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Definition and aim

1. The majority of UNHCR's operations begin as a result of an emergency caused by a sudden influx of refugees¹ and IDPs. The organization and procedures of UNHCR reflect this. Much of UNHCR's normal work is, in effect, built upon emergency interventions and responses. There are, however, situations that are clearly exceptional. This handbook addresses the needs and requirements for a comprehensive response to such situations.

Definition of a refugee emergency

2. The definition of a refugee emergency for the purposes of UNHCR and this handbook might be:

any situation in which the life or well-being of refugees will be threatened unless immediate and appropriate action is taken, and which demands an extraordinary response and exceptional measures.

3. Sudden refugee influxes are, of course, not the only situations which demand an extraordinary response from UNHCR. Equally swift action will be required in other types of emergency. For example, an emergency can develop in an existing operation, such as when events suddenly place in danger refugees who had previously enjoyed asylum in safety (discussed in chapter 2 on Protection). It can also erupt during the final phase of an operation as in the case of a large-scale repatriation (discussed in chapter 19 on Voluntary Repatriation). In addition there are complex emergencies, which are humanitarian crises involving the competence of more than one UN agency (see chapter 7 on Co-ordination for a full definition). The general guidance provided in this handbook will be useful to these types of emergencies as well.

¹ For convenience, "refugee" is used in this handbook to refer to all persons of concern to UNHCR. The different categories of persons of concern, including refugees, are defined in chapter 2 on Protection.

4. What is important is the ability to recognize, in time, the development of situations in which an extraordinary response will be required of UNHCR in order to safeguard the life and well-being of refugees.

5. Much of the handbook is concerned with guidelines on the protection and humanitarian assistance likely to be needed when large numbers of refugees cross frontiers to seek asylum; and also for internally displaced persons (IDPs) as a result of conflict or natural disasters i.e. an emergency caused by a sudden influx of refugees or IDPs.

Aim

The aim of UNHCR's emergency response is to provide protection to all persons of concern to UNHCR and ensure that the necessary assistance reaches them in time.

Responsibilities

Governments and UNHCR

6. Host governments are responsible for the security and safety of, assistance to, and law and order among refugees and internally displaced persons (IDPs) on their territory. Governments often rely on the international community to help share the burden, and UNHCR provides assistance at the request of governments or the UN Secretary General.

The statutory function of providing international protection to refugees and seeking permanent solutions for their problems is however, always UNHCR's responsibility.

7. The role of UNHCR in emergency operations is primarily to protect refugees. UNHCR assists and complements the work of the government by acting as a channel for assistance from the international community, and by coordinating and monitoring implementation of the assistance. Whatever the organizational

manner in which UNHCR provides emergency assistance in response to a government request, UNHCR is responsible for ensuring that the protection and immediate material needs of the refugees are met effectively and appropriately. This requires a good understanding of the community and analyzing the situation of the diverse groups from an age and gender perspective together with planning protection and assistance responses with the community.

UN organizations

8. The material needs of refugees are likely to be covered by sectors for which other organizations in the UN system have special competence. In particular the World Food Program (WFP), with which UNHCR has established a close partnership, and who provides the major part of the emergency food needs of refugees. In recognition of each organization's comparative advantages and skills, and with the aim of giving consistency and predictability to the relationships between them, UNHCR has concluded Memoranda of Understanding (MOUs) with a number of UN organizations. These MOUs also cover issues related to emergency preparedness and response, such as joint contingency planning, joint assessments and development of standards and guidelines, as well as programme implementation. Notable among these are the MOUs with World Food Programme (WFP), the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF). UNHCR has also signed MOUs with the United Nations Population Fund (UNFPA), the United Nations Development Fund for Women (UNIFEM) and the World Health Organization (WHO) (see Appendix 3 for additional MOUs).

Responsibility for coordinating the response of the UN system to a refugee emergency normally rests with UNHCR. Complex emergencies involving IDPs are dealt within the UN collaborative response described under Chapter 7 "Co-ordination and site level organisation".

9. The UN body charged with strengthening the coordination of humanitarian assistance of the UN to complex emergencies is the Office for the Coordination of Humanitarian Affairs (OCHA), through coordination, policy development and advocacy.

Non-Governmental Organizations

10. A large number of non-governmental organizations (NGOs) provide assistance to refugees in emergencies. These organizations often act as UNHCR's operational partners. The division of responsibilities is determined by the implementing arrangements agreed between them, the government and UNHCR regardless of whether funding is from UNHCR or elsewhere. This is discussed in more detail in chapters 7 and 8 on coordination and implementing arrangements

Other organizations

11. A number of other organizations also act as operational partners in the provision of assistance to refugees in emergencies. In particular, the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (IFRCS) with the National Red Cross and Red Crescent Societies, have long provided such assistance. The ICRC mandate requires a high degree of operational neutrality and independence, which sometimes limits their participation in co-ordination mechanisms and the exchange of information between them and other organizations.

12. Other operational partners could include inter-governmental organizations, for example the International Organization for Migration (IOM). The objective of IOM is to ensure the orderly migration of persons who are in need of international migration assistance. IOM works subject to the agreement of both (or all) the states concerned with the migration. IOM has worked closely with UNHCR, notably by assisting with voluntary repatriation.

13. In order to enhance strategic partnerships and complement UNHCR's emergency preparedness and response capacity, EPRS concluded agreements with Governmental and Non-Governmental partners since 1992. MOUs covering emergency staffing, support to emergency teams and operational capability mechanisms were signed with the Danish and Norwegian Refugee Councils, Swedish Rescue Services Agency, AUSTCARE, EMERCOM, Norwegian Civil Defence, Red R Australia, Swiss Development co-operation, Save the Children, Center for Diseases Control and Oxfam. Evaluations of these MOU are done following utilization in emergencies to determine how they improve UNHCR's capacities to deliver.

The refugees

14. Beyond the right to international protection under the Statute of UNHCR and under the 1951 Refugee Convention and 1967 Protocol, all refugees, as indeed all persons, have human rights. These are enshrined in the Charter of the United Nations and in the Universal Declaration of Human Rights: the fundamental right to life, liberty and security of person; protection of the law; freedom of thought, conscience and religion; and the right to own property. Refugees have the right to freedom of movement. However, it is recognized that, particularly in cases of mass influx, security considerations and the rights of the local population may dictate restrictions.

15. Refugees and displaced persons also have, of course, responsibilities towards the country where they have sought refuge. These are set out in Article 2 of the 1951 Convention: "Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order." The civilian nature of refugee status must be respected.

Defining responsibilities

16. All those involved both inside and outside the UN system, should have clearly defined responsibilities within a single overall operation. This can be achieved through the establishment of an appropriate coordinating structure at various levels to ensure that duplication of effort and gaps are avoided. Incertain situations, the coordinating role of UNHCR may need to be more direct and operational, both in planning and executing the emergency response, and in providing expertise in specific sectors.

Principles of response

Introduction

17. Whatever the framework of responsibility for a particular refugee emergency, certain principles of response are likely to be valid. Many of these are common themes in the chapters that follow.

18. By definition, the needs of a refugee emergency must be given priority over other work of UNHCR. This is essential if the aim of ensuring protection and timely assistance to refugees is to be met. Leadership and flexibility are required of UNHCR in an emergency.

A rights and community-based approach

19. The following summarises how a rights and community based approach should permeate all UNHCR emergency operations:

i. All of UNHCR's programmes, policies, and operations should further the realization of the equal rights of women, men, girls, and boys of concern, of diverse backgrounds, as set out in international legal instruments.

ii. International legal standards should form the framework for UNHCR's protection strategies and programme assessments, analyses, planning, design (including setting goals, objectives and strategies), implementation, monitoring and evaluation. Protection objectives should be at the forefront of programme planning (see chapter 2 on Protection for more details).

iii. Our work should help to develop the capacity of States, as duty-bearers, to meet their obligations, and the capacity of women, men, girls, and boys of concern, as rights-holders, to claim their rights.

iv. We must work in partnership with persons of concern of all ages and diverse backgrounds in order to understand the community's priorities, capacities and resources, and to build on them in order to ensure that all members of the community are protected.

v. Women, men, girls, and boys should be engaged as partners in protection and programming activities. Our work should reinforce the dignity and self-esteem of the members of the community. It should help to empower the community as a whole, and individuals within the community, particularly women and girls, to access and enjoy their rights.

vi. Practices within a community, including traditional, cultural or religious practices that violate the rights of women and girls, should not be tolerated or overlooked. UNHCR has a responsibility to work towards the prevention and elimination of such practices at the individual and community levels, and to take action to ensure that individual women and girls whose rights have been, or are at risk of

being, violated are protected. International legal standards should guide our work in this respect.

vii. It is crucial that UNHCR work closely with individual community members and different groups within the community in order to prevent and eliminate traditional, cultural or religious practices that violate the rights of women and girls.

Get the right people to the right place at the right time

20. The single most important factor in determining whether or not sufficient emergency assistance reaches the refugees in time, and in an appropriate manner, will probably be the people involved in organizing and implementing the operation.

Sufficient UNHCR and implementing partner staff of the right calibre, experience and gender balance must be deployed in the right places and equipped with the authority, funds, material and logistical support needed. They must be committed to a multi-functional team approach in all aspects of their work.

A multi-functional team approach

21. Multi-functional teams are responsible for undertaking participatory assessment in UNHCR's emergency operations. A multi-functional team is, at a minimum, composed of protection, programme, and community-service staff. Ideally, it should include female and male staff, both national and international and of different levels.

22. A successful multi-functional team approach requires the involvement and commitment of the emergency team leader who should ensure the engagement of all members of the team. Offices should ensure that multi-functional teams include the wider circle of actors on the ground, such as partners, government counterparts, NGOs, other UN agencies, and donors, as appropriate.

23. No amount of expertise and experience can substitute for organizing ability, flexibility, a readiness to improvise, ability to get on with others, ability to work under pressure no matter how difficult the conditions. An aptitude to promote a rights and community-based approach, capacity to recognize age and gender considerations, tact, sensitivity to other cultures and particularly to the plight of refugees, a readiness to listen, and, not least, a sense of humour, are essential.

Work with refugees through a community-based approach and promote self-reliance

24. In order to ensure that the assistance provided to refugees is appropriate, the refugees must be involved from the outset in the measures taken to meet their protection and assistance needs. In addition, all components of the operation must be planned in such a way as to promote their self-reliance. Obvious as this principle is, the pressures of an emergency often make it easier to organize an operation from the outside for, rather than with, those whom it is to benefit.

25. If the emergency operation involves the refugees in this way from the start, its effectiveness will be greatly enhanced. Furthermore, such an approach will allow the refugees to maintain their sense of dignity and purpose, encourage self-reliance and help avoid dependency. In emergencies, refugees are often regarded as helpless and passive recipients of external assistance. In the long term this approach by humanitarian workers sets a pattern of dependency. Refugees must be encouraged to help themselves by using their own skills and resources from the beginning of an emergency. Community services staff are essential actors in supporting the mobilization of the community and facilitate a participatory process.

It is important to ensure refugee participation; women, men, adolescents, boys and girls at all stages of planning, implementation and monitoring.

26. Refugees are often most able to help themselves, and thus be least reliant on outside assistance, if they are not grouped together in highly organized camps, but rather reside in small, less formal groups.

27. The interests of refugees with specific needs, such as persons with disabilities are better cared for and such efforts are more sustainable if community support and involvement is harnessed right from the start. In addition, refugee involvement helps ensure that the emergency response addresses social, human and emotional needs, and goes beyond the provision of material relief.

Be aware of social and economic roles and identify groups at specific risk.

It is crucial to plan and manage an emergency response effectively by undertaking participatory assessment with groups of affected population to identify and analyse the changing social and economic (gender) roles of women, men, boys and girls. This will enable emergency interventions to meet assistance standards and promote gender equality¹.

28. It is essential to understand socio-economic factors, including gender relations, when planning and implementing the emergency response to avoid unintentionally depriving some refugees of the benefits of assistance and inadvertently exposing them to protection risks. This is often true for women, children, older persons and the disabled. UNHCR pays particular attention to the needs of these groups, especially in emergencies. It is important that groups with specific needs are identified at the outset and that meetings are held with them to determine

¹ *The UNHCR Tool For Participatory Assessment in Operations, 2005*

needs and responses. Thus, in the planning and implementation of an emergency response, groups with specific needs must be monitored systematically to ensure that they are not further disadvantaged and targeted measures should be taken to meet their particular needs. In an emergency, health staff should spend time with women, girls, boys and men to identify patterns of SGBV and establishing prevention and response mechanisms (see chapter on Prevention and Response to SGBV in Emergencies).

29. Even in an emergency, refugees are likely to have some form of representation, through a community or group organization.

It is important to find out exactly what kind of leadership structure exists and what measures are taken to ensure the views and voices of women and children are represented in the forum. Specific measures must be instituted to ensure equal participation of women and men in decision-making processes.

It is also through an effective use of their active participation and equal representation (women, men, girls and boys of different backgrounds) that refugees' rights can be better promoted. However, be aware that leaders may sometimes not be representational, or may have an agenda or objectives which could have adverse consequences on other refugees, hence, the importance of meeting with different members of the community and working with the leadership to promote effective communication with the whole community.

