessment that is intended to hide certain conditions that are believed to delay resettlement. A more complex situation occurs when a refugee assumes multiple identities, and then sells the extra identities and places that s/he does not need. Identity fraud is always of concern, but is particularly so when it allows war criminals or other excludable and undeserving persons to benefit from resettlement.
- Family composition fraud is one of the areas where fraud is most likely to be committed. It may involve marriages of convenience; fictitious relationships, such as when distant relatives are claimed as direct sons and daughters; adding fictitious family members; substituting children, which may occur for money or under duress; or 'losing' or hiding a family member to get an improved chance at resettlement (such as when a woman hopes

¹⁴ Personal relationships with refugees and other beneficiaries are problematic as they involve a relationship of unequal power and are thus easily subject to exploitation. The staff member will always be perceived as having power over the refugee, and the refugee may thus feel obliged to provide favours, including those of a sexual nature, in order to obtain certain benefits, or to avoid negative repercussions. See also the *UNHCR Code of Conduct & Explanatory Notes*, UNHCR/IOM/60/2002//FOM/56/2002, 14 October 2002; available at: <http://www.unhcr.org/405ac6d27.html>

to qualify for the woman-at-risk category by claiming that her husband is dead or has disappeared). Family composition fraud may occur early in the process, in order to obtain increased rations of assistance; or it may occur at any later stage, to obtain recognition of refugee status or resettlement, or to take advantage of family reunification programmes outside of resettlement.

- Bribery of UNHCR staff or others involved in the resettlement process with money, favors or gifts; or
- Material misrepresentation in relation to the refugee claim or the resettlement needs either through false stories or omission of relevant facts that might, for example, raise exclusion considerations.

Perpetrators may also rely on partially or wholly fraudulent or substituted documents to support the fraud. At times the documents themselves may be legitimate but issued on a fraudulent basis.

MIXED OR COMPLEX RESETTLEMENT FRAUD

Mixed or complex resettlement fraud occurs when internal and external elements collude to commit fraud. It may also involve an entire criminal enterprise, which has the capacity to endanger the general safety of UNHCR staff.¹⁵

RESETTLEMENT EXPLOITATION SCHEMES

There may also be exploitation schemes where persons or groups of persons, referred to as 'brokers' or 'facilitators', may falsely claim to have links to UNHCR and the ability to ensure that refugees or others obtain resettlement. Such scams may involve coaching refugees on false claims or promising them false documents, interview spots, or a place in the group of next departures.

Such services are generally offered for considerable fees. To help convince potential victims, such persons may show photos of themselves with UNHCR staff; wear fraudulent ID tags and cards; drive vehicles with false UN plates; use false UNHCR signs and logos; or even set up false UNHCR offices. They may also falsely claim to be NGOs working with UNHCR on resettlement referrals.

¹⁵ See for example: UN General Assembly, *Investigation into allegations of refugee smuggling at the Nairobi Branch Office of the Office of the United Nations High Commissioner for Refugees* : note / by the Secretary-General, 21 December 2001, A/56/733, available at: <http://www.unhcr.org/refworld/docid/3d58c61f0.html>.

Preventing fraud

Prevention is the best way to fight fraud and is most useful if it tackles all three elements which contribute to fraud: opportunity, motivation or situational pressures, and rationalization

Efforts to reduce fraud work best when they focus on prevention. When seeking to prevent fraud, it helps to have an understanding of the situations in which fraud is most likely to occur. Three of the elements that contribute to fraud are:

- **OPPORTUNITY:** weak systems and procedures or limited management oversight allow people to obtain major benefits with little risk;
- **MOTIVATION OR SITUATIONAL PRESSURES:** staff may face particular financial, personal or family pressures; refugees may expect considerable benefits from being recognized as a refugee or from resettlement; and other external actors may expect considerable financial gain from fraud;
- **RATIONALIZATION:** for example, the belief that the system is unfair, or that the fraudulent action is not unethical or illegal; staff may also rationalize their actions through their unhappiness with UNHCR or their supervisor.

Efforts to prevent fraud will usefully target all three elements, but interventions focusing on internal controls are easiest to implement.

There should be a focal point for fraud in each office

Focal points for fraud, which have been established in the Resettlement Service at Headquarters as well as at the Regional Hubs, should be kept apprised of any incidents of fraud. In addition, a focal point and/or an anti-fraud committee should be appointed by the Representative in each office. It is, however, the responsibility of *all* staff members to address fraud and uphold the integrity of UNHCR's activities.

INTERNAL MEASURES

The safeguards highlighted throughout this Learning Programme, and the different elements outlined above to ensure a well-managed resettlement programme form the foundation of a strong anti-fraud plan.

The most effective measures to prevent fraud are to follow standardized procedures carefully, and to allow transparency, proper authorization and accountability

This includes properly implementing the Baseline SOPs; ensuring transparent, objective resettlement procedures with appropriate accountability and authorization; clearly defining responsibilities for all staff; ensuring that there are file management and tracking systems that allow each step and action to be reconstructed, including who took which action at what time, while still ensuring respect of confidentiality of information; and having proper leadership and oversight by senior management, including through spot checks. An annual review of the practices and procedures and compliance with the different steps should be conducted in addition to periodic random checks.

ProGres also has significant anti-fraud capabilities, with its capacity for digital photographs and biometric information (e.g. fingerprints), as well as the ability to track who made which changes. Access to *proGres* and any other computer-based systems should be based on the use of

passwords and, as an additional safeguard, the *proGres* Data Administrator should be instructed to submit a weekly report of files to the accountable officer if photos and/or other key data fields have been changed or updated. Key data fields include gender, date of birth, ethnicity and nationality. The accountable officer may then prioritize spot-checking of these files for tampering or fraud.

The lack of active implementation of any of these factors may indicate an increased risk of fraud.

