Statement by
Mr. Manuel Jordão, UNHCR Representative for Ireland
to the RIS/NASC seminar on Family Reunification
Cork, 15 November 2007

Good morning, ladies and gentlemen.

Let me start by thanking the organizers for inviting UNHCR to speak here today and to share our views on the subject of family reunion.

The Refugee Information Service (RIS) has invested a great deal of energy in this area and recently launched a report on family reunification, which I read with great interest.

Indeed, the RIS report is not only detailed in its description of the existing family reunification procedures, but it also puts forward a significant number of recommendations with the aim of addressing an equally important number of areas where they observe difficulties for their clients.

I welcome initiatives, like the RIS's in the area of family reunion, and believe we must combine our experience and understanding of the difficulties that refugees experience if we are too continue to improve the services provided to bring families together.

I have no doubt of Ireland's commitment to refugees and their families, and I am working closely with the Department of Justice, Equality & Law Reform to offer UNHCR's assistance.

Turning to the subject of our seminar, let me try to give you UNHCR's views on this topic by answering a single question. This question reads as follows:

"How far have we gone in our collective efforts when it comes to promote family reunification of persons in need of international protection in Europe and in Ireland ?"

My answer will deal successively with issues relating to the existing international legal framework, the E.U. context and finally, with today's situation in Ireland. I will try to be brief.

The International Legal Framework

In 1994, a UN General Assembly resolution considered that the family was ***"the foundation of human society and the source of human"*** life. This was a simple reformulation of the notion proclaimed in Article 16 of the 1948 Universal Declaration of Human Rights, as well as in the two 1966 International Covenants on Civil, Political, Economic, Social and Cultural Rights, according to which ***"the family is the natural and fundamental group unit of society, and is entitled to protection by society and the State"***.

As you are aware, a number of other universal and regional binding instruments similarly uphold this same principle of protecting family unity, including the 1950 European Convention on Human Rights, the 1961 European Social Charter, the 1989 Convention on the Rights of the Child and others listed in the projected transparencies behind where I am speaking. **(Show slides 2 and 3).**

Concerning **refugees,** while the 1951 Convention does not confer a right to family reunification on refugees, the issue has nevertheless been considered important in view of some of the above mentioned international instruments. In this connection, one should further note that the *Final Conference of Plenipotentiaries* which adopted the 1951 Convention relating to the Status of Refugees, unanimously considered that the principle of family unity was ***"an essential right of the refugee".*** Among others, the Conference also urged Governments to extend protection to members of the

refugee's family once the head of the family had been granted admission to a particular country. It also emphasized the special protection needs of children, particularly unaccompanied minors who have been separated from their parents.

In addition, a number of Conclusions of UNHCR's Executive Committee on this subject (Conclusions 1, 9, 24, 84, 85 and 88), generally reaffirm the principle of family unity in international and humanitarian law.

More recently, during the 2000-2002 UNHCR Global Consultations on International Protection, countries agreed in the summary conclusions on family unity that, I quote:

"Respect for the right to family unity requires not only that States refrain from action which would result in family separations, but also that they take measures to maintain the unity of the family and reunite family members who have been separated. Refusal to allow family reunification may be considered as an interference with the right to family life or to family unity, especially where the family has no realistic possibilities for enjoying that right elsewhere."

The main limitation of most of these texts is that they are not binding in the sense that the right to family unity, despite being recognized as a core human right, remains largely a State prerogative and thus a matter of national policy.

Indeed, when States are confronted with a binding instrument on this subject, then the tendency is for the scope of the said instrument to include a number of substantive and procedural limitations. States often prefer to simply "opt out" of instruments that might limit or determine national policy as regards key international public law principles.

The 2003 EU Directive on Family Reunification, is a good example of an instrument with these limitations.

After more than three years of negotiations, the then fifteen (15) EU Member States set out conditions under which refugees and migrants may be reunited with their families which reflected minimum standards in States across the board.

Among other concerns raised by UNHCR and other parties, were **(show slide 4)**:

(1) **The narrow definition of the family unit**, which allows states not to admit adult children, elderly parents or other close relatives who may be entirely dependent on the refugee;

(2) **The denial of family reunion on the grounds of public policy, public security and public health**, which allowed the use of terms such as "public policy" to keep families apart without any real justification;

(3) **No automatic right to family reunification to both migrant and refugee couples who are under 21 years old**, which potentially means splitting marriages that have not only been in place for years, but which may also have produced children;

(4) **Suspension of the right to work of reunited family members of recognized refugees for up to year** *for reasons "related to the situation of the labour market"***;**

(5) **No rights to family reunification to those granted *"subsidiary forms of protection"***, a provision hard to justify as it simply excludes from the scope of the

Directive people who have needs that are every bit as compelling as those of refugees.