Ensure the measures are appropriate

Age, gender, and diversity mainstreaming (AGDM) in emergencies

30. UNHCR's AGDM strategy aims to ensure that the meaningful participation of all persons of concern to the office is

integral to the design, implementation, monitoring, and evaluation of UNHCR's emergency protection strategies and programmes. Through dialogue with women, men, girls, and boys of diverse backgrounds and ages, facilitated by multi-functional teams, a proper analysis of the protection problems they face as well as their proposed solutions can be undertaken.

31. The findings from participatory assessments and all other information should be analysed from an age, gender and diversity perspective. This analysis provides the basis for emergency planning and responses designed to ensure the effective protection of all members of the community. There needs to be a continuous exchange of information with the different members of the community to ensure that responses are regularly evaluated and adapted according to feedback from the people of concern.

Identify protection risks and needs from an age, gender and diversity perspective

32. An appropriate response in the provision of protection and material assistance requires participatory assessment of the protection risks facing refugees and their needs. This should take into account not only their specific protection needs, material state, the resources available as well as their capacities, but also their culture, age, gender and background including those of the nationals in whose country they are granted asylum. The provision of protection and of essential goods and services must be provided to refugees in ways which actually meet their needs.

33. In collaboration with other agencies, promote and ensure collection of sex and age disaggregated data and information on groups with specific needs, such as persons with disabilities, unaccompanied and separated children.

Be flexible and respond to changing needs

34. What is appropriate will vary with time. In the early stages of a major emergency, special measures that rely heavily on outside assistance may be necessary. However, as a general principle, the response should draw on refugee capacities, local resources, materials and methods, to the extent possible and should, for example, avoid regimented refugee camps. Solutions that can be readily implemented with existing resources and simple technologies should be sought.

Identify standards

35. It is an important responsibility of UNHCR to determine with the government and operational partners the standards of assistance that are appropriate. This requires expertise in a number of disciplines. The guidelines in Section III of this handbook suggest general considerations, to be modified in light of the circumstances of each emergency. Appendix 1 (Toolbox) also contains standards. Each sector would then need to decide and be accountable for the correct level of overall assistance from all sources.

36. As a general principle, the standards of assistance must reflect the specific needs of the refugees based on their age, sex, physical and psychological condition, situation and experiences. At the same time account must be taken of the standards planned for and actually enjoyed by the local population.

37. If the standards have been correctly determined, they cannot later be lowered without harm to the refugees. The refugees must, for example, receive a minimum basic food ration. Outside contributions required to reach the standards will, however, naturally be reduced as the refugees become more self-reliant.

Do not treat issues in isolation

38. In all stages of an emergency, the problems and needs of refugees must be seen comprehensively, and sector-specific tasks should be set within a multi-sectoral framework, since action in one area is likely to affect others. For example the real solution to a health problem might be found in improving the water supply. Ensure the correct balance in resource allocation between the different sectors.

A multi-functional team approach, that promotes a community-based response and meets the standards of assistance are important criteria of an emergency response.

Ensure environment is considered at an early stage

The emergency phase is the critical moment at which environmental degradation may be confined or limited.

39. There are a number of strong arguments for making environmental interventions as soon as possible during the emergency phase of a response, such as:

- ♦ Unnecessary damage to the environment is most effectively prevented or mitigated during this phase.
- ♦ Activities undertaken at an earlier stage of an operation are far more cost-effective than those taken later.
- ♦ The potential for promoting environmental awareness among the refugee population is greater if activities begin at an early stage.
- ♦ Minimization of refugee-related environmental impacts will reduce the burden placed on the local population and may have the added benefit of decreasing friction between the local population and refugees.

40. Similarly, issues which are cross-cutting in nature should not be neglected.

This is often the case with issues concerning age and gender groups, and the environment.

41. Strengthening institutional capability to deal with environmental matters in the field is essential. The provision of clear guidance to UNHCR and implementing partner field staff on how environmental matters should be treated within UNHCR's operational framework is particularly important (see chapter 4 on Contingency Planning).

42. Although our aim is to minimize environmental impacts caused by refugees, it is relevant to note that, in certain locations, the presence of environmental hazards may also occasionally pose a risk to the health of refugees. This may arise from features such as the presence of endemic diseases, high levels of air or water pollution, and toxic or radioactive chemicals in the soil.

Work for durable solutions

Always Remember the Longer Term Objectives

43. A general principle in considering the appropriateness of measures is that, from the start, resources must be divided between immediate needs and actions aimed at longer-term improvements and the prevention of problems. For example, resources must be devoted to general public health measures as well as to the treatment of individual diseases, which will include many that could be prevented by better water and sanitation. Emergency assistance is to be allocated to the maximum extent possible to activities which will be of lasting benefit, thus keeping any relief phase as short as possible.

44. From the beginning of an emergency, and even during preparations for an emergency, planning must take into account the post emergency phase as well as the envisaged durable solutions. This requires that the response both encour-

ages the self-reliance of the refugees and reduces prolonged dependency on outside relief, without preventing the promotion of a long-term solution as soon as possible.

45. As a general principle, the best solution is voluntary repatriation. Where this is not possible, assimilation within the country of asylum (local settlement) is in most circumstances preferable to assimilation within another country (resettlement). This is particularly true for large groups and in cases where resettlement would take place in a cultural environment alien to the refugees. There may, however, be situations in which resettlement is the only way to ensure protection.

Food and non-food items distribution

46. The distribution of food and non food items cannot be predetermined by handbooks and rules, these can only provide guidance. Once emergency team members arrive on the ground, they will find many unforeseen situations and a wide variety of needs. The important rule is to remember to pay close attention to the different requirements people may have and to respond in a reasonable manner to situations, such as the needs of older persons in a cold climate if you only give them one blanket and remember they will be different to those of young people. Think about the implications of forcing people to share blankets and plastic sheeting, will you be mixing young male and female adolescents, will you be forcing different families from different ethnic groups to mix, will you be putting single women at risk, and will people be able to eat the food you are requesting, did you check with them if it was appropriate. Be flexible and **explain** the situation to people. Get them to help you prioritise if there is not enough to go round. Try and be as generous as possible when allocating assistance rather than "protecting" it. Keep an open mind and try to understand people's urgent needs, think

age, gender and diversity and make sure you keep double checking if the assistance reached the right people.

Monitor and evaluate the effectiveness of response

47. Whatever the nature of the emergency, the action required of UNHCR is likely to vary with time and as circumstances change.

It is essential that the effectiveness of the response be kept constantly under review through continued participatory assessment and action adjusted as necessary and in time.

This will require sound monitoring, reporting and evaluation systems, including sex and age disaggregated data and indi-

cators, to detect deterioration or change. Also, a continuous review of the aims of UNHCR's assistance, both in terms of bringing the emergency to an early end and for the promotion of a durable solution, is necessary.

48. Such monitoring must also ensure that the funds provided voluntarily to UNHCR by governments and others are being used to the best advantage. This is inherent in the principle of appropriate response. It should be borne in mind that whatever funds may be available in the early stages of an acute humanitarian emergency, the passage of time will produce financial constraints. Thus it is important that actual and potential donors see that the action proposed is indeed essential, and that its impact is effective.





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UNHCR's mandate

UNHCR's primary responsibilities are:

- to ensure that all persons of concern to the office receive international protection; and
- to seek permanent (durable) solutions for their situation.

1. Ensuring that UNHCR meets these responsibilities is not the sole responsibility of the “protection officer” in an emergency but a collective responsibility of all UNHCR staff.

International protection

International protection includes a range of concrete activities that ensure that all women, men, girls and boys of concern to UNHCR have equal access to and enjoyment of their rights in accordance with international law. The ultimate goal of these activities is to help them in permanently rebuilding their lives within a reasonable amount of time.

2. The need for international protection arises when States are unable or unwilling to protect their nationals. In such circumstances, these people need the protection and support of other governments and humanitarian agencies such as UNHCR. International protection is a temporary substitute for the protection normally provided by States to their nationals.

3. States are responsible for protecting people who seek safety in their territory. UNHCR works closely with these States and other authorities to ensure that such persons are able to exercise their basic human rights and live securely and with dignity. **UNHCR is not a substitute for State responsibility.**

4. Understanding who is entitled to international protection, the legal basis for securing this protection, the purpose and means to provide international protection is essential. This chapter addresses these issues.

‘Persons of concern’ to UNHCR

The first step in any emergency is to establish whether individuals or groups are of concern to UNHCR and therefore entitled to international protection.

5. In an emergency, UNHCR and its partners can expect to encounter the following **persons of concern** to UNHCR:

♦ **Asylum-seekers:** When civilians seek safety in countries other than their own, they are said to be seeking asylum and are known as asylum-seekers. This is the first step towards being formally recognized as refugees. Very often, people do not formally register as asylum-seekers. However, they may still be in need of international protection.

♦ **Refugees:** According to UNHCR's mandate, a refugee is any person who is outside his or her country of origin or habitual residence and who is unwilling or unable to return there owing to:

i. a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion (this is similar to the definition provided in the *1951 Convention*); or

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

♦ **The internally displaced:** The internally displaced are those who have been forced to flee their homes as a result of armed conflict, situations of generalised violence, violations of human rights, or natural or human-made disasters. Unlike refugees who have crossed an international border, the internally displaced remain uprooted within their own country. As citizens within their own country, they are entitled to enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They

shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced. Sometimes, unfortunately, refugees who return to their countries remain internally displaced until they are able to return to their areas of origin within the country. UNHCR is committed to engaging with the internally displaced affected by armed conflict, generalised violence or violations of human rights. Only exceptionally and on a good offices basis, does UNHCR assist persons who are internally displaced for other reasons such as natural disasters.

- ♦ **Returnees:** Returnees are refugees and the internally displaced who return to their country/area of origin or habitual residence (and chapter 22 on voluntary repatriation). UNHCR has a legitimate interest in the consequences of return, not least to ensure that further displacement does not take place.
- ♦ **Stateless persons:** A stateless person is one who is not considered to be a national by any state under its laws. A stateless person can also be a refugee when, for example, s/he is forced to leave her/his country of habitual residence because of persecution. However, not all stateless persons are refugees, and not all refugees are stateless. The UN General Assembly has mandated UNHCR to work to prevent statelessness and to act on behalf of stateless persons. UNHCR assists stateless persons in resolving their legal problems, obtaining documentation, and eventually restarting their lives as citizens of a country. UNHCR also provides technical and legal advice to governments on nationality issues, including assistance in drafting and implementing nationality legislation designed to prevent and resolve situations of statelessness. The main international instruments dealing with statelessness are listed in Annex 1.

6. On occasion UNHCR has, for humanitarian reasons and on the basis of its mandate (including upon the specific request of the General Assembly or Security Council), become involved with individuals other than the categories mentioned above such as local populations at risk who may not have fled their homes.

The legal basis

For protection activities

7. Humanitarian workers must be familiar with legal principles that form the basis for all protection activities that UNHCR and its partners undertake in an emergency. These principles can be found in:

- i. **International refugee law:** Including the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*; The *1969 Convention Governing the Specific Aspects of Refugee Problems in Africa* of the Organization of African Unity (OAU) (for operations in Africa only) the *1984 Cartagena Declaration on Refugees*, and the *1994 San Jose Declaration* (for operations in Latin America only).
- ii. **International human rights law:** Including the *International Covenant on Economic, Social and Cultural Rights* of 16 December 1966; the *International Covenant on Civil and Political Rights* of 16 December 1966 and its two optional protocols; the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* of 10 December 1984 and its optional protocol; the *Convention on the Rights of the Child* of 20 November 1989 and its two optional protocols; the *International Convention on the Elimination of All Forms of Racial Discrimination* of 21 December 1965; and the *Convention on the Elimination of All Forms of Discrimination against Women* of 18 December 1979 and its optional protocol.

iii. **International humanitarian law and the law of neutrality:** Including the four Geneva Conventions of 12 August 1949 and the two protocols of 8 June 1977. The law of neutrality especially the 1907 *Hague Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land* is also useful in countries neighbouring armed conflict.

iv. **International criminal law:** Including the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, both of which supplement the *United Nations Convention Against Transnational Organized Crime* of 15 November 2000.

8. Annex 1 lists these and other relevant international instruments and their main purpose(s). The UN Security Council and General Assembly Resolutions and non-binding legal texts such as the *Guiding Principles on Internal Displacement* are also essential in the protection of refugees and other uprooted people.

9. Even when an emergency occurs in a country not party to the relevant international and regional instruments, some of the principles embodied in the *1951 Convention* are considered customary international law and hence are binding on all states. Foremost amongst them is the principle of *non-refoulement*. The prohibition of torture as well as violence against women, that are both enumerated in human rights instruments, are also norms of customary international law. In addition, the moral strength and standard setting value of the conclusions on international protection of UNHCR's Executive Committee (ExCom) is not limited to states which are members of the Executive Committee (see chapter 9 for more details on EXCOM members).

10. Understanding the relevant **national laws** of the country in which persons of concern are residing in is also essential in ensuring their protection. On occasion, the standards established by national legislation may be far below those established by international law. In such cases, UNHCR must promote and uphold principles of international law.

For UNHCR's involvement

11. UNHCR's protection responsibilities have been established by the General Assembly (through the *Statute of the Office of the United Nations High Commissioner for Refugees* complemented by General Assembly and ECOSOC resolutions). The Statute has universal applicability.