Good managers should also focus on knowing their staff and providing them with guidance and support, including in difficult personal situations, to help counteract situational pressures which may lead staff to fraudulent activities. Another important element of UNHCR's strategy is training and raising awareness, such as through this Learning Programme. Staff should know which actions are unethical and illegal, and should clearly understand the consequences of any fraudulent actions.¹⁶

INTERPRETERS

Interpreters may be subject to particular pressures from the refugee community

As noted in Unit 5, interpreters may be subject to particular pressures by the refugee community, since they often are of the same or similar origins, may themselves be refugees (although the hiring of refugee interpreters should normally be avoided) and/or are generally paid very low wages. Some offices have recognized the particular expertise of interpreters and introduced competitive recruitment practices and salaries. In general, to avoid fraud, the following general measures should be adopted:

- assigning interpreters to different officers when scheduling interviews (this also helps with quality assurance for each interpreter);
- establishing positive professional working relationships with all interpreters;
- discouraging staff from fraternizing with interpreters (inside and outside the office);
- discouraging interpreters from fraternizing with refugees outside the office;
- making appropriate checks prior to engagement, including police, reference and educational / professional qualification checks;
- providing interpreters with orientation, training with respect to conduct and responsibilities, and monitoring;
- advising interpreters that they should report all inappropriate approaches made to them;

¹⁶ See: UNHCR/IOM/38/2002-FOM/36/2002 *Disciplinary Proceedings and Measures*, 30 May 2002; available at: https://intranet.unhcr.org/intranet/unhcr/en/home/executive_direction/official_policies/iom-foms/2002iomfoms.html.

- preventing repeated involvement by one interpreter in the same applicant's case;
- prohibiting interpreters' access to files and the file room as well as to proGres;
- restricting interpreters' access to and use of mobile telephones while on duty; and
- recognizing the expertise of translators and interpreters, introducing effective and competitive recruitment policies and practices and 'professionalizing' the service by ensuring appropriate salaries and benefits are provided.

Interpreters should be subject to the same monitoring and performance checks as other staff. Interviewers should be permitted to stop any interviews if they are concerned about suspicious behavior on the part of interpreters. Staff should consult the UNHCR Guidelines for the recruitment, training, supervision and conditions of service for interpreters.¹⁷ Additional considerations were covered in Unit 5.

SECURITY PERSONNEL

Guards are key to accessing UNHCR but often are paid very low salaries

Guards may similarly be subject to particular situational pressures. They are key to accessing UNHCR premises but are generally paid relatively low salaries. Possible best practices for safeguarding against corruption and fraud include requiring guards:

- not to fraternize with interpreters or refugees inside or outside the office;
- to report all advances made to them inside or outside the office;
- to undergo a police check prior to engagement;
- to uphold high standards of integrity and professionalism in the discharge of their duties, which includes a responsibility to protect the work of UNHCR by facilitating the safe and dignified access of refugees to the premises when they seek assistance from the office; and
- to be subject to a confidential complaints mechanism that the Office has made available.

As with staff, guards should be subject to regular monitoring, checks and observation, and security cameras may also be used.

EXTERNAL MEASURES

External efforts to highlight the importance of fraud awareness, measures to prevent and combat fraud, training resettlement partners on resettlement and ensuring regular communications about resettlement-related activities are an important part of any anti-fraud

¹⁷ See UNHCR/IOM/005/2009–UNHCR/FOM/005/2009 'Interpreting in a refugee context: Guidelines for the recruitment, training, supervision and conditions of service for interpreters' (19 January 2009) at: <http://intranet.hcrnet.ch/SUPPORT/POLICY/IOMFOM/2009/iom00509.htm>.

plan. As we have seen in Unit 5, agreements with external resettlement partners such as NGOs should include specific measures (such as training) to safeguard against fraud, as well as clear specifications of all actors' roles.

Expectations management, a strong communications strategy and regular briefings and updates with all resettlement partners are key elements for preventing fraud

Relying on a communications strategy to pass key messages about resettlement to refugees, as outlined in Unit 4 and 5, should help prevent fraud and manage expectations. In addition to general information provision, continuous and appropriate counseling of refugees is vital to addressing fraud. It is also important for the refugee community to understand the potential implications of fraud on the overall availability of resettlement activities in the country, and for the local population to know that resettlement is only available to persons of concern to UNHCR.

As we have seen in Unit 4, key messages include information on fraud, what fraud entails (e.g. falsifying family composition), the duty to abstain from fraud, and the fact that all UNHCR services are free of charge. Such messages should be clearly understandable, visible and disseminated through the various tools available for mass information campaigns. Refugees should also be warned against any fraudulent offers of assistance. Information on how and when to access UNHCR and the aforementioned complaint mechanism for refugees and other beneficiaries should also help reduce the incidence of fraud.¹⁸ UNHCR has also introduced policy and procedural guidelines on addressing resettlement fraud perpetrated by refugees.¹⁹ These guidelines seek to harmonize procedures for handling instances of suspected fraud by refugees in UNHCR's resettlement activities, including in conducting investigations and imposing sanctions.

RECOGNIZING FRAUD

We have highlighted family composition as an area which may be particularly vulnerable to fraud, and have emphasized the importance of identity checks. Family composition and identity checks against registration records should be conducted at key stages from initial registration onwards, including prior to departure on resettlement. Staff should also watch for any other significant changes, for example to the refugee claim or biodata.

Types of behavior which may be linked to fraud

All staff should be aware that they may be targeted by potential perpetrators of fraud or exploitative activities, including non-refugees, when they encounter:

- excessive flattery;
- name-dropping;

¹⁸ See Section on handling enquiries.

¹⁹ See: UN High Commissioner for Refugees, *Policy and Procedural Guidelines: Addressing Resettlement Fraud Perpetrated by Refugees*, March 2008, available at: <http://www.unhcr.org/refworld/docid/47d7d7372.html>.