The situation in Ireland

Despite the above mentioned shortcomings, the instrument went ahead. E.U. countries like Denmark, the UK and Ireland "opted out".

As a result, the Irish legislator is only expected to take into consideration the international human rights instruments mentioned above, in particular the 1950 European Human Rights Convention, the two 1966 International Covenants, the 1989 Convention on the Rights of the Child, International Humanitarian Law and, of course, the 1948 Universal Declaration of Human Rights which is a non-binding instrument but still one which Ireland has signed.

In my view, the existing legislation, in particular **Section 18 of the Refugee Act *(as amended)*,** meets the international standards that Ireland subscribes to.

The Act makes a distinction between two types of family members, *i.e.* **direct family members** (spouse, minor unmarried children, parents where the refugee is a minor unmarried child)**,** and **certain extended family members** (grandparent, parent, sibling, grandchild, ward or guardian of the refugee who is dependent on the refugee or is suffering from a mental or physical disability to such extent that it is not reasonable for him/her to maintain him/herself).

The latter type of family member is granted permission at the Minister's discretion, whereas the former type "shall" be granted permission**,** provided that the Minister is satisfied that the person is who he/she purports to be.

Formally, the only way to appeal a decision of the Minister to refuse family reunification is by way of seeking High Court judicial review of the procedural legality of the Minister's decision.

In principle, this family reunification regime applies only to **Convention refugees**, but in our view it can apply equally to resettled refugees, even though in practice it is often difficult for a ***resettled (programme) refugee*** to get permission to bring in additional family members.

Moreover, the current regime also considers **persons granted Subsidiary Protection Status** under Statutory Instrument. No 518 (Regulation 16).

Family reunification is not provided for in legislation for persons granted Temporary Leave to Remain. However the Department of Justice does accept applications and makes such decisions on a case by case basis, although no statistics are made available on numbers of visas granted or refused in this regard.

To date, the information available indicates that the main features of the current family reunification regime will be kept in the framework of the much awaited new Bill on Immigration, Residence and Protection. In other words, even though UNHCR would like to see the authorities having a more liberal approach to the issue of "family formation", "customary marriage" and *de facto* couples, and couples engaged to be married, we tend to be not very optimistic as regards the possible future introduction of a broader definition of the ***family,*** or even of a more broader application of the concept of "dependent relatives".

However, we would certainly hope that the new Bill will allow us to clarify the issue of what is a valid marriage in Ireland as well as the status of a reunited couple who subsequently divorce.

We would further expect that flexible criteria will be adopted as regards proof of family relationship for refugees, allowing alternative means of proof where the necessary documentary evidence is simply not available. And we would also hope that the existing regime will continue to be applicable to beneficiaries of subsidiary protection.

In the current context, our other main expectations are more of a procedural nature and considerations of the possibilities that will be created by the introduction of a *Single Procedure* in the determination of who is a refugee.

Indeed, throughout 2006-2007, the application procedure for family reunification remained difficult for refugees to navigate, and I would like to recognize the valuable assistance being given by the Refugee Information Service to refugees making applications for family reunification.

UNHCR has consistently promoted the adoption of a derivative refugee status for reunited family members, as a number of family reunification cases now pending concern individuals who are already in Ireland and who are related to a refugee recognized in Ireland - and who, therefore, we believe would be eligible for derivative status. The adoption of such a system would in practice cut down a proportion of the number of family reunification applications pending in Ireland.

Another important measure that could shorten significantly the current length of this procedure, would be to end the visa application procedure that follows a successful family reunification

authorization. We would recommend that a successful application automatically lead to a grant of a visa.

We would hope that the new Bill will introduce the potential for administrative changes in order to ensure greater transparency and consistency in family reunion decisions.

Finally, we hope that in the next few years the Irish State will take over from UNHCR the responsibility to provide material assistance to those persons who prove that they do not have enough means to pay the costs involved in family reunification, such as flights and other related costs.

My final word is one of thanks to the organizers here today for inviting UNHCR to speak and for your willingness to work with UNHCR and indeed the authorities to address the complex issues underlying this particular issue.

Thank you for your attention.