12. In addition, UNHCR's protection function is facilitated by the *1951 Convention* that obliges States which are parties to the Convention to cooperate with UNHCR in the exercise of its functions and facilitate UNHCR's responsibility of monitoring the application of the Convention's provisions (Article 35). The 1969 OAU Convention contains a similar clause.

13. UNHCR is also guided (and bound by) international law and ExCom Conclusions mentioned above as well as UNHCR's own policies and guidelines.

UNHCR in emergencies

14. The legal basis on which UNHCR intervenes to secure the protection of refugees is contained in the instruments mentioned in paragraphs 7-13. However, it is the practical course of action adopted in emergencies that really determines the *quality* of protection offered to persons of concern to the agency.

Protection in emergencies frequently depends less on the fine print of a law and more on swift, appropriate action by UNHCR staff in the field.

15. In order for UNHCR to effectively discharge its mandate in an emergency, it is often essential, among other things that:

- i. A **multi-functional team** comprised of staff - both women and men - with protection, community services, programme, logistics, security and other expertise are rapidly deployed to address the emergency.
- ii. UNHCR constantly updates itself **with the rapidly developing and changing situation** it is confronted with. This includes the humanitarian, political, economic, social, security and other aspects of the situation.
- iii. UNHCR **establishes and maintains strong working relations with its partners**, in particular local and national authorities, the local military and international peacekeepers, other UN agencies, NGOs, other members of civil society and the persons of concern to UNHCR themselves that are present during the emergency. It may be necessary, due to lack of resources or expertise, to divide responsibilities among UNHCR and its partners.
- iv. **Partners understand UNHCR's concern and involvement in practical terms.** Local officials may not know of UNHCR's mandate, or of the humanitarian aid which UNHCR may already be giving elsewhere in the country. The approach should stress that the work of the High Commissioner is of an entirely non-political character and is strictly humanitarian.
- v. UNHCR has **free and unhindered access to all persons of concern** irrespective of their location (including border points, detention centres and camps).
- vi. UNHCR **maintains a continuing presence in the affected areas** - including border, camps, settlements and other locations - for as long as

necessary. During this time, UNHCR should work closely with refugees and others of concern using participatory assessment to identify protection risks; find and implement solutions together with them and evaluate the results of these solutions jointly.

- vii. UNHCR and its partners apply a **rights- and community-based approach** in their work.

16. During an emergency, some **immediate protection goals** that need to be met **together with States and other partners** often include:

- ♦ Ensuring that asylum-seekers, refugees and the internally displaced are able to **access safety** (access to safe territory; ensuring that borders are open to asylum-seekers and refugees);
- ♦ Ensuring that they are **not refouled** (forcibly sent back to a place where their life, liberty and security would be at risk).
- ♦ **Registering and documenting** persons (on an individual basis as soon as possible) and **determining whether they are of concern to the agency** and entitled to international protection.
- ♦ **Ensuring that the human rights** -- including the right to life, liberty, protection against arbitrary detention and **physical violence** such as rape and other forms of SGBV -- of persons of concern are respected and upheld.
- ♦ In ensuring that some of these rights -- such as the right to food, potable water, adequate shelter, education and health -- are accorded, **provide humanitarian assistance** if necessary. It is important to ensure that everyone has equal access to these amenities and that persons with specific needs, such as single-parents, separated children, the disabled and older persons are not excluded from receiving such support. This means

that humanitarian assistance must be planned from a protection perspective.

- ♦ Ensuring that the **civilian and humanitarian character of asylum is maintained** (ensure combatants are not allowed in camps, that they do not recruit people – especially children -- to fight with them).
- ♦ Identifying and addressing the **specific protection needs** of individual women, men, girls and boys, older persons, persons with disabilities and others.
- ♦ Working with countries to identify and provide **durable solutions** for refugees and others of concern to the agency.

These issues are discussed in the following pages in more detail.

Action taken at the outset of an emergency may have significant long-term consequences in ensuring that refugees and others of concern benefit from quality protection.

Securing access to safety

Often in emergencies, international protection requires that UNHCR and other humanitarian agencies first ensure that:

- i. **asylum-seekers, refugees and the internally displaced are admitted to safe territory;**
- ii. **that they are able to enjoy asylum/safety from violence and persecution;**
- iii. **that they are not forcibly returned (“re-fouled”) to territory where their life or liberty would be threatened; and**
- iv. **that they are treated in accordance with human rights standards.**

17. Establishing and maintaining a presence in the area where these uprooted people are and taking prompt action are often essential in ensuring that persons of concern to UNHCR are protected in emergencies.

Admission and non-refoulement

18. In an emergency involving asylum-seekers and refugees, often the first and most urgent priority is to ensure that their right to seek asylum is respected and to ensure they are not forcibly returned (*re-fouled*). There are a number of physical barriers that prevent refugees from accessing safety – land mines, borders monitored by the military and closed borders are some of them. There may also be legal barriers such as visa restrictions that prevent refugees from accessing safety.

19. In an emergency involving internally displaced persons, it would be necessary to ensure that they have access to safety and are not at risk of being forcibly sent back to a part of their country where their life or liberty would be threatened.

Admission

20. Asylum-seekers must be admitted to the State in which they seek refuge without discrimination on the basis of race, religion, nationality, political opinion or physical incapacity. This is in accordance with the *Universal Declaration of Human Rights* that states that “*Everyone has the right to seek and to enjoy in other countries asylum from persecution*”. Further, the UN General Assembly, on adopting the UNHCR Statute, called on governments to cooperate with the High Commissioner in the performance of his/her functions by, among other things, **admitting refugees to their territories.**

21. Similarly, the *Guiding Principles on Internal Displacement* states that internally displaced persons have the right to seek safety in another part of the country, the right to leave their country and the right to seek asylum in another country.

22. Refugees often do not have proper identification or travel documents because they leave their homes at short notice or because they are escaping from the very authorities that issue these documents in their country. Therefore, they may not

fulfil the immigration requirements of the country of asylum. Article 31 of the *1951 Convention* obliges States not to penalize refugees on account of their illegal entry or presence so long as they make their presence known as soon as possible.

Non-refoulement

23. Of cardinal importance is the principle of non-refoulement which includes:

- ♦ not denying access to their territory to asylum-seekers who have arrived at their border (access to asylum);
- ♦ not intercepting asylum-seekers or refugees outside the territory of any country (e.g. the high seas) with a view to prevent them from seeking safety;
- ♦ not expelling or returning asylum-seekers or refugees in any manner whatsoever to the frontiers of territories where his/her life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (Article 33 of the 1951 Convention).

In the case of the internally displaced, the Guiding Principles on Internal Displacement prohibits their forcible return to or relocation to any place where their life, safety, liberty and/or health would be at risk. This is supported by international human rights law and international humanitarian law.

24. The *1951 Convention* provides for very limited exceptions to the principle of *non-refoulement* of refugees, namely, for whom there are reasonable grounds for being regarded as a danger to the security of the country where they are, or for those who, having been convicted by a final judgement of a particularly serious crime, constitute a danger to the community of that country.

25. The principle of *non-refoulement* is recognized by a number of international and regional instruments. Because of its

fundamental and universally accepted character, the principle of *non-refoulement* has been recognized as a principle of customary international law.

The principle of non-refoulement is binding on all States irrespective of whether or not they are party to the 1951 Convention or other international or regional instrument.

26. In any emergency, UNHCR must take all measures to ensure that refugees and the internally displaced have access to safety and that they are not *refouled*. Some ways to ensure this include:

- i. **Developing good working relationships** with the local authorities, army personnel and border officials. In some situations, it may also be necessary to develop their operational capacity as they may not even have some basic tools to do their work (such as writing paper, pens and flashlights). Ensure that adequate arrangements are in place to receive single women and unaccompanied and separated children.
- ii. **Creating awareness** among these authorities. While it may not be possible to provide formal training during an emergency, UNHCR may promote principles of access to safety and *non-refoulement* through daily contacts with them. Give concrete examples to the authorities of what can happen to a refugee who is returned: it can mean that s/he is detained for long periods, tortured and raped or even killed.
- iii. **Maintaining a permanent presence** at the border. If it is not possible for UNHCR and its partners to be present at all border crossing points on a permanent basis, each crossing point should be visited frequently. This also helps in maintaining direct contact with the refugees, and helps in understanding what is happening in the country of origin as well as the problems on both sides of the border.

iv. Awareness may also need to be raised in the **local population and civil society** – the media may provide a forum – and public opinion can be an important influence.

27. Any issue relating to the admission or treatment of refugees at the border, (or the internally displaced who are prevented from accessing safety) should be brought immediately to the attention of the competent authorities in the host country and any other country involved for urgent remedial action.

Registration and documentation

28. Registration and the provision of individual identity documents are important protection tools that assists in ensuring, among other things, that the situation of persons of concern is properly monitored, that their human rights are protected, that they have access to assistance, that family reunification is facilitated and that a durable solution is found for them. Proper allocation of resources and programme planning is also dependent on proper registration, especially in the long-run. While registration and documentation is normally a State responsibility, UNHCR supports States in this area and even undertakes registration on behalf of governments at times.

29. Normally, upon accessing safety, asylum-seekers, refugees and the internally displaced should be registered individually as soon as possible. However, in emergencies when they arrive in large numbers, it is often impractical to register them individually or in detail at the outset. Therefore, it may be necessary to begin by conducting ‘population estimates’ and undertaking brief forms of registration until the situation is safe and stable enough to register them individually (see chapter 10 for more details on registration). Nonetheless, persons with specific needs must be identified by the community and staff to ensure adequate protection from the outset.

30. Similarly, while it would be difficult to provide individual identity documents during the first phases of an emergency, it is important to work towards a system by which this is possible in order to protect them more effectively (see chapter 10 for more details on documentation).

31. Over time, governments should, with the support of UNHCR and its partners, ensure that the **births, deaths and marriages** of people of concern to UNHCR are also registered and documented by the government. This assists, among other things, in ensuring that people can exercise their rights in accordance with the relevant laws, that they do not face problems when finding a permanent solution (resettlement, for instance) and that situations of statelessness are avoided in the future.

32. Women and children who are not registered or provided with documents may be denied access to fundamental human rights. Refugee women, particularly those who were separated from their husbands, may not be able to access food or essential services, seek support for their children, or claim or inherit property on return. Women and children may be more prone to sexual exploitation, early and forced marriage, slavery, trafficking, permanent separation from families, and unauthorized and illicit adoption.

33. Efforts must be taken to ensure that the registration and documentation process does not directly or indirectly discriminate against women and girls, and that all women and girls, regardless of age and background, are able to fully participate. Parents or caregivers may not want to register girls for a number of reasons. They may also not want to declare separated children living with them and who are working as unpaid servants. When registration is undertaken by the State, especially with the internally displaced, UNHCR must ensure that these minimum standards are met. In some locations sex-

ual exploitation has been linked to the registration process.

Refugee status determination

34. States recognize refugees on their territory based on the definition provided in the *1951 Convention*. UNHCR recognizes refugees in accordance with its **mandate** (see section ‘Persons of concern’ of this chapter for the mandate definition of a refugee). This normally happens in countries that have not established a procedure to determine refugee status or in countries where the asylum procedures are not functioning properly. Refugees recognized by States as well as by UNHCR are of concern to UNHCR. A person does not become a refugee because s/he is recognized as such by a State or by UNHCR, but is recognized because s/he is a refugee. Recognition of his/her refugee status does not therefore make him/her a refugee, but declares him to be one.

35. Refugees may be recognized by States (based on the 1951 Convention) or by UNHCR (in accordance with its mandate) either on an individual or on a group basis. If large numbers of people have fled persecution or conflict, they are often recognized as a group on a prima facie basis.

This means that based on the objective conditions in the country of origin, UNHCR and/or States can consider every member of the group as a refugee in the absence of evidence to the contrary. This is a practical measure to allow refugees to receive international protection without the formality of undergoing individual refugee status determination.

36. In the case of mass influx, the aim is to secure treatment in accordance with universally recognized humanitarian principles not necessarily directly linked to the legal status of those in need. The speed and quality of intervention to secure protection is the first priority.

Exclusion from international refugee protection

37. Certain persons do not fall under UNHCR’s competence and are excluded from international refugee protection. These include:

- i. ***Persons who are not entitled to the benefits of international refugee protection*** because they are receiving protection or assistance from a UN agency other than UNHCR. In today’s context, this applies to certain groups of Palestinian refugees who are inside the area of operations of the *United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA)*.
- ii. ***Persons who are not in need of international refugee protection*** because they have taken up regular or permanent residence in a country that has given them a status whereby they effectively enjoy the same rights and have the same obligations as nationals of that country.
- iii. ***Persons who are considered undeserving of international refugee protection*** on account of them having committed certain serious crimes or heinous acts. This applies to persons who are responsible for **war crimes** (i.e. serious violations of the laws or customs of war), **crimes against humanity** (i.e. inhumane acts when committed as part of a widespread or systematic attack directed against the civilian population) or **crimes against peace** (i.e. planning, preparation, initiation, or waging of a war that is in violation of international treaties). Similarly, those who have committed **serious non-political crimes** (e.g. murder, rape) prior to entering the country of asylum or acted against the purposes and principles of the United Nations cannot benefit from refugee status.