- subtle bribery such as offers to pay for meals or gifts;
- confusing background stories; evasiveness and accusing others of paranoia or mistrust;
- haste and urgent requests that allow no time to think;
- attempts to assert control;
- attempts to isolate one from other staff in the Office;
- requests for physical access to the Office for unneeded personal visits, preferential access to information, or favors; and
- requests for photographs together, particularly near spots identified with the office.

Additional measures to safeguard against external fraud, which UNHCR is pursuing with partners include:

- pre- and post-selection mission reports by resettlement States;
- standardized reporting forms for NGOs based in resettlement States, including reporting on post-resettlement interviews with refugees;
- joint process mapping and analysis of fraud exposure, including common definitions and lists of fraud indicators;
- joint investigations;
- joint training and information campaigns;
- fraud-specific working group with resettlement States; and
- developing additional tools to help safeguard against fraud and to identify the risk of fraud exposure²⁰.

Dealing with fraud and allegations of fraud

An important part of anti-fraud vigilance is encouraging its reporting. While procedures may differ for internal and external fraud, appropriate measures should be taken to protect individuals reporting fraud in both cases. The names of individuals who report substantiated allegations of fraud should always be kept confidential, and the details of allegations should remain confidential until a full investigation has been completed.

INTERNAL FRAUD

Indicators that fraud may have occurred

Key indicators for which all staff should be alert include:

- files in which one staff member appears to be responsible for more than one stage of processing and decision-making without respecting the regular requirements for authorization;
- staff members enquiring about or showing an interest in files to which they have no work connection;
- files that may be delayed for excessive periods (possibly suggesting the expectation of a bribe), as well as files that move too rapidly (suggesting preferential treatment);

²⁰ See UN High Commissioner for Refugees, *Resettlement Fraud: A Tool to Help Offices Assess Their Exposure and Vulnerability*, 20 October 2006, available at: <http://swigea56.hcrnet.ch/refworld/docid/4ad300d12.html>.

- files in which key information is missing or signatures are missing or illegible;
- excessive or unusual documentation on file; and
- any other procedural abnormalities.

While these indicators alone do not confirm that fraud has been committed, they indicate that further follow-up may be warranted. Such incidents should be brought to the attention of the accountable officer. The complaints mechanism introduced above may also result in allegations of fraud or misconduct by UNHCR staff.

Procedures for dealing with complaints received through the complaints mechanism

Complaints that are received directly or through the complaints mechanism are subject to a special procedure. Two persons should be present whenever a complaints box is opened, which should be done on a regularly scheduled basis. The Baseline SOPs should specify how information in the boxes is handled; it may require, for example, the presence of an international staff member, often the accountable officer, while complaints are registered and recorded. The register, with information on the handling of the complaint, should be kept in a secure location with restricted access.

The Inspector General's Office (IGO) has a key role to play whenever there are allegations that staff might be involved in fraud

When allegations of fraud come to the attention of UNHCR staff, they must be documented and reported appropriately. Details of the alleged fraud, including names and dates, are required. All staff members have an obligation to respond to allegations of fraud that come to their attention, regardless of their grade and function. Possible misconduct may be reported either to their Director, Representative or Chief of Mission, or accountable officer, who should promptly inform the **INSPECTOR GENERAL'S OFFICE (IGO)** at Headquarters, as well as Resettlement Service, with:

- an initial assessment as to the credibility of the source, including the reasons or evidence for that assessment;
- the extent to which the information is specific and can be dated;
- the existence of any supporting evidence; and
- whether and the extent to which the alleged fraud has resulted in damage – material, financial, or to the credibility and image of the office.

Such allegations may be reported directly and confidentially to the IGO at Headquarters.

CONFIDENTIAL FAX: +41-22-739-7380
CONFIDENTIAL E-MAIL: inspector@unhcr.org
TELEPHONE HOTLINE: +41-22-739-8844

The IGO will then assess any information received to judge credibility and whether the complaint falls within the competence of the IGO. If the IGO decides to conduct an investigation into the matter, the staff member providing the information or the manager who reported it will be informed within 30 days. The manager may be asked to assist in the investigations.

Contact with the IGO can also be made to obtain preliminary advice. The name of the source will be kept confidential and may only be disclosed if it is required for administrative, disciplinary or judicial proceedings, with the approval of the source, and the approval of the Inspector General. If the source fears any reprisals for having reported fraud, this should also be recorded, because reprisal is misconduct in and of itself and the Inspector General can recommend immediate protective measures to the High Commissioner. If a report is made anonymously, the IGO will investigate whether the allegation is corroborated by independently established facts.

In addition to specific investigations to follow up on claims of misconduct including fraud, the IGO also carries out inspections to check how effectively established policies and guidelines are being implemented in an office. These inspections may also include specific terms of reference to address particular issues. Such investigations are an additional tool to help identify risk factors for fraud and measures to combat it.²¹

EXTERNAL MEASURES

The same complaints mechanism introduced above should also serve as an important source of fraud reports by persons external to UNHCR, such as refugees, local populations or partners. Enhanced cooperation with resettlement partners, including resettlement States, IOM, NGOs and other partners will be useful in examining the characteristics of fraud. Possible fraud, how to prevent it and how to deal with it once it has arisen should be discussed regularly at resettlement meetings.

The IGO will not normally be involved in allegations that only concern persons external to UNHCR. Such allegations should, however, be reported to the Representative or Head of Office who may seek further advice from the IGO. In specific cases, UNHCR will contact the local law enforcement authorities to investigate incidents of external fraud.