38. Exclusion assessments should be carried out by persons qualified and trained to do so. Any recommendation to exclude an asylum-seeker in an emergency should be reviewed and endorsed by a Regional Legal Adviser at Headquarters. **People can be recognized as refugees on a *prima facie* basis as a group, but can only be excluded from refugee protection on an individual basis.** Once excluded, they would not be of concern to UNHCR. However, human rights NGOs and the High Commissioner for Human Rights would advocate for the State to respect their human rights, including the right not to be *refouled* to a territory where their life or liberty would be at risk.

Complementary and temporary protection

Complementary protection

39. Some countries adopt a narrow definition of the term “refugee” which does not encompass those persons who are fleeing from armed conflict or generalised violence. Instead, they often establish ‘*complementary forms of protection*’ as a pragmatic response for individuals in need of international protection but do not meet the refugee definition under the *1951 Convention* or the *1967 Protocol*. These countries are bound by relevant international treaty obligations prohibiting *refoulement*, such as those deriving from Article 3 of the *Convention against Torture* or Article 7 of the *International Covenant on Civil and Political Rights* as well as in regional human rights instruments.

40. Although persons granted complementary protection do not have access to the full range of benefits given to refugees, UNHCR encourages States to provide for the highest degree of stability and certainty to them (almost the same rights as refugees). Those with complementary protection should enjoy, without discrimination, the human rights and fundamental freedoms laid down in relevant international instruments, including the princi-

ples of *non-refoulement*, the ‘best interests’ of the child and family unity.

Temporary protection

41. Temporary protection is a specific provisional protection response to situations of mass influx, providing immediate emergency protection from *refoulement*, and postponing formal refugee status determination until it is practically feasible. Often this response is provided in situations where there are good prospects of voluntary repatriation in the near future. UNHCR does not encourage States to resort to this measure when it is feasible to recognize them on a *prima facie* basis. The rights of persons granted temporary protection are similar to those of recognized refugees. In any case, these shall include:

- i. admission to the country of refuge;
- ii. respect for human rights, with treatment in accordance with internationally recognized humanitarian standards; and
- iii. protection against *refoulement*.

Combatants at the border

42. When people flee areas affected by armed conflict or political unrest marked by serious human-rights offences, it may happen that combatants arrive in the country of asylum (or the safe areas or camps in the case of the internally displaced) along with the civilian population. A combatant is a member of regular or irregular forces, who has or is taking an active part, directly or indirectly, in an armed conflict. The presumption of refugee status, including recognition on a *prima facie* basis, (or recognition as an internally displaced person of concern to UNHCR) does not apply to combatants, as this would threaten the civilian and humanitarian character of camps, settlements and asylum.

43. International Humanitarian Law would govern the treatment of combat-

ants arriving in a country that is **party to the conflict** and ICRC would be best placed to monitor and advise in such situations. The law of neutrality, in particular the 1907 *Hague Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land* and Executive Committee Conclusion 94 (of 2002) relating to the *Civilian and Humanitarian Character of Asylum* would govern the treatment of combatants arriving at in **country neutral to the conflict**.

44. In a neutral country, combatants should be, as far as possible, identified at the border. They should be disarmed, separated and held in an internment facility. ICRC is mandated to visit and monitor these internment facilities. An influx may also contain armed elements who are not combatants, but civilians carrying weapons for reasons of self-defence or hunting purposes. While such persons must be disarmed, they would not need to be separated or interned.

45. Combatants should not be considered as asylum-seekers (or ‘persons of concern’) until it has been established, within a reasonable time frame – often after a period of internment -- that they have genuinely and permanently renounced military activities (in practice, this has ranged from between three months up to a year or more). They may thereafter be admitted into asylum procedures. The asylum applications of former combatants should be examined through individual refugee status determination procedures, which should provide for a thorough examination of the possible application of the exclusion clauses. They can then be allowed to integrate with a civilian population as long as they are not at risk of facing protection problems from the community. There may be situations where internment may not be necessary or feasible.

46. Persons who claim to have given up their combatant status and who have requested for asylum may sometimes be at

a risk of being *refouled* prior or during their internment period. In such situations, UNHCR should advocate for States not to *refoule* them and if necessary, on an urgent basis, determine whether they have genuinely given up their combatant status and whether they are refugees or not. Human rights NGOs and the Office of the High Commissioner for Human Rights, if present, would also normally advocate against their *refoulement*.

Child soldiers, on the other hand, need to be disarmed and assisted in reintegrating within the civilian refugee community as far as possible

47. The State is responsible for dealing with combatants who arrive at their border or who enter their territory. UNHCR should only support the government by providing advice, by helping the authorities in establishing systems by which combatants can be identified, disarmed, separated and interned. UNHCR does not have the mandate or the expertise to actively identify, disarm or intern any combatant.

Specific protection issues

48. UNHCR, governments and other partners should ensure that persons that have access to safe territory (the country of asylum in the case of refugees; other safe areas in the case of the internally displaced) continue to remain protected and that their human rights are respected. They should be able to live in an environment that promotes safety, dignity, and self-sufficiency when they are uprooted. Below are some specific issues that often arise during emergencies.

Refugee protection encompasses measures to ensure that people of concern enjoy, on an equal basis, *legal security* (that they are not discriminated against; that they have a legal status and documentation) *physical security* (that they are protected against physical harm) and *material security* (that they have equal access to basic goods and services).

Understanding the concerns of uprooted people

49. To be able to provide the right protection response in an emergency there is a need to understand the people who we are working for and what their concerns are. Involving women, men, girls and boys of all ages and different ethnic and religious groups of concern to UNHCR from the start will ensure better understanding of their problems and also build trust between UNHCR and the people of concern. (read more on Community-Based Approach in chapter 11)

50. By undertaking an initial participatory assessment (see chapter 5 for more information on Initial Participatory Assessment), UNHCR and its partners can, in systematic and rigorous way, collect information with the active participation of the community and thereby gain a better understanding of issues concerning their protection and well-being. This is a crucial step in understanding, developing and implementing any protection strategy – including on issues such as access to asylum, camp planning, distribution of assistance, provision of services including education and health, physical security including SGBV and even durable solutions. Participatory assessment should be an activity jointly undertaken by multi-functional teams comprised of staff from UNHCR and other UN agencies, NGOs and the government.

51. Sources of information must be developed and direct communication with refugees through participatory approaches established in the field to ensure that

UNHCR is quickly informed of any new influx or protection problem. This information should be systemized and used for defining protection strategies and the emergency assistance response. Such open lines of communication, including those with local authorities are important in particular for border regions which are remote from the capital, and where UNHCR may not yet have a local presence.

52. Sources of information in addition to refugees and others of concern include:

- i. Local or central government authorities (including military officials)
- ii. Community and religious leaders
- iii. Host community
- iv. National and international NGOs
- v. ICRC
- vi. Other UN and international organizations
- vii. National (particularly local language) and international news media

53. If possible the central authorities should participate in fact-finding missions, as this reduces the risk of misunderstanding between UNHCR and the central authorities and between the central and local authorities.

Analysing, monitoring, reporting and intervening

UNHCR's Statute and Article 35 of the 1951 Convention provides UNHCR with the authority to monitor and assist States in their fulfilling obligation to protect refugees and others of concern to the agency.

54. UNHCR and its partners must monitor any emergency situation at all times – often by being physically present at borders, camps and other affected areas - not least to ensure that the rights of asylum-seekers, refugees, the internally displaced are respected.

55. Immediate, clear and regular reports of developments, action taken and intended to be taken are important, whether from

the Field Officer to the Head of Office or from the latter to Headquarters. Guidance must be requested as necessary and Headquarters level interventions recommended as appropriate. See chapter 8 on implementing arrangements, for a standard situation report.

Unless information gathered locally is done systematically, and unless it is shared appropriately, its usefulness is limited.

56. Intervention with governments, partners and other stakeholders can take many forms and depends on the specific situation at hand. Prerequisites for intervention with government authorities, partners or other stakeholders are accurate and regular situational analysis, reporting to the appropriate channels and if necessary, seeking advice from UNHCR colleagues in the country, region or headquarters. Among other options, UNHCR can intervene by:

- i. **Advocating for and promoting** principles of international protection and UNHCR's mandate through meetings, trainings and correspondence, not least to ensure that States apply these principles in protecting persons of concern to UNHCR. Individual cases may also be raised as part of UNHCR's advocacy role. UNHCR may advocate for refugees and others of concern in a public forum. However, before doing so, staff should be aware of any potential negative consequences (see chapter 9 on working with the media for further information).
- ii. **Building the short, medium and long-term capacity of States and partners** to offer protection. This may include enhancing the knowledge, skills and attitudes of governments through dialogue and training, assisting them in developing their legislation, providing them with material support (including, if necessary, building basic infra-

structure such as schools for refugees, providing furniture and stationary to authorities etc). When providing material support during an emergency, not only does UNHCR require the appropriate funding, but should provide this support only if it is essential and if no other responsible agency is able to do so (for instance, UN development agencies) and ensure that States do not become dependent on this support in the medium and long-term.

- iii. Providing **services** (food, clothing, shelter material, education and health services, for example) to persons of concern that States would normally be obliged to provide.

57. Situational analysis can be undertaken using a variety of tools, not least using the results of a participatory assessment process (see chapter 5 on initial participatory assessment) as well as using the *Protection Gaps Framework of Analysis Tool* developed by UNHCR that can be adapted to an emergency situation.

Protection through assistance

58. Ensuring protection and providing humanitarian assistance are not two separate issues. Rather, humanitarian assistance is an integral part of protection and should be planned to ensure that the rights of refugees and others of concern are respected (right to life, right to adequate living conditions, protection of specific categories of people such as older persons, unaccompanied and separated children, single parents, survivors of SGBV etc.) and as part of a single emergency operation.

59. Women, men, girls and boys of concern must be consulted and involved in planning humanitarian interventions as soon and as frequently as possible from the very beginning of the emergency. Their roles in the community should also be understood. Often, especially at the beginning of an emergency, older persons, persons with disabilities, unaccompanied

and separated children, and some single parents are less able to access food, shelter material, health care and other humanitarian assistance with ease. Specific efforts must be made to identify the obstacles as early as possible and ensure that the groups have equal access and are being supported by the community. Furthermore, sexual exploitation by aid workers and other refugees has, sometimes, been linked to the provision of humanitarian assistance. Women, girls and boys of concern especially have been exploited by aid workers or other refugees who are in a position to provide them with essential items such as food, shelter, education and medical care or by persons in positions of authority, such as border guards. In accordance with the UNHCR *Code of Conduct*, UNHCR and its partners should ensure that mechanisms are in place from the very outset to prevent exploitation from occurring during and after emergencies. (Please refer to the IASC gender mainstreaming handbook for further guidance and the SG bulletin on Special measures for protection from sexual exploitation and sexual abuse 9 October 2003).

60. In most emergencies in developing countries, it is necessary to indicate that the granting of asylum and meeting of immediate needs will not be a significant financial burden on local authorities. UNHCR staff must receive early guidance on the extent to which commitments on humanitarian assistance may be given by UNHCR and its partners, in order to communicate this information with local authorities (see chapter 6 on Operations). If the influx consists of additional asylum-seekers clearly belonging to a group already assisted by UNHCR, a firm assurance of humanitarian assistance, within the means available, is usually given.

Children

Child: a person below the age of 18 years, unless, under the law applicable to the child, majority is attained earlier (cited from *The Convention on the Rights of the Child*, article 1).

61. Girls and boys often constitute 50% or more of the population in an emergency operation. It is essential to work with them separately and with their parents/guardians to understand and address their specific needs at all times. Children, adolescent girls and boys in particular should be consulted at all times, even when planning the camp structure such as schools, latrines and other facilities, and when implementing, monitoring and evaluating programmes that affect them.

62. UNHCR's publication *Refugee Children: Guidelines on Protection and Care* (see key references) is essential reading for those designing a protection intervention in emergencies. Particular attention must be placed on the risks faced by adolescent girls, such as lack of access to education, forced labour, early marriage and prostitution.

Protection of women and girls ¹

63. Women do have specific needs which, if not met, can put them at risk, such as exposure to exploitation and sexual abuse, sexual discrimination and restricted access to humanitarian assistance. Not including refugee women in planning, decision-making, implementing or evaluating projects that affect them may put them at further risk. In addition, the effectiveness of the assistance programme may be reduced because the problems and needs of all the beneficiaries have not been properly identified.

¹ Please also see UNHCR handbook on the Protection of Women and Girls, 2006.

64. However, when seeking women's participation in decision-making, measures which challenge the *status quo* may be threatening to traditional leaders. Special efforts may be needed to overcome resistance to change (see chapter 11 for more information on women's participation and empowerment in emergencies)

65. Identifying women and girls at risk in any given situation requires identifying the "risk factors" that threaten their rights. These factors can be present in the wider protection environment and/or result from the individual's particular circumstances.

Among the risk factors in the wider protection environment that can arise as a result of, and after, women and girls flee their homes are:

- **security problems threatening or exposing them to SGBV or other forms of violence**, particularly when such dangers arise from inadequate housing, the need to collect fuel and water and to tend to crops/animals, or, in urban settings as a result of isolation, problems with housing/landlords, or because displaced children are living on the streets;
- **problems accessing and enjoying assistance and services**, resulting from inadequate food and/or material assistance; inadequate access to health care, especially given their sexual and reproductive roles and disproportionate vulnerability to HIV/AIDS; lack of access to, or unsafe or poor educational opportunities; child labour; abuse by those in positions of authority controlling access to assistance and services; lack of livelihood or income-generating opportunities;
- **the position of women and girls in society**, which results in discrimination against them; marginalization; camp management, community, and leadership structures that do not sufficiently include them; unequal gender

and power relations; changes in gender roles; continuing harmful practices; the breakdown of family, community structures, and values;

- **legal systems that do not adequately uphold their rights**, including justice systems that do not fully address harmful traditional practices or domestic violence or that restrict their rights to marriage and divorce and to property and inheritance; traditional justice systems that do not respect international norms; national registration systems that do not provide refugee or asylum-seeking women with individual documentation; asylum systems that are not sensitive to the needs and claims of female asylum-seekers;
- **protection systems that do not uphold their rights**, because refugee and asylum-seeking women and girls are not individually registered; disaggregated data on displaced women and girls are not available; systems to identify, monitor, and support women and girls at risk are inadequate and slow to respond; there are insufficient numbers of female and international staff or female law enforcement officers present; a lack of awareness about women's and girls' rights; reporting systems are not clear; relations between staff and displaced communities need strengthening; monitoring of unaccompanied and separated girls and other women with specific needs is weak.

66. These more general factors may be combined with individual risk factors. They can be grouped as relating to:

- **their status or situation in society**, including as women who are alone, are single heads-of-household including grandmothers, in mixed and/or polygamous marriages, or are without documentation; as widows without family support; as girls, including adolescents, who are unaccompanied or separated, heads-of-household or out of school; as

women and girls who challenge social norms, are stateless, are without access to assistance or in detention;

- **their exposure, or risk of exposure, to SGBV or other forms of violence**, including rape, torture, other serious physical harm, domestic violence, abduction, trafficking, female genital mutilation, early or forced marriage, forced contraception, abortion or sterilization, maltreatment by foster families or relatives, forced recruitment by armed factions, whether as (child) combatants or sex and labour slaves;
- **additional health care or other support**, because they are physically or mentally disabled, traumatized, pregnant or teenage mothers, affected by HIV/AIDS or suffering from medical conditions particular to their sex or gender.

67. In certain cases, the presence of one factor alone may be sufficient to require an urgent protection intervention. In others, the presence of a combination of individual and wider-environment factors will result in heightened protection risks for displaced and returnee women and girls. In still other cases, if women and girls have been subjected to SGBV in the place of origin or during flight, they may be at heightened risk in the area of displacement. Finally, threat levels may change and may thereby expose women and girls to heightened (or reduced) risk, for example during the crisis or emergency phase or if the situation becomes protracted.

68. Responding more effectively to these protection problems requires a holistic approach that combines preventive strategies and individual responses. It involves collaboration among, and the involvement of, all relevant actors, and should include working with men and boys to understand and promote respect for the rights of displaced and returnee women and girls.

69. Strategies to prevent protection risks from arising in the wider environment include actions to identify, assess, and monitor the wider protection environment, establish and strengthen secure environments, and empower displaced and returnee women and girls.

70. Responses to individual women and girls at risk can be grouped under three themes, which are listed non-exhaustively below.

Identification and immediate response involves:

- working in partnership with states and partners to establish mechanisms, based on the wider protection environment and individual risk factors outlined above, to identify individual women and girls at risk, determine and implement appropriate immediate responses and subsequent solutions;
- providing women and girls at risk with information, counselling, and medical and psychosocial care;
- providing women and girls facing domestic violence and abuse or attack by other members of the community with access to safe houses, especially if there are no mechanisms to remove perpetrators; offering them emergency voluntary relocation to another town or camp, or emergency resettlement;
- determining the best interests of girls at risk and providing alternative accommodation, physical protection, and interim foster care, as required;
- initiating family tracing and ensuring family reunification for separated and unaccompanied girls so that they can rejoin their families wherever possible and in their best interests.
- ensuring that refugee status determination procedures, whether carried out by States or, if necessary, by UNHCR provide female asylum-seekers with access to gender-sensitive procedures, and that

decisions recognize gender-related forms of persecution in the context of the refugee definition as constituting grounds for refugee status.

Physical safety of refugees

71. Ensuring the physical security of refugees is an essential part of all emergency operations. Uprooted people must be allowed to live in an environment that ensures their human right to life, liberty and security. Under refugee and human rights law, a host state is obliged to ensure the physical protection of those who reside within its borders, including refugees and others of concern to UNHCR.

72. Once they have gained access to safe territory (a country of asylum for instance), ensuring the physical security of refugees and others of concern entails securing their areas of residence and taking steps to prevent their safety from being compromised. It also requires that the living environment of refugees should be peaceful, humanitarian and civilian, free of violence and criminal activity, and conducive to the realization of human dignity.

73. Threats to the physical security of refugees may stem from a variety of causes, including organized armed criminals, errant military and police, non-state armed actors, anxious local populations and other refugees themselves. Women, men, girls and boys often have different security concerns, including in relation to SGBV, that need to be identified and addressed accordingly.

Location of refugees

74. Asylum-seekers and refugees should be located at a reasonable distance from the frontier of their country of origin to ensure their safety and well-being. The internally displaced should be located in safe areas and a safe distance away from conflict areas.

75. Camps for refugees and the internally displaced are often established for security reasons and to ensure that humanitarian agencies can easily monitor the situation and deliver humanitarian assistance. However, camps may not always offer better protection to refugees and the internally displaced – they can often be detrimental for their security. Sometimes, it may be more effective and safe if they are allowed to live with local communities in villages and semi-urban areas that share cultural and other ties with them. This would also promote self-reliance within the uprooted community. However such measures require the willingness and consent of the host government and the host communities themselves.

76. In either situation, the environment where the refugees or the internally displaced live should ensure that they are able to exercise their human rights to the greatest possible extent. As the internally displaced are citizens in their own country, they should not be forcibly restricted to ‘camps’ and they should have the freedom to move in and out of camps if such camps are established for their benefit.

Camp security

77. The closed environment of camps is particularly conducive to exploitative and manipulative activities by people who seek to gain from the vulnerable nature of the residents – especially during an emergency. The specific nature of threats to the security of refugees and the internally displaced in camps may take a number of forms such as theft, assault, domestic violence, forced marriage, cattle rustling, vandalism and civil disputes; child abuse, rape and other sexual forms of sexual and gender-based violence, robbery (armed and otherwise); arson, fraud, forgery, aggravated assault, murder, forced prostitution, kidnapping, human trafficking, smuggling of people and arms, forcible recruitment into armed forces, extortion,

enslavement, torture, war crimes, and withholding humanitarian assistance.

78. All efforts must be made by the host country to maintain law and order within the camp including the prevention of sexual and gender-based violence, curtail the flow of arms into refugee camps, prevent the forcible recruitment of refugees into armed groups as well as disarming armed elements and identifying, separating and interning combatants. Often, however, States need considerable support and technical assistance, not least by humanitarian agencies, to successfully undertake these activities.

The security aspect of camps should be considered during the initial stages of site selection and physical planning; the neutrality of camps should never be taken for granted (see chapter 12 on site selection and planning).

79. In situations where a host state is unable or unwilling to ensure the physical security of refugees the international community may be obliged to step in. The '*Ladder of Options*' concept provides a matrix of refugee insecurity and proposes responses through the use of soft, medium and hard approaches (or options) to refugee security. Depending on the security situation and the extent to which the government is unwilling or unable to involve itself in providing safe asylum.

Ladder of options

- **Soft approach:** involves preventative measures, where international organizations provide support to the host state to maintain security within refugee-populated areas.
- **Medium approach:** involves the use of international civilian or police monitors who provide technical expertise and support for local authorities, through training, mentoring and monitoring.
- **Hard approach:** involves the direct use of international military forces, whether peace-keeping or peace-building, to maintain security in refugee populated areas. This last resort is exceptional in nature, requires UN Security Council authorization, and can compromise the humanitarian nature of assistance work.

Judicial systems and detention

80. Even during an emergency, UNHCR and its partners should work towards ensuring that the national legal system -- including law enforcement and courts of law -- cater to the needs of refugees and other persons of concern. Complaints by refugees should be registered by the police, proper investigations should be conducted and principles of due process should be followed. It may be necessary to ensure that refugees and others of concern have physical access to these mechanisms, so that they are aware of how to use these systems and sensitize the police and judiciary in responding to cases brought by or brought against refugees and the internally displaced. It may even be necessary to provide some basic support to the courts and police so that they can function effectively and promote gender balance. However, it is important to ensure that in all cases, the victims of these offences (such as survivors of rape) are not 'forced' to use these systems, but rather provided with the information and access to these systems so that they can make an informed choice.

81. Refugees and others of concern often resort to using traditional mechanisms of ‘justice’ (traditional courts for instance) that are run by their community to address a range of issues from petty theft to physical assault rape and murder. While sometimes these mechanisms may be effective (even more effective than national legal systems), they often do not follow principles of due process often resulting in violations of human rights of refugees and others of concern. Issues relating to women and children (such as rape) are often not represented or addressed properly (the woman or girl can be forced to marry her rapist for instance). Furthermore, the adjudicators may often only be men or not truly representational of the community. For this reason, among others, it is important that traditional mechanisms do not deal with serious offences (such as rape, murder, physical assault) but refer such cases to more formal systems of justice. While it is important to work with the community and traditional mechanisms, it is also essential to agree on what issues they can and cannot address through these mechanisms to ensure individual human rights are respected. A person should not be prevented from accessing the formal national legal system either before, during or after the matter is heard by the traditional court.

82. Asylum-seekers, refugees and the internally displaced are often detained for a number of reasons. UNHCR should work to ensure that they are not detained for entering the country illegally (pursuant to Article 31 of the *1951 Convention*). UNHCR should also sensitize the authorities not to prosecute or convict refugees if they violate rules that place unreasonable restrictions on their freedom of movement, right to work and other human rights. Further, refugees or the internally displaced that are convicted and imprisoned for criminal offences remain of concern to UNHCR and their conditions should be monitored regularly.

Physical safety in areas of conflict

83. International humanitarian law provides protection to civilians including refugees in situations of armed conflict. In non-international conflicts (i.e. internal armed conflict but not police operation), all parties to the conflict are bound by common Article 3 of the *1949 Geneva Conventions* and the *Second Additional Protocol* to respect all persons not taking an active part in the hostilities, and in particular:

- i. to treat them humanely and without distinction as to race, religion, sex, birth, wealth or any other similar criteria;
- ii. to refrain from violence to life and person;
- iii. not to take hostages;
- iv. to respect personal dignity;
- v. not to pass sentences or carry out executions without due process of law; and
- vi. to collect and care for the wounded and sick.

84. The International Committee of the Red Cross (ICRC) is the agency charged with supervising the implementation of international humanitarian law in situations of armed conflict. In most situations of armed conflict or civil strife, the ICRC offers its services to all parties to assist victims and ensure the protection of civilian populations – including, where applicable, refugees and other displaced populations – as well as detained combatants.

85. UNHCR staff should seek the cooperation of the ICRC, wherever it is present, and benefit from its expertise in dealing with state and non-state parties alike in situations of armed conflict.

Operations in areas controlled by non-state entities

86. In situations of civil strife or internal armed conflict, particular difficulties may arise from the fact that UNHCR’s interlocutors are not States or regular armed

forces answerable to States, but insurgent groups and other non-state entities. UNHCR may have no choice but to deal with these groups as they exercise *de facto* control over a refugee population or the internally displaced. Such non-state entities might be very organized to the point of having established various ‘ministries’, ‘administrative departments’ and even ‘courts of law’. In an emergency, UNHCR should respect these systems to ensure the protection of refugees, the internally displaced and the humanitarian workers themselves.

87. In other situations, non-state actors may be less organized, in which case it may be necessary for UNHCR to build and maintain working relations with specific individuals or groups who can ensure the protection of persons of concern to UNHCR.

88. In all situations, it is important to highlight the impartial, non-political and humanitarian role of UNHCR and to exercise public pressure in order to convince these groups of the importance of adhering to international humanitarian and refugee law. Similar to building the capacity of States, it may be necessary to build the capacity of the non-state actors so that they respect international protection standards, in particular the rights of women and children; training, awareness raising and other activities could help in this regard. Yet, when dealing with these groups, UNHCR should not imply, through any of its actions or correspondence, a formal recognition of these non-state entities by the United Nations.

Forced recruitment

89. Refugees and the internally displaced that live in or near a conflict zone are often at risk of forcible recruitment by one or more parties (State or non-state) to the conflict. Men, boys and girls may be forcibly recruited to take up arms or undertake jobs such as portering, cooking and

cleaning. Women and girls may even be abducted and forced into sexual slavery by these armed groups.