In case where refugees are involved in fraud, specific investigative procedures should be followed

As noted in Unit 5, where fraud concerns specific refugees, case processing should be suspended. Staff should also refer to UNHCR's policy and procedural guidelines on addressing resettlement fraud perpetrated by refugees, which is attached in the Annex of this Unit. In situations where an alleged fraud is likely to prejudice a UNHCR resettlement submission to a resettlement State, that State must be appropriately informed. The refugees concerned should be interviewed, both for investigative purposes and to give them a reasonable opportunity to respond to the allegations. The interview should be recorded in full, either in writing or by audio tape recording; the consent of the refugee will be required. A full investigative report, including

²¹ For more details, see UN High Commissioner for Refugees, *IOM/054/2005 - FOM/054/2005 The Role, Functions and Modus Operandi of the Inspector General's Office*, 3 November 2005; available at: <http://swigea56.hcrnet.ch/refworld/docid/43706e744.html>.

recommendations on any sanctions, will also be required. This report should be reviewed by a Representative or his or her delegate, and should be subject to an automatic review by the Regional Hub / Office or UNHCR Headquarters staff. Any sanctions against refugees should take into account the severity of the fraud committed and the refugees' protection need. The UNHCR policy and procedural guidelines on addressing fraud by refugees should be followed.²²

Where fraud is suspected of implementing partners or NGOs, the Bureau and the Legal Affairs Section (LAS) in the Department of Human Resources Management (DHRM) may provide further advice or guidance. In some cases, the incidence of fraud may lead to criminal prosecution. In such cases, LAS should always be consulted, together with the Resettlement Service and the Bureau.

Stress management

Stress management deserves mention as an essential component of a well-managed resettlement operation. Resettlement is a very labor-intensive task and resettlement interviews and counseling sessions can be particularly demanding, as staff are exposed to the discontent and frustration of refugees, who themselves are under high stress, having been subject to persecution or indiscriminate violence, having been forced to flee and leave behind families and homes, and having to deal with the uncertainty of their status and future.

Insufficient staff and resources and/or backlogs in cases, as well as pressures to reduce backlogs, also add to stress. High stress levels not only reduce staff's capacity to listen, understand and assess the stories and testimonies of refugees, it is also more likely to lead them to take shortcuts in procedures, ignore safeguards and security measures, and miss signs of fraud. It can also lead to trauma, burnout and threats to staff security. It is thus important to catch signs of stress, ideally before more serious manifestations develop.

All staff should be trained to recognize symptoms of stress, whether physical, psychological and emotional, or behavioral. Symptoms may include:

Recognizing symptoms of stress

- physical: headaches, increased heartbeat, intense fatigue, difficulty in concentrating;
- psychological and emotional: anxiety, fear, over-preoccupation and identification with victims, sadness, anger, helplessness; and
- behavioral: hyperactivity, inability to rest or relax, periods of crying, social withdrawal, limiting contacts with others, use of drugs and/or alcohol.

²² See UN High Commissioner for Refugees, *Policy and Procedural Guidelines: Addressing Resettlement Fraud Perpetrated by Refugees*, March 2008, available at: <http://www.unhcr.org/refworld/docid/47d7d7372.html>.

Techniques for reducing stress

Being informed and aware of how to deal with stress is an important part of promoting well-being. Techniques to deal with stress include:

- recognizing that a particular task is stressful and using self-encouragement to complete it;
- ensuring sufficient and proper sleep;
- allowing time for leisure as well as exercise;
- using relaxation techniques, such as yoga;
- regularly eating a well-balanced diet;
- avoiding excessive use of alcohol, caffeine and nicotine; and
- ensuring that work is conducted effectively, efficiently and safely and priorities are set appropriately.

Representatives, officers accountable for resettlement activities and other staff should remain vigilant for signs of harmful stress in other colleagues. Measures to reduce stress at office-level include:

All staff should take the necessary measures to prevent and minimize stress and to watch for it in colleagues

- creating and maintaining a pleasant working environment;
- monitoring workloads and task prioritization, and ensuring that staff take breaks and have an opportunity for proper meals;
- organizing a breakaway space or a coffee corner;
- conducting regular team meetings, possibly on a daily basis, to debrief on particularly stressful activities. Such meetings may also be used to discuss the impact of stress more generally;
- taking the time to follow up in private with staff that may be affected; and
- leading by example.

Where lack of resources and backlogs are a source of stress, then consideration may need to be given to ensuring that appropriate resources are made available, including *inter alia* through reliance on the deployment schemes outlined in Unit 2.

Unit 6: Assignments

Exercise 1:

Please read the following additional documents:

- [Baseline SOPs](#), 1 January 2008, Section II relating to "Resettlement Management and Risk Mitigation"
- [Disciplinary Proceedings and Measures](#), UNHCR/IOM/38/2002–FOM/38/2002, 30 May 2002
- [Interpreting in a refugee context: Guidelines for the recruitment, training, supervision and conditions of service for interpreters](#), UNHCR/IOM/005/2009–UNHCR/FOM/005/2009, 29 April 2009
- [Investigation into Allegations of Refugee Smuggling at the Nairobi Branch Office of the United Nations High Commissioner for refugees, Report of the Secretary-General on the activities of the Office of Internal Oversight Services](#), A/56/733, 21 December 2001
- [Management of Protection Activities: Responsibilities of UNHCR Staff](#), UNHCR/IOM/25/2002–FOM/24/2002, 15 March 2002
- [Policy and Procedural Guidelines: Addressing Resettlement Fraud Perpetuated by Refugees](#), UNHCR/IOM/008/2008–FOM/010/2008, 9 March 2008
- [Procedural Standards for Refugee Status Determination under UNHCR's Mandate](#), Unit 2
- "Resettlement Management in Field Offices," Chapter 8 of the [Resettlement Handbook](#), November 2004 (please keep in mind that some of the sections may have been superseded by the newer Baseline SOPs)
- [The Role, Functions and Modus Operandi of the Inspector General's Office](#), UNHCR/IOM/54/2005–FOM/54/2005, 3 November 2005
- [UNHCR's Code of Conduct and Explanatory Notes](#), November 2004
- UNHCR Guidelines on the Sharing of Information on Individual Cases: [Confidentiality Guidelines](#), IOM/71/2001–FOM/68/2001, 24 August 2001

Exercise 2:

Based on your reading throughout the Learning Programme, particularly the materials above, assess where your office stands in terms of fraud awareness and prevention, first by completing the tools provided, and then by elaborating on both the best practices and some of the major weaknesses you have identified. To the extent possible, discuss your answers with other resettlement and protection colleagues.