90. Forcible recruitment can take place anywhere and anytime – especially in schools, marketplaces, youth and community centres and the homes of refugee families. Children living near areas of armed conflict, those not attending schools, particularly adolescents; unaccompanied or separated children and children from disadvantaged or marginalized parts of society are more susceptible to being forcibly recruited. While refugees and the internally displaced are often coerced into joining armed forces, sometimes, families and leaders have been known to willingly ‘volunteer’ their children and other members of the community to join these forces. Specific measures must be taken to monitor them and ensure that they are not forcibly recruited, including **sensitizing** women, men girls and boys of this risk, **monitoring** areas where recruitment can take place, establishing **community-based mechanisms** in schools to prevent recruitment from occurring and even ensuring a police presence if necessary.

91. In confronting this issue, UNHCR staff must remember – and remind the authorities – that:

- i. The civilian and humanitarian character of refugee camps and settlements must be preserved and respected in all circumstances. Therefore recruitment of any age group for military and paramilitary purposes is unacceptable.
- ii. Recruitment by force may amount to cruel, inhuman or degrading treatment, which is prohibited in all circumstances.
- iii. Recruitment and direct participation in hostilities of children less than 15 years old is considered a war crime. Children under 18 should not be involved in hostilities.
- iv. Where refugees are forced or coerced to return to their country of origin to

fight, this is tantamount to *refoulement*, which is prohibited in all circumstances.

92. Annex 2 provides some activities and measures that can be taken by governments with the support of UNHCR and other humanitarian agencies to ensure the physical protection of camps. Particular attention must be given to the possibility of young men, girls and boys – especially those with little parental guidance or supervision -- who are more susceptible to forcible recruitment during emergencies.

Combatants in camps

93. The presence of combatants in refugee camps or settlements can lead to a general breakdown in law and order, forced military recruitment, an increase in rape and other forms of physical and sexual abuse, human trafficking, political manipulation, and the diversion of humanitarian assistance for non-humanitarian activities. It can also make refugees vulnerable to attacks from across the border. Host government may even adopt a more hostile position towards refugees as it may affect the national security and even regional stability, as well as threaten inter-state relations. As a result, refugees may be even be subject to *refoulement*.

94. Combatants placed *hors de combat* (sick, wounded, shipwrecked and prisoners of war) residing in a country that is party to the conflict are primarily protected by international humanitarian law, and fall under the competence of the State and the ICRC. Combatants who are residing in a neutral country are protected by the law of neutrality in particular, the 1907 *Hague Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land*. Executive Committee Conclusion 94 (of 2002) relating to the *Civilian and Humanitarian Character of Asylum* provides guidance in such situations and emphasizes the responsibility of States in this matter.

95. Continuous efforts need to be made by State authorities to monitor camps and settlements to determine if combatants are residing in the camp. These efforts should not place other refugees or the internally displaced at risk (i.e. by getting camp residents, especially children, to identify others who may be combatants). Humanitarian workers should also not place themselves at risk by actively identifying combatants. Information received by UNHCR should be passed on to the relevant State authorities for appropriate action.

96. Similar to combatants identified at the border, combatants who are residing in the host country need to be identified, disarmed, separated, and interned with separate arrangements for women and men. Their treatment in the internment facility and their status will be similar to combatants identified at the border. Child soldiers also need to be treated differently. The primary responsibility for this lies with the host country, while international agencies such as UNHCR may offer support and advice.

Sexual and gender-based violence (SGBV)²

Sexual and gender-based violence (SGBV) refers to a range of actions by which an individual is exploited because of her/his sex or gender. This includes physical, emotional, psychological and socio-economic abuse such as rape, female genital mutilation, domestic violence, forced marriage, exploitation, threats, confiscation of money or identity cards, and restrictions on freedom of movement and liberty.

97. SGBV often occurs in situations where people can abuse the power they exercise over others, such as:

- *When people are caught in armed conflict:* rape and other forms of sexual abuse are widely used as weapons of war to humiliate the enemy.

² Please see chapter 18 for more guidance on how to deal with SGBV in an emergency.

➤ *When people flee persecution and armed conflict:* refugees and the internally displaced are at risk of sexual abuse or rape during flight when they are smuggled or trafficked. Because uprooted people often do not have identity documents, money, or access to justice, those with authority may take advantage of the situation and exploit them.

➤ *In the family and the community:* rape, including within marriage (marital rape), forced early marriage, sexual abuse, female genital mutilation (FGM), sexual harassment, trafficking of women, and forced prostitution are some types of SGBV that can occur in a family or in the community.

➤ *In the daily lives of asylum-seekers, refugees, the internally displaced and returnees:* SGBV can occur in the workplace, at border check-points, in detention centres and prisons, in educational institutions, classrooms, health centres, places where assistance and/or documentation is provided, areas for firewood or water collection outside a camp, and at latrines located in poorly designed camp settings.

98. Survivors of SGBV usually need one or more of the following responses:

i. Medical attention: A survivor of rape needs to see a doctor within 72 hours to receive treatment, which may include prevention of unwanted pregnancy and HIV infection.

ii. Psycho-social support: A survivor may be traumatized and will require emotional and social support, which includes a non-blaming and supportive attitude from the immediate family.

iii. Legal counselling: Most forms of SGBV are punishable crimes under relevant national law. If a survivors wishes, s/he should be supported in reporting the case to the police and prosecuting the perpetrator(s).

iv. Physical security: Survivors may be threatened with retaliation for reporting cases and therefore need a safe place to stay. In some situations, re-settling them to another country is one way of protecting them.

99. Whenever assisting survivors of SGBV, always respect the confidentiality of the survivor. Furthermore, provide all the relevant information to the individual so that s/he can decide what s/he wishes to do³.

Humanitarian evacuation and 'safe havens'

100. In extreme situations, refugees and others of concern to UNHCR may no longer be able to find safety either in the country of asylum or, in the case of the internally displaced, in the country of origin. For instance, the country of asylum may be involved in a conflict itself because of which it is no longer able to protect refugees. Armed groups may resort to ethnic cleansing or genocide that target persons of concern to UNHCR including the internally displaced.

101. In such situations, the possibility of evacuating refugees and the internally displaced to another safer country (or countries) may be the only way to ensure their protection (as a measure of last resort). Such moves are quite different from large-scale resettlement as a durable solution. Immediate approaches to potential countries of asylum must be made at local, embassy, and Headquarters levels. Receipt of resettlement offers may have an important influence on the government's attitude towards the refugees. Operational partners must be identified. In addition to locally-based NGOs, the assistance of the ICRC (for example, with travel documents) and the International Organization for Migration (IOM) may be sought.

³ Please refer to UNHCR's *Sexual and Gender-based Violence against Refugees, Returnees, and Internally Displaced Persons: Guidelines for Prevention and Response*.

102. UNHCR must advocate that these safe countries are able to ensure the protection of these uprooted people (for instance, they must have a legal identity, their physical protection, including protection against *refoulement* must be ensured and that they have access to proper living conditions. Chapter xx discusses the importance of the family unity and evacuation of children on their own.

103. In extreme and tense situations where the lives of refugees and the internally displaced were threatened, “safe havens” were established in the country for them. However, UNHCR’s experience with “safe havens” demonstrated that refugees often could not be provided with adequate protection and continued to be exposed to high risks. It is therefore not recommended to formally establish “safe havens”.

Groups with specific needs⁴

Unaccompanied and separated children

Families are easily and often separated when fleeing war, violence and persecution. Girls and boys who have been separated from their parents are at risk of being abused and exploited and even their very survival may be threatened. They can also face serious challenges in accessing quality care and assistance. This is why unaccompanied and separated children need to be given special attention.

104. At all times, UNHCR and its partners should ensure that:

- i. unaccompanied and separated children are identified as early as possible – when they enter the country or even when they are in the camps;
- ii. all children should be individually registered and provided with individual documentation as soon as possible;

- iii. information that will help to meet the specific needs of the child, including tracing, and to make plans for the future is recorded;
- iv. family members should be traced as soon as possible; and
- v. effective monitoring of all unaccompanied and separated children takes place.

105. During the time they remain separated from their families, including the initial stages of an emergency, children must be able to live in a safe environment where they are properly cared for and protected. Children may need counselling to deal with the trauma that they have faced. It is important that siblings remain together. Specific attention is given to child-headed households. UNHCR and its partners should carefully and continuously monitor these care arrangements to ensure that the **best interests of the child** are respected. (See chapter 11 for more information on protecting unaccompanied and separated children in an emergency operation).

Child soldiers

‘Child soldier’ refers to any person under 18 years old who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and those accompanying such groups, other than purely as family members. It includes girls recruited for sexual purposes and forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms.⁵

Child recruitment encompasses compulsory, forced and ‘voluntary’ recruitment of children into any kind of regular or irregular armed force or armed group.

Demobilisation means the formal and controlled discharge of child soldiers from the army or from an armed group.

⁴ Please see chapter 11 for more information on groups/persons with specific needs.

⁵ *Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa, 1997.*

106. Governments and humanitarian agencies should take all measures to ensure that forced recruitment, especially in emergencies located close to armed conflict, are prevented.

107. During emergencies, child soldiers or former child soldiers may also enter the country of asylum with refugees or reside in camps with the civilian population. They may have escaped from or been abandoned by the armed force or group, or may have been sent back by the armed group. Upon their return, they may be ostracized by the community for having participated in armed activities. They may also be at risk from the armed forces or groups themselves, who sometimes forcibly recruit them again.

108. Unlike adult combatants, they should not be separated and interned. Rather, after they are disarmed, they should be enrolled into programmes that will rehabilitate and reintegrate them back into society. They may also need specific medical care as well as psycho-social support and counselling. Often, teenage girls may return pregnant or with young children and will require specific support and longer-term solutions. Education and vocational training, reunification with family members, and the children's own participation in decisions that affect them would all contribute towards this effort. The community must be sensitized and involved in this process. These rehabilitation and reintegration programmes – which should be part of wider effort to support the war affected communities – may be necessary at the very beginning of emergencies especially when there are a number of child soldiers who arrive at the border or who are residing in camps.

109. **Single parent households:** Emergencies may see a large number of **single-parent households** – while most of them are female-headed, there can also be male-headed households. These parents have to manage the family needs on their own

and may be at risk as they are exposed to exploitation and harassment, especially if they are young. Their children too could be at risk of abuse and exploitation as these parents may not be able to supervise the children constantly. (Grandparent-headed households have particular problems as they often become dependent on very young children for their survival).

110. **Older persons:** can constitute a significant proportion of the refugee population although they are often overlooked. Older persons, who often have been immersed in their own culture and practices for many years, may find it particularly hard to adjust to a changing environment. With displacement, older persons' sources of power -- such as control of land, resolution of disputes, systems of respect are likely to be fundamentally undermined leading to risk of exclusion from participation and decision-making. Also, physical deterioration may limit their mobility and hence their access to basic services. Particular attention should be given to older persons who are caregivers or are living alone. Assistance criteria must consider their specific requirements.

111. ***Persons with physical and mental disabilities***

Persons with disabilities might have problems in accessing humanitarian assistance that is made available to refugees. Steps must be taken to ensure this access, including that of children with disabilities, to whatever schooling is available. In some refugee situations, but more often in returnee situations, additional dangers of land-mines mean that an information campaign must be started immediately to prevent further disability. Their physical protection is also a cause for concern and they can be at risk of SGBV and require careful monitoring (see chapter 11 for more information on the protection of disabled persons in emergencies).

112. **Victims of violence, torture and trauma:** Men and women of all ages fleeing conflict areas often include victims of violence or torture – including detention, severe beatings, rape and mutilation of the body. Specific attention must be given to ensure that their physical and psychological needs are addressed during an emergency, possibly by the community itself. They must have access to humanitarian assistance and counselling from an early stage and in mass influx situations community-based response mechanisms, which respect individual rights, should be supported (see chapter 18 for more information on the protection of victims of violence in emergencies).

Partnership in emergencies

Working with host governments (including the military)

113. At both the local and central level, UNHCR must ensure that it has access at all times to those officials whose decisions will affect the refugees' situation. Establish who they are, contact them and if possible request home telephone numbers and other means of communication so that if a protection problem arises it can be brought to the right official's attention at once. *Refoulement* and other protection problems can often take place very rapidly.

114. Local authorities should be kept informed of demarches UNHCR has made or intends to make in the capital – these should not only be the demarches of a political or formal nature, but also those covering practical aspects of the programme.

115. Often, it may be necessary to approach the most senior local official directly responsible for the situation. In some cases this may be the local military commander for a region. The military (both national and international forces) can be an important partner in, among other things, providing information, delivering humanitarian assistance and ensuring the

security of operations (see chapter 27 on working with the military).

116. Any temporary or *ad hoc* agreements with the authorities should be formalized, such as agreements relating to UNHCR presence in the local areas. Reference should be made to protection and durable solutions in any formal exchanges governing the provision of material assistance.

117. As a general rule, a written demarche should be made as soon as possible to the central authorities at the highest appropriate level. This level, and the form of the demarche, will be determined by the nature of UNHCR's presence in the country. A demarche by a newly arrived mission would normally be addressed to the Minister of Foreign Affairs (or perhaps Interior; the advice of UNDP and/or embassies should be sought). The communication might:

- i. Refer to the information available to UNHCR on the influx or problem (qualifying it as necessary: the government will often know more than UNHCR).
- ii. State UNHCR's view that persons involved are or may (as applicable) be of concern to the High Commissioner.
- iii. Refer to the government's protection responsibilities; including in particular the obligation not to refoule anyone to persecution.
- iv. Request (confirm understanding, express gratitude for, etc.) assurances that persons will be admitted if seeking protection, be granted (at least temporary) asylum (if appropriate: pending determination of status and longer-term arrangements).
- v. Request that the authorities ensure UNHCR access to persons of concern (as provided in UNHCR's statute and the 1951 Convention).
- vi. Offer, where persons are found to be of concern to UNHCR, commitment in principle to provide material assist-

ance (for example, «every effort» formula).