RESETTLEMENT FRAUD: A TOOL TO HELP OFFICES ASSESS THEIR EXPOSURE AND VULNERABILITY

“Research consistently shows that almost all organizations experience fraud of one type or another. Only those organizations that carefully examine their risk of fraud and take proactive steps to create the right kind of environment succeed in preventing fraud. Fraud prevention involves two fundamental activities: i) creating and maintaining a culture of honesty and ii) assessing the risk of fraud and developing concrete responses to minimize risk and eliminate opportunity.”²³

“The most important element in an appropriate control environment is management’s role and example.”²⁴

Fraud is a crime that is not ‘visible’, so we all need to be aware of the symptoms or ‘red flags’ that may indicate the presence of fraud and pursue these until fraud is proven or otherwise. These items listed below suggest only where opportunities may exist in the system. They do not relate to either the personal lifestyle and behavioural symptoms in staff or others that may suggest fraud or the situational ‘push factors’ in the environment that may lead to increases or decreases in fraud attempts.

INSTRUCTIONS:

1. For each statement below, tick the box if it represents a practice currently in place in your office;
2. Score one point for each tick mark and record the score in the right hand column;
3. Total all of the scores in the right hand column.

Areas of Vulnerability			Score
A: Fraud Awareness, and Oversight of the Resettlement Programme			
A 1	It is clearly understood that fraud occurs where opportunity, situational pressures and rationalization / personal integrity converge.	<input type="checkbox"/>	/ 13
A 2	It is clearly understood that the benefit of resettlement (often to a developed country) can be a powerful incentive to commit fraud for a wide range of persons (including staff, refugees, criminals and others).	<input type="checkbox"/>	
A 3	It is clearly understood that fraud may enter the system at earlier stages of the RS process (such as Registration and RSD) and that anti-fraud procedures are needed throughout the system.	<input type="checkbox"/>	
A 4	All staff, IPs and partner NGOs are aware of their responsibility to report known or suspected resettlement fraud ²⁵ to their Supervisor, Representative or Accountable Officer (see A 6).	<input type="checkbox"/>	
A 5	Standard Operating Procedures (SOPs) for Resettlement have been developed and approved by the Resettlement Hub or the Resettlement Service at HQ. ²⁶	<input type="checkbox"/>	
A 6	An Accountable Officer for resettlement has been identified by the office, it is clearly understood that this officer is responsible for monitoring the resettlement referral process and this has been communicated to all staff.	<input type="checkbox"/>	
A 7	Within the last three months the Accountable Officer has conducted oversight of the RS programme by comparing a number of RS cases against the SOPs in which all the required documentation, signatures and processes	<input type="checkbox"/>	

²³ Albrecht and Albrecht, “Fraud Examination and Prevention,” 2004 South Weston Publishing, page 47.

²⁴ Ibid. p. 27.

²⁵ Code of Conduct, UN Staff Rules as well as IOM/25/2002/FOM/24/2002 Management of Protection Activities – Responsibilities of all Staff – who notes that staff have the responsibility of carrying out their duties to the highest standard and to prevent fraud and malfeasance.

²⁶ SOPs for Resettlement are required –refer to IOM/25/2002/FOM/24/2002: “The requirement to develop written procedures should be considered a priority.”

	have been checked for compliance with the SOP standards.		
A 8	The Accountable Officer conducts spot checks of resettlement interviews on a regular basis and provides feedback and guidance to improve the performance of staff and to ensure that acceptable interview practices and standards are being adhered to.	<input type="checkbox"/>	
A 9	All resettlement files are individually quality controlled to ensure compliance with resettlement guidelines before being referred to a RS Hub or submitted to a RS country.	<input type="checkbox"/>	
A 10	All staff clearly understand that the Resettlement Service guidelines on how to respond to instances of resettlement fraud committed by a refugee ²⁷ or other persons with whom the office does not have a contractual relationship.	<input type="checkbox"/>	
A 11	All staff clearly understand what actions to take if fraud is known or thought to have been committed by a staff member ²⁸ .	<input type="checkbox"/>	
A 12	It is clearly understood, where office systems and procedures appear to be vulnerable to fraud attempts, who to contact in the Resettlement Service for support ins strengthening these areas and how to arrange for resettlement anti-fraud training. ²⁹	<input type="checkbox"/>	
A 13	The office has a close and positive working relationship with IPs, NGOs and civil society such that these groups would provide the office with information of any known or suspected fraud or exploitation related to the refugee resettlement process.	<input type="checkbox"/>	
B: Infrastructure			
B 1	<i>ProGres</i> registration is used.	<input type="checkbox"/>	
B 2	The office's progress Data Administrator has been directed to submit a weekly report of files, where photos have been changed / updated and/or other key data fields changed, to the Accountable Officer so that this may be checked for potential fraud.	<input type="checkbox"/>	/ 11
B 3	All staff conducting resettlement activities have participated, or are participating in, the Resettlement Learning Programme ³⁰ .	<input type="checkbox"/>	
B 4	All staff conducting registration, resettlement or refugee status determination (RSD) have received training in resettlement fraud. ³¹	<input type="checkbox"/>	
B 5	IPs and NGOs involved in the resettlement process have been trained in resettlement policy and procedures and know to report all suspected or known incidents of fraud to the UNHCR Accountable Officer. They have been told who this person is and how to contact him / her.	<input type="checkbox"/>	
B 6	All staff conducting resettlement have a copy of and have read the most recent update of the Resettlement Handbook ³² .	<input type="checkbox"/>	
B 7	A resettlement fraud focal point has been identified.	<input type="checkbox"/>	
B 8	The Resettlement Self-Assessment Checklist in the RS Handbook has been completed by the Accountable Officer for resettlement year and steps have been taken to ensure all gaps are filled.	<input type="checkbox"/>	
B 9	Clear mechanisms exist for suspending processing or withdrawing cases referred to a Hub or submitted to a RS country where fraud is believed or has taken place.	<input type="checkbox"/>	
B 10	All interpreters meet UNHCR standards and have signed a confidentiality undertaking. The interpreters' role within the resettlement process is tightly controlled and they are scheduled with different officers to minimize	<input type="checkbox"/>	

²⁷ Resettlement Service Guidelines on how to respond to resettlement fraud committed by a refugee are available (contact HQRESLP@unhcr.org).

²⁸ All suspected or actual staff misconduct, including in resettlement fraud, must be reported to the Inspector General's Office. See IOM/FOM/54/2005 entitled "The role and functions and modus operandi of the Inspector General's Office" dated 03 November, 2005.

²⁹ To request resettlement anti-fraud training contact the Resettlement Service (HQRESLP@unhcr.org)

³⁰ For information about the Resettlement Learning Programme, contact (HQRESLP@unhcr.org)

³¹ See footnote 29.

³² Copies of the 2004 version of the Resettlement Handbook may be ordered from the Resettlement Service. Contact HQRESLP@unhcr.org . The Resettlement Handbook is also available electronically at <http://www.unhcr.org/refworld/docid/3ae6b35e0.htm>

	opportunities for systematic collusion in fraud.		
B 11	The interpreters' role within the resettlement process is tightly controlled and they are scheduled with different officers to minimize opportunities for systematic collusion in fraud.	<input type="checkbox"/>	
C: Access, Filing and Confidentiality Issues as Well as Document Security			
C 1	Access to the office is controlled as are the movements of guests. This includes ensuring persons who have no professional reason to be in the office are not granted entry and the behaviour of guards and receptionists is monitored.	<input type="checkbox"/>	/ 18
C 2	All staff are familiar with the UNHCR Guidelines on the Sharing of Information on Individual Cases (a.k.a. "Confidentiality Guidelines") and understand how these apply to resettlement cases. ³³	<input type="checkbox"/>	
C 3	All paper (hard copy) IC files are stored securely in locked cabinets in a separate lockable room. ³⁴	<input type="checkbox"/>	
C 4	One staff member is directly responsible for the file registry and his / her role and responsibilities are clear and in written form.	<input type="checkbox"/>	
C 5	Procedures are in place that cover the movement of files in the office. This includes recording the movement of files in and out of the registry and file movement from officer to officer. ³⁵	<input type="checkbox"/>	
C 6	Access to the file registry area is restricted to those who are authorized to be there.	<input type="checkbox"/>	
C 7	A shredder exists in the office for destroying dated documents or drafts of documents (such as RRFs) that contain confidential personal information.	<input type="checkbox"/>	
C 8	Staff have been instructed that all IC files must be maintained securely in locked cabinets outside regular working hours and when a work area is left unattended.	<input type="checkbox"/>	
C 9	The international staff member responsible for Protection or Administration has conducted a spot check of file movement in the past three months to ensure that file regulations are being adhered to and files are properly signed in and out. Records are kept of such internal audits.	<input type="checkbox"/>	
C 10	An international officer conducts occasional after-hours checks of desktops and other insecure areas in the office to determine if IC files have been left exposed and any breaches of file security / confidentiality have been reported and recorded.	<input type="checkbox"/>	
C 11	Staff have been advised of the need to maintain security and confidentiality of documents. Where files have been discovered with staff having no reason to hold them this has been looked into and noted, and the staff member has been advised. ³⁶	<input type="checkbox"/>	
C 12	Incidents where files have been discovered with staff (that are not authorized to hold them), have been reviewed / investigated and the staff member has been informed of the violation.	<input type="checkbox"/>	
C 13	The security of electronic IC files is maintained through a system of passwords and other controls.	<input type="checkbox"/>	
C 14	Electronic RRFs are maintained on shared drives with limited access and instructions exist as to who may or may not alter information on an RRF.	<input type="checkbox"/>	
C 15	The issuance of official documents such as Mandate Letters is controlled.	<input type="checkbox"/>	
C 16	All official documents are set up in a systematic way with unique numbers	<input type="checkbox"/>	

³³ Files are our assets, and physical safeguards ensure they are protected so that, for example, files cannot be destroyed or cannot have documents added or taken out or amended improperly. Many instances of fraud occurring and being covered up through tampering with files are known.

³⁴ UNHCR Guidelines on the Sharing of Information on Individual Cases a.k.a. "Confidentiality Guidelines" (page 2, paragraph 6).

³⁵ Bar-coding paper files is a best practice that is recommended for tracking files in larger offices. Weekly supervisory checks using a bar code reader allow an office to know where files are at all times and provide a check against the records of where they are supposed to be. Use of file jackets that require officers to sign who the file is next going to (and require initials and a date of receipt) are an excellent tracking and accountability tool.

³⁶ Document security / file security is extremely important as documents show accountability. Without accountability it is much easier to perpetrate fraud and not get caught.

	that allows for the checking of documents against copies maintained on file.		
C 17	Wet seals, dry seals and other security features are securely stored when not in use and there are procedures outlining by whom and when they may be used.	<input type="checkbox"/>	
C 18	Staff with access to IC information are aware that they should not talk about this information in front of other persons either inside or outside the office (including drivers and other staff) who have no professional need to know.	<input type="checkbox"/>	
D. Communications with Refugees, NGOs and Civil Society			
D 1	An active, planned communications outreach programme is in place that ensures resettlement and resettlement fraud messages are clearly delivered to all key audiences (refugees, NGOs, civil society).	<input type="checkbox"/>	/ 6
D 2	The office maintains a file wherein all communications with refugees, NGOs and civil society are recorded and stored.	<input type="checkbox"/>	
D 3	All correspondence with refugees is copied to individual case files so that documents provided at a later date may be compared with originals to determine if they have been fraudulently altered.	<input type="checkbox"/>	
D 4	Pamphlets, posters and signs have all been developed and are in use as a means of communicating key messages about protection and resettlement (including resettlement fraud)	<input type="checkbox"/>	
D 5	Pamphlets are easily accessible to asylum-seekers and refugees and posters / signage are visible in high traffic areas such as the front gate.	<input type="checkbox"/>	
D 6	A Complaints Box is available for use by refugees and others and refugees know they can advise us about fraud through this system. ³⁷	<input type="checkbox"/>	
Total Score:			/ 48

Total score analysis

Less than 15: There are some serious vulnerabilities that need to be addressed immediately in your office environment.