118. The text of representative level demarches should be communicated to Headquarters at once both for information and in order that they may be shared with the permanent mission and/or referred to in any subsequent Headquarters level demarches. Likewise, the texts of the latter should of course be shared at once with the field.

119. Representatives should immediately recommend action at the Headquarters level if they are in doubt that their interventions alone will secure protection.

120. New oral and written demarches must be made if there are any grounds for concern that protection is still not adequately assured (*refoulement*, abduction, arbitrary detention, mistreatment, abuse of women and children etc.). Complementary action at the local level should both closely monitor developments affecting protection, and concentrate as far as possible on assisting the authorities to meet the practical problems of the influx.

Working with other humanitarian agencies

121. Implementing and operational partners have specific expertise that is essential in ensuring the protection of refugees and others of concern to UNHCR. Often other humanitarian agencies (UN and NGOs) who have worked in the affected area for some time are more aware of the local situation, have good working relations with the government and other authorities and are present in locations that UNHCR may not be. Their expertise – on essential matters such as medical care, water and sanitation, logistics, community services, education and protection – must be relied upon. Various agencies will need to coordinate between themselves to ensure that there is no unnecessary duplication of services and that all possible sectors are covered simultaneously. In

particular, similar to UNHCR, many UN and NGO agencies deploy ‘protection officers’. UNHCR should work closely with these colleagues rather than duplicate work that may do more harm than good, especially from the perspective of persons of concern to UNHCR.

122. Some UN agencies that are often present in emergencies include the United Nations Children’s Fund (UNICEF), the World Food Programme (WFP), the United Nations Office of the High Commissioner for Human Rights (OHCHR), and the Office of the Co-ordinator for Humanitarian Affairs (OHCA). The International Committee of the Red Cross (ICRC), the International Federation of the Red Cross (IFRC) as well as national and international NGOs such as the International Rescue Committee (IRC), Danish Refugee Council (DRC), Norwegian Refugee Council (NRC), Save the Children (STC), Médecins Sans Frontières (MSF), Oxfam and national red cross societies also have established a significant capacity to work in emergency situations (see Appedix 1 on the MoUs established with some of these agencies). International Human Rights NGOs such as Human Rights Watch, Amnesty International and Refugees International are also important partners in advocating for better standards of protection in operations (see paragraph 124 on partnership in emergencies relating to internal displacement). National NGOs often have excellent information about the local conditions and good relationships with the local authorities as well as communities and local women’s associations can be important partners in working on gender issues and women’s rights.

Public relations and working with the media

123. In certain circumstances tensions in relations between neighbouring countries may make it necessary to stress even at the local level that the granting of asylum is a purely humanitarian act.

Emphasize that the granting of asylum is purely humanitarian and therefore not a hostile act, and that UNHCR's presence and involvement may help reduce tension.

124. Often in an emergency, UNHCR may require the support of other agencies and governments in urgently influencing the host countries policies such as access to asylum, *non-refoulement* and security of refugees and others of concern. Furthermore, a number of governments and other UN agencies may also assist in funding or supporting UNHCR's operations. This is why briefing other UN organizations and the diplomatic community, especially governments whose influence may be able to facilitate protection is vital.

125. Visits by national and international media and the diplomatic corps may help achieve a broader appreciation of UNHCR's protection function. The position to be taken with regard to the media will depend very much on the circumstances and whether or not publicity would help protect persons of concern to UNHCR. It is important that the confidentiality and privacy of persons of concern is being protected, especially children and survivors of SGBV. Close coordination within the various levels of UNHCR is necessary. Where UNHCR is already represented, previously established good contacts with the locally based (and especially local language) media may prove a valuable source of information and is useful in advancing an understanding of UNHCR's role (See Chapter 9 on media relations).

Specific issues in relation to the internally displaced

126. While measures to assist the internally displaced are broadly similar to those used for refugees, more reliance is placed on national authorities, national laws and human rights instruments to protect them. The *Guiding Principles on Internal Displacement* that are based on international

human rights law, international humanitarian law and international refugee law should also be used to guide UNHCR's actions towards the internally displaced.

127. The *Guiding Principles* address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return and reintegration.

128. Generally, UNHCR is committed to engaging with the internally displaced only when they are fleeing armed conflict, generalized violence or violations of human rights. Only exceptionally and on a good offices basis, does UNHCR assist persons who are internally displaced for other reasons.

129. Since 2006, with a view to ensuring a more predictable response, UNHCR addresses all emergencies in relation to the internally displaced within the context of a broader UN-wide collaborative response (an inter-agency response). UNHCR is responsible for ensuring (as the 'cluster lead') that the internally displaced are adequately **protected (including issues in relation to their return)** and that the **emergency shelter and camp management 'clusters'** are properly managed and addressed, either by UNHCR or by other competent agencies. Other agencies will be responsible for ensuring that other 'clusters' are properly addressed.

130. As a cluster lead for these three areas, UNHCR is responsible as 'the first port of call' and the 'provider of last resort'. This means that UNHCR may not necessarily be the agency funding, or carrying out all the field activities. Rather, as cluster lead UNHCR must ensure that it, as well as other actors, assume their own allocated responsibility to the best of their capacities and that additional funding is secured.

131. In emergencies, UNHCR should be ready from the outset to provide the Humanitarian Coordinator with needs and capacity assessments on the ground and advocate for the resources needed. These assessments should indicate which organizations will address which aspects of an adequate response in protection, camp coordination and shelter. Where capacity gaps exist in the cluster as a whole and where no other actors can realistically respond, UNHCR must be prepared to act as a provider of last resort and to plan to carry out priority activities, seeking funds accordingly.

132. In such emergencies, UNHCR must build effective partnerships, with governments, with UN agencies, inter-governmental organizations, NGOs and affected populations. These agencies and others can significantly multiply response capacity and mobilize additional resources within the clusters. Relationships with agencies and NGOs working in the three UNHCR-led clusters require particular effort and attention and co-coordinating all activities under these clusters requires specific attention.

133. Humanitarian Coordinators in each country are responsible for, among other things, establishing appropriate cluster arrangements in close consultation with the Country Team, taking into consideration the capacities of agencies specific to the situation. While the cluster approach can be flexibly applied and may not exactly replicate arrangements at the global level, the aim is to leave no major sectoral gaps in leadership and response. UNHCR should ensure that age, gender and diversity are mainstreamed in all cluster activities. Needs assessments at the field level should include the participation of the affected populations - women, men, girls and boys of diverse backgrounds - using UNHCR's Tool for Participatory Assessment. While UNHCR has accepted to be the cluster lead in three areas, it should

also, as part of the Country Team efforts, be proactive in all other relevant clusters by lending its support, expertise and resources where required.

134. In relation to emergencies in countries where UNHCR has been protecting the internally displaced even prior to 2006, the existing arrangements can be reviewed in light of the 'cluster' approach and if there are gaps in leadership or coordination that need to be addressed, the cluster approach should provide a useful framework to discuss and clarify roles and to draw more support from cluster leads, thus strengthening the overall response.

Editors Note: Staff being deployed to emergency operations involving the internally displaced should first check for any updates on UNHCR's policy on this matter.

Emergencies as a result of changes in government policy

135. A special type of protection emergency can occur as the result of a sudden change, for whatever reason, in government policy towards persons of concern to UNHCR already on its territory. Those affected may include both persons known to UNHCR and recognized as refugees, and others who have hitherto neither formally requested asylum nor made themselves known to UNHCR, but who may nevertheless fall within the High Commissioner's competence.

136. The action to take in protection emergencies of this type will vary greatly in each case and only very general guidance can be given. Accurate information, a UNHCR presence where needed, and a clear and consistent policy in defence of the rights of the refugees will always be required. The guidelines that follow must be modified as necessary in light of the actual situation. Some of the considerations discussed in the previous sections may also be relevant.

137. UNHCR should immediately try to identify and if possible establish a list of persons who are, or may be at risk but were not previously known to UNHCR staff. This list must be constantly updated. Sources of information include the diplomatic community (some persons may approach or even seek asylum in embassies), the ICRC, the national Red Cross or Red Crescent society, churches and NGOs. Care should be taken to ensure the confidentiality of individual cases when establishing contacts with embassies. Early identification, and, if possible registration of, these new cases by UNHCR can often be a very important source of protection.

138. UNHCR must maintain (or in the case of a new regime, establish) close and continuing cooperation with the authorities. If the country has acceded to the relevant international instruments, these obligations remain binding, whatever new policies may be adopted. If the country is not a party to any of the refugee instruments, the Statute and universal instruments must be invoked.

139. The government is, of course, responsible for the physical security of the refugees. Every effort must be made to encourage the government to protect refugees, particularly during any periods of civil tension. The immediate aim is that refugees should be able to remain in safety in their present country of asylum. Respect of the principle of *non-refoulement* is of paramount importance.

Durable solutions

The three traditional durable solutions

- i. **Voluntary repatriation occurs when uprooted people return to their homes after making a free and informed decision to do so.**
- ii. **Resettlement occurs when refugees are offered and take up permanent admission in a third safe country to rebuild their lives.**
- iii. **Local integration occurs when refugees rebuild their lives in the country where they have found safety.**

140. From the outset of an emergency, UNHCR and its partners must bear in mind the ultimate goal of international protection: to help uprooted people overcome displacement and achieve a solution whereby national protection of a State is effectively and permanently re-established. Achieving self-reliance through a community-based approach at an early stage during displacement is essential in enhancing the sustainability of any future durable solution.

Whenever feasible, integrate voluntary repatriation, local integration and resettlement into one comprehensive approach. These three solutions must be implemented in close cooperation among countries of origin, host States, UNHCR and its partners as well as the people of concern themselves.

Voluntary repatriation

141. Most large scale refugee emergencies are eventually resolved through the voluntary repatriation of refugees and the internally displaced once the danger they have fled from has been removed or significantly reduced. In the past decade, many of UNHCR's larger operations involve the large-scale repatriation of refugees and the internally displaced.

142. The return of such uprooted people must be **voluntary** -- free of physical, psychological or material coercion to return. It must also take place in conditions

of **safety** and with **dignity**. Each individual, man and woman – even individual members of a family -- should be allowed to make this choice. Refugees and the internally displaced must be provided with accurate information about the prevailing situation in their home country/regions of origin so that they can make an informed decision about if and when to return. This information should be provided in a manner that will make it easier for them to make a decision and reach all members of the community. Specific needs of individual persons – such as unaccompanied and separated children, the disabled, single parents or survivors of SGBV, torture and trauma – in the context of repatriation should be carefully considered and addressed.

143. To ensure that uprooted people can return home and live in safety and in dignity, UNHCR and its partners monitor the repatriation and reintegration processes to the greatest extent possible using international human rights standards to guide their work. Returnee monitoring is a crucial activity that assists in ensuring the long-term sustainability of return.

144. UNHCR, its partners and development agencies assist countries in ensuring that returning refugees have equal access to resources. These include food, land, and housing, and such services as education, health care, potable water and sanitation. Over time, returnees should become self-reliant. Successful repatriation fosters economic, cultural, and social stability and reduces the risk of new conflicts erupting. (see chapter 22 for more information on voluntary repatriation).

Local integration

145. Local integration in the country of asylum is a complex and gradual process, comprising three distinct but inter-related legal, economic, and social and cultural dimensions. Over a long period of time,

refugees are able to, at least *de facto*, integrate into the host society, especially in situations where they are not forced to reside in camps and can become more self-reliant over time.

Resettlement

146. Resettlement (the process of selection and transfer of refugees from a country of asylum to a third state that has agreed to admit them on a permanent basis) should be considered when refugees are at risk in their country of refuge or have particular needs during an emergency. The absence of (prospects for) another durable solution is also relevant for determining whether resettlement should be pursued. Before a decision is taken to pursue the resettlement of a refugee, every effort should be made to fully explore the possibility of local solutions. At the same time, the possibility of voluntary repatriation in the foreseeable future (within an acceptable time frame) should also be evaluated.

147. During an emergency, it is particularly challenging to identify all persons who may be in need of urgent or emergency resettlement (i.e. provide equal access to all persons of concern to resettlement). Similar to accessing humanitarian assistance, it may be difficult for women (including married women), children, older persons or the disabled, and persons from minority ethnic or religions groups and who are facing severe protection problems from accessing resettlement. To address this issue during an emergency, it would be necessary for UNHCR and its partners to work closely with individuals and groups to identify their needs and find solutions for them.

Emergency resettlement

148. Emergency resettlement must be used selectively and on the basis of a thorough and objective assessment of both refugee status and urgency of removal.

Emergency resettlement should be considered where the security and/or medical threat faced by the refugee necessitates his or her removal from the threatening conditions within a very few days, if not within hours. For the sake of clarity, a notional limit of a maximum of five days during which the person is resettled is considered.