Between 15 and 30: Your office has many good practices, but a systems review could reduce the vulnerability to resettlement fraud.

More than 30: Your office has instituted many good practices to reduce the risk of resettlement fraud. Constant attention to the health of these practices will ensure that risk is minimized.

QUESTIONS:

1. What are three areas where your office does well in preventing or minimizing the risk of fraud? List three.
2. Where is your office most vulnerable and what are some suggestions for minimizing these vulnerabilities? List three of each.

³⁷ Persons in the best position to detect fraud are often close to the perpetrator(s) – family members, friends or co-workers. They will often provide tips or complaints that may indicate fraud is being or has been committed if there is a Complaints Box or a telephone Hotline that they can use. Your office should have clear SOPs regarding who and how often the Box is opened and how tips are followed up.

Exercise 3:

Review and update the Baseline SOPs for your country operation. In light of the vulnerabilities identified in the previous exercise and the best practices recommended in this Unit of the Resettlement Learning Programme, identify areas for improvement and, to the extent possible, discuss this exercise with other resettlement and protection colleagues.

SEND YOUR UPDATED SOPs TO THE RLP PROGRAMME ADMINISTRATOR.

Exercise 4:

1. Read all of the case studies.
2. Analyse each one with a view to identifying the kinds of fraud **committed or attempted** in each case. Remember that multiple kinds of fraud may be involved, or be committed by multiple people. For each case study, find the type(s) of fraud shown and enter the number of the case study (i.e. "Case Study 1") in the relevant box(es) on the Resettlement Fraud Taxonomy Table (Part A below).
3. For each of the case studies, complete the attached Fraud Taxonomy Worksheet (Part B below).

PART A – RESETTLEMENT FRAUD TAXONOMY TABLE

Fraud Type	Fraud categories		
	Internally perpetrated fraud	Externally perpetrated fraud	
		UNHCR employees	Refugees
Identity fraud			
Family composition			
Document fraud ³⁸			
Material misrepresentation (commission / omission)			
Bribery			
Malfeasance (preferential access, selling services, "fast tracking")			
Resettlement exploitation schemes (brokers, impersonation of UNHCR staff, coaching, internet)			
Other			

Case Study 1

UNHCR is conducting interviews in preparation for a selection mission by the resettlement country, Fortunistan. Marina has been called for an interview in two weeks' time but she is anxious to get her story "right" for resettlement.

³⁸ To enable various types of fraud

Marina's uncle is familiar with the UNHCR system and knows many refugees who have been successful in the resettlement process. He has a friend who in turn knows an interpreter who works at UNHCR. According to the information he has heard, the UNHCR interpreter provides advice to refugees about how to describe their experiences in a way that will ensure that they are accepted for resettlement.

Marina's uncle set up a meeting with the interpreter, Yasmina and the two women met one evening in a café close to UNHCR, after Yasmina finished work. Yasmina advised Marina to embellish the story of her husband's death from AIDS by claiming in addition that he was shot by the Liberation Army when, weak as he was, he tried to leave the village. Yasmina told her to describe the fighting in detail: the gunshots and dead bodies lying around the village. Marina explained that she didn't see any of this because she left before the fighting began, but according to Yasmina these details would add to the drama of her story. She also told Marina to claim that the scar on her left, upper arm is a knife wound from a soldier who attacked her in the field during her flight.

After reviewing each detail with Yasmina, Marina memorized the story and gave the interpreter \$50 USD as she left the café.

When Marina was called for her UNHCR resettlement interview a few days later, she related the story Yasmina had directed her to tell.

Marina was very grateful to Yasmina because three weeks later, Marina received a notice that she and her two daughters had been accepted for resettlement to Fortunistan.

CASE STUDY 1: PART B – FRAUD TAXONOMY WORKSHEET

Question	Answer
Who committed or attempted the fraud?	
Was the fraud or attempted fraud recognized? If so, how was it recognized, and if not, how could it have been recognized?	
How should the fraud be responded to?	
How should this type of fraud be prevented in the future?	

Case Study 2

BACKGROUND

In April 2005, the Resettlement Officer in Tivaliland received allegations from refugees in the local camp and those who had already been resettled to Nirvania that An Assistant Protection Officer, Munir L, was accepting bribes to process cases for resettlement. She also heard rumours that Munir was socializing with refugees outside office hours. In addition, the Resettlement Officer herself noticed that Munir often showed interest in files that did not concern him.

The Resettlement Officer decided that Munir would be relieved of interviewing and resettlement duties until these allegations and concerns could be examined. She asked for assistance in investigating the possibility of fraud or other wrongdoing in the Branch Office in Tivaliland.

ALLEGATIONS

When concerns were investigated through interviews with UNHCR staff, with refugees in Tivaliland and several refugees resettled in Nirvania, UNHCR investigators noted three specific allegations:

Munir submitted 4 cases directly to the Nirvanian Embassy without prior clearance from his supervisor and against standard office procedures;

In February 2005, Munir had met and interviewed a refugee, Ms Sanam L. There was a rumour that Munir and Sanam had been seen together at the cinema and in a local restaurant and that Munir was particularly interested in the processing of Sanam's case;

Munir accepted the gift of a gold watch from a refugee in payment for resettlement.

RESULTS OF THE INVESTIGATION

When refugees (who had informed UNHCR that Munir was accepting bribes), were asked directly whether Munir had asked them to pay him in return for processing their resettlement claim, none of the refugees stated that they had been asked for bribes. Instead, the refugees complained about Munir's attitude toward them. They claimed that he did not return phone calls or respond to questions about the status of their case. They verified that there were many rumours about Munir accepting money but all the refugees interviewed stated that they had never witnessed money changing hands between Munir and a refugee.

One person stated that she suspected Munir had been "set up" by a discontented refugee who had not been resettled and that this frustrated refugee was spreading rumours about Munir. Another refugee stated that she thought Munir "got too close to refugees", taking interest in particular cases but this person also admitted that she had never seen Munir with a refugee outside the office.

When Munir was asked about his relationship with Sanam, he admitted that he had gone to the cinema with her but he stated that they had not eaten at a restaurant together. Munir told the investigators that he and Sanam had a lot in common and spoke on the phone often. He stated that he knew her "a little better than other refugees" and that their relationship was "just friendly, not romantic". He also acknowledged that Sanam had given him a watch as a birthday present.

FINDINGS OF THE CASE

In spite of a significant number of interviews with refugees in Tivaliland and those resettled in Nirvania, no one corroborated the statement that Munir had requested money in exchange for facilitating resettlement.

It does appear that Munir maintained an inappropriate relationship with a refugee, accepting the gift of a watch from Sanam but the investigators found no evidence either on file or in statements made by refugees or staff to suggest that there were any serious problems in the resettlement process. They did, however, state that there were irregularities in the processing of some files, i.e. Munir did not follow BO Tivaliland office standards regarding clearing cases with his supervisor before forwarding them to the Nirvanian Embassy. The cases submitted by Munir directly to the Nirvanian authorities did not meet BO Tivaliland criteria for submission.

CASE STUDY 2: PART B – FRAUD TAXONOMY WORKSHEET

Question	Answer
Who committed or attempted the fraud?	
Was the fraud or attempted fraud recognized? If so, how was it recognized, and if not, how could it have been recognized?	
How should the fraud be responded to?	
How should this type of fraud be prevented in the future?	

Case Study 3

Mr. Nahid R. is a 38 year-old head of household who was recognized as a refugee following his RSD interview in May 2005. Nahid and his family fled the persecution of members of his tribe that erupted in February, 2005 and left many of his relatives dead and his home destroyed.

Nahid has been living on the outskirts of the capital of Sakurinam with his wife, Arifa and their three children. He has been employed as a rug maker at a nearby factory and has managed to provide for his family. His daughters, ages, 12, 8 and 5 are all attending the local school. Nahid is not being considered for resettlement.

On September 18, 2005 Ms. Arifa R. approached the UNHCR office to inform the Resettlement Officer (RO) responsible for her family's case, that her husband, Nahid disappeared in mid June and, although she's been hoping for his return, it now appears that he has abandoned the family. Arifa stated that all her resources are depleted and she will soon have to take her daughters out of school as she cannot afford to live without the money her husband had been earning. Arifa also claims that she is frightened that some of the men in the neighbourhood where she is living will take advantage of the absence of her husband to harass her and her children.

The Resettlement Officer noted this change in Arifa's family configuration and vulnerability and completed a Resettlement Form using the Woman at Risk criterion. He submitted Arifa's case to the resettlement country of Fortunistan which interviewed her during a selection mission to Sakurinam. Arifa is accepted for resettlement and she is scheduled to depart the country of asylum for Fortunistan on October 22, 2005.

In October 15, the Resettlement Officer heard rumours from an NGO active in the area that Arifa's husband Nahid has been seen and is in fact living with relatives not far from Arifa's shelter. Nahid was also spotted in the marketplace with Arifa and one of the children.

Arifa was called for an interview at UNHCR and at first denied any knowledge of her husband's whereabouts. In response to probing questions, Arifa admitted that she and Nahid desperately wanted to be resettled and they had heard that qualifying as a Woman at Risk would improve the family's chances.

CASE STUDY 3: PART B – FRAUD TAXONOMY WORKSHEET

Question	Answer
Who committed or attempted the fraud?	
Was the fraud or attempted fraud recognized? If so, how was it recognized, and if not, how could it have been recognized?	
How should the fraud be responded to?	
How should this type of fraud be prevented in the future?	

Case Study 4

Ms. Vita M is a single 34 year old Kimurian refugee interpreter with a UNHCR Implementing Partner in Tivaliland. She was frustrated with not being found eligible for resettlement. UNHCR considered that she was in no danger as she is employed and well established in Tivaliland.

Through her work as an interpreter, Vita is in constant contact with refugees. In April, 2005 she approached Mr. Bernard H, a single, male Tivalian refugee who had been preliminarily approved for resettlement in Nirvania. Vita proposed to pay Bernard \$1,000 if he would add her to his file as his wife.

Bernard agreed to the arrangement and accepted the \$1,000 from Vita. Vita and Bernard obtained a document from the Refugee Centre for Human Rights confirming that they were married and intending to apply for official recognition of their marriage. Bernard then abandoned Vita, taking no further steps towards formalizing the marriage. He did not seek to add Vita to his UNHCR resettlement case, nor did he return the \$1,000 she had given him.

Aware that IOM was processing Bernard for travel to Nirvania, Vita complained to IOM about Bernard's deception of her. IOM suspended Bernard's travel pending an investigation of the matter and referred the case back to UNHCR. UNHCR determined that although Bernard H denied receiving funds from Vita M, he had in fact done so.

CASE STUDY 4: PART B – FRAUD TAXONOMY WORKSHEET

Question	Answer
Who committed or attempted the fraud?	
Was the fraud recognized? If so, how was it recognized, and if not, how could it have been recognized?	
How should the fraud be responded to?	
How should this type of fraud be prevented in the future?	

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