149. Emergency resettlement can be considered where there is:

- i. an immediate threat of *refoulement* to the country of origin;
- ii. an immediate threat of *expulsion* to another country from where the refugee may be *refouled* or where his/her life or liberty would be at risk of being threatened;
- iii. a threat of arbitrary arrest, detention or imprisonment in the country of asylum;
- iv. a threat to physical safety or human rights in the country of refuge analogous to that under the refugee definition and rendering asylum untenable.

150. Categories of refugees who can be considered for emergency resettlement include refugees with legal and physical protection needs, survivors of violence and torture, mixed marriages, refugees with serious medical needs which cannot be treated in the country of asylum, women-at-risk, children and adolescents (for whom a determination has been made that resettlement is in their best interests) and older refugees. (Refer to the UNHCR Resettlement Handbook, 2004 for more information on resettlement categories and procedures).

Urgent cases

151. Refugees who face conditions requiring their expeditious resettlement but can wait for more than 5 days are categorized as **urgent** cases. Urgent cases require close and early follow-up with resettlement governments to ensure they are prioritized over regular cases, which

can sometimes remain pending for many months. Field Offices may request Headquarters' support, in such cases. Note that the abuse of the emergency category will erode the credibility of UNHCR's judgment concerning such submissions, thereby reducing the effectiveness of these channels.

Emergency resettlement procedures

152. When faced with an emergency resettlement requirement, time available for investigation of a refugee's statement may be severely limited. Nevertheless, such time that may be available before departure must be used to the maximum with a view of checking the veracity of the story and its consistency.

153. The following information should be conveyed to Headquarters immediately:

- full name, date of birth, place of birth, sex, nationality and ethnic origin;
- details on status determination (Convention or mandate);
- whether accompanied by family (if so, size);
- details of each dependent to accompany the candidate;
- brief explanation of need(s) for resettlement;
- brief justification for emergency categorization, and required time-frame for departure;
- whether valid travel documents held by all refugees concerned;
- in case of medical emergency: diagnosis, prognosis, current condition of refugee (family members), whether escort needed; and
- recommendation on countries of resettlement and reasons, including third country links.

154. A full submission, including the **Resettlement Registration Form (RRF)** and supporting documentation, must follow by the fastest means available.

155. The RRF can be obtained from the Resettlement and Special Cases Service at Headquarters. This is the section of the Division of International Protection Services that is responsible for processing emergency submissions. In addition, the Service helps coordinate and support the resettlement of difficult protection and special needs cases. It should be contacted for advice.

156. Once a resettlement submission has been made, a **focal-point** should be designated to follow-up on the particular case, thereby ensuring that the case proceeds in a timely manner and that all unnecessary delays are avoided. Additional information may be found in the UNHCR **Resettlement Handbook, 2004**.

Key references

UNHCR's **RefWorld** CD-ROM that is updated annually, contains country-of-origin information, maps, UNHCR guidelines, policies and handbooks, legal documents, UN documents and other material that very helpful in emergency operations. All documents listed below are available in **RefWorld**.

General

- *Self-Study Module 1: An Introduction to International Protection: Protecting Persons of Concern to UNHCR*, UNHCR, 1 August 2005.
- *Protecting Refugees: A Field Guide for NGOs*, UNHCR and NGO Partners, May 1999.

Legal

- *The Statute of the United Nations High Commissioner for Refugees*, General

Assembly Resolution 428 (V) of 14 December 1950.

- *UNHCR Mission Statement*.
- *The Agenda for Protection*, UNHCR, A/AC.96/965/Add 1 of 26 June 2002.
- *Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme*, UNHCR Geneva (updated every year).
- *Collection of International Instruments Concerning Refugees*, UNHCR, Geneva, 2006.
- *Guiding Principles on Internal Displacement*, United Nations, document E/CN.4/1998/53/Add.2 of 1998.

Access and non-refoulement

- *Asylum Processes (Fair and Efficient Asylum Procedures)*, Global Consultations on International Protection, Second Meeting, document EC/GC/01/12, 31 May 2001.
- *Reception of Asylum-Seekers, Including Standards of Treatment, in the context of Individual Asylum Systems*, Global Consultations on International Protection, Second Meeting, document EC/GC/01/17, 4 September 2001.
- *Summary Conclusions – The principle of Non-Refoulement*, Global Consultations on International Protection, Cambridge Roundtable 9–10 July 2001.

Registration

- *Practical Aspects of Physical and Legal Protection with regard to Registration*, Global Consultations on International Protection, First Meeting, document EC/GC/01/6, 19 February 2001.
- *UNHCR Handbook on Registration – provisional release* September 2003.

Refugee status determination

- *Self-Study Module 2: Refugee Status Determination. Identifying who is a Refugee*, UNHCR, 1 September 2005.
- *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UNHCR, second edition, January 1992.
- *Guidelines on International Protection No. 1 – 7 on (i) Gender-Related Persecution* HCR/GIP/02/01 of 7 May 2002; (ii) *Membership of a Particular Social group*, HCR/GIP/02/02 of 7 May 2002; (iii) *Cessation of Refugee Status under Article 1C(5) and (6)*, HCR/GIP/03/03 of 10 February 2003; (iv) *Internal Flight or Relocation Alternative*, HCR/GIP/03/04 of 23 July 2003 (v): *Application of the Exclusion Clauses: Article 1F*, HCR/GIP/03/05 of 4 September 2003; (vi) *Religion-Based Refugee Claims*, HCR/GIP/04/06 of 28 April 2004; (vii) *Victims of Trafficking and Persons at Risk of Being Trafficked*, HCR/GIP/06/07 of 7 April 2006.
- *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*, UNHCR, 1 September 2005.

Quality of protection

- *Protection of Refugees in mass influx situations: Overall protection framework*, Global Consultations on International Protection, Second Meeting, document EC/GC/01/4, 19 February 2001.
- *Designing Protection Strategies and Measuring Progress: Checklist for UNHCR Staff*, UNHCR, July 2002.
- *UNHCR Practical Guide to the use of Standards and Indicators*, UNHCR 2006.

- *Operational Protection in Camps and Settlements: A reference guide to good practices in the protection of refugees and others of concern to UNHCR*, UNHCR 2006.
- *Protection Gaps Framework of Analysis: Enhancing Protection of Refugees*, UNHCR 2006.

Partnership with uprooted women, men, girls and boys

- *Reinforcing a Community Development Approach*, UNHCR, EC/51/SC/CRP.6 of February 2001.
- *A Practical Guide to Empowerment*, UNHCR, 2001.
- *UNHCR Tool for Participatory Assessment in Operations*, UNHCR, 2005.
- *UNHCR policy on Harmful Traditional Practices, Inter-Agency Standing Committee (IASC) Handbook on gender mainstreaming (draft)* 2006.

Children

- *Refugee Children*, Global Consultations on International Protection, Fourth Meeting, document EC/GC/02/9, 25 April 2002.
- *Refugee Children: Guidelines on Protection and Care*, UNHCR, 1994.
- *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, ICRC, IRC, Save the Children, UNHCR, UNICEF, WVI, 2004.
- *Policy on Refugee Children*, UNHCR, EC/SCP/82 of October 1993.
- *UNHCR's 5 priorities for girls and boys of concern to UNHCR*, UNHCR 2005.
- *Summary Update of UNHCR's Strategy and Activities for Refugee Children*, October 2005.
- *UNHCR Guidelines on Formal Determination of the Best Interests of the child (BID) (provisional release May 2006)*.

Women

- *Refugee Women*, Global Consultations on International Protection, Fourth Meeting, document EC/GC/02/8, 25 April 2002.
- *Five Commitments to Refugee Women*, UNHCR, 2001.
- *Policy on Refugee Women*, UNHCR, 1990.
- *Handbook on the Protection of Displaced Women and Girls*, UNHCR 2006 (Provisional release).

SGBV

- *Sexual and Gender-based Violence against Refugees, Returnees and Internally Displaced Persons – Guidelines for Prevention and Response*, UNHCR, May 2003.
- *Guidelines for Gender-based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies* IASC, 2005.

Timely and durable solutions

General

- *Framework for Durable Solutions for Refugees and Persons of Concern*, UNHCR, May 2003.

Repatriation and reintegration

- *Voluntary Repatriation Handbook*, UNHCR, 1996.
- *Handbook for Repatriation and Reintegration Activities*, UNHCR, May 2004.

Resettlement

- *Resettlement Handbook*, UNHCR, November 2004.

Local integration and self-reliance

- *Local Integration*. Global Consultations on International Protection, Fourth Meeting, document EC/GC/02/6, 25 April 2002.
- *Handbook for Planning and Implementing Development Assistance for Refugees (DAR)*, UNHCR, January 2005.
- *Handbook for Self-Reliance*, UNHCR, February 2005.

Annex 1: International instruments and legal texts concerning refugees and others of concern to UNHCR

Below are some of the international instruments and legal texts that may be particularly useful in an emergency context. However, as emergencies vary, there may be other instruments and legal texts as well as national legislation that would be relevant and important. They can be found on UNHCR's RefWorld database.

Refugees and others of concern to UNHCR

Name	Description
Statute of the Office of the United Nations High Commissioner for Refugees	The Statute of the High Commissioner's office was adopted by General Assembly Resolution 428 (V) of 14 December 1950. It serves as UNHCR's constitution and sets out UNHCR's function and responsibility to provide international protection and to seek permanent solutions to the problem of refugees. It also includes a definition of persons who are of concern to UNHCR. The mandate has been elaborated and expanded over time through subsequent General Assembly and ECOSOC resolutions.
1951 Convention Relating to the Status of Refugees, and its 1967 Protocol Relating to the Status of Refugees	An international treaty which is binding upon the signatory states. It sets out the responsibilities of states which are parties to the Convention vis-à-vis refugees on their territories, and sets out the obligations of the refugees.
Conclusions on international protection adopted by UNHCR's Executive Committee (ExCom Conclusions are adopted every year)	Contain important guidance (and standards) to States and UNHCR on international protection.
OAU Convention governing the specific aspects of refugee problems in Africa (Organization of African Unity, Addis Ababa, 1969)	A regional complement to the 1951 Convention and 1967 Protocol. It contains an expanded refugee definition as well as provisions on safe and peaceful asylum, burden-sharing and voluntary repatriation.
i. Cartagena Declaration on Refugees, 1984 ii. American Convention on Human Rights, "Pact of San Jose, Costa Rica", 1969	Non binding declarations which have greatly influenced regional policies on refugees and asylum seekers, and contain an expanded refugee definition.
The Asian-African Legal Consultative Organization's (AALCO's) 1966 Bangkok Principles on Status and Treatment of Refugees (as adopted on 24 June 2001 at the AALCO's 40th session, New Delhi)	Another non-binding document that addresses refugee issues at a regional level.
Convention Relating to the Status of Stateless Persons, 1954	Grants a recognized status to stateless persons who are lawful and habitual residents. Similar to the 1951 Convention Relating to the Status of Refugees.
Convention on the Reduction of Statelessness, 1961	Contains measures to ensure that persons do not become stateless.
The Guiding Principles on Internal Displacement	Addresses the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

International Human Rights

Name	Description
Universal Declaration of Human Rights, 1948 (UDHR)	Universal instrument setting out the basic human rights of all persons, including refugees and other persons of concern to UNHCR.
International Covenant on Civil and Political Rights of 16 December 1966 (ICCPR)	Obliges states which are parties to the Covenant to respect and ensure the rights set out in the Covenant to all individuals (within the state's territory and jurisdiction), without distinction such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The ICCPR also has two optional protocols as well (one on an individual complaint mechanism and another to abolish the death penalty)
International Covenant on Economic, Social and Cultural Rights of 16 December 1966 (ICESCR)	Obliges states to respect the human right to work, the right to an adequate standard of living, including food, clothing, and housing, the right to physical and mental health, the right to social security, the right to a healthy environment, and the right to education. It is also applicable to refugees and others of concern to UNHCR.
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (CAT)	Defines 'torture' and bans torture under all circumstances. It also states that States cannot return a refugee to his country if there is reason to believe he/she will be tortured (principle of non-refoulement).
Convention on the Rights of the Child of 20 November 1989 (CRC)	A comprehensive code of rights for all children (defined as 18 years or under) including children of concern to UNHCR. It requires that children have a right to citizenship upon birth and specifically addresses the needs of refugee children (article 22). The CRC also has two optional protocols (one on children in armed conflict and another on the sale of children, child prostitution, and child pornography).
International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (CERD)	Prohibits racial discrimination (where a person or a group is treated differently because of their race, colour, descent, national origin or ethnic origin and this treatment impairs, or is intended to impair, their human rights and fundamental freedoms). The Convention permits distinctions between citizens and non-citizens; but not between different groups of non-citizens.
Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979 (CEDAW)	Defines what constitutes discrimination against women and sets a framework for national action to end such discrimination and to ensure the full development and advancement of women in all spheres -- political, educational, employment, health care, economic, social, legal, and marriage and family relations.
Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948	Defines genocide and declares it as a crime whether committed during peace time or during war.

International Humanitarian Law and the Law of Neutrality

Name	Description
Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949	Covers the treatment of civilians in time of war, including refugees and other uprooted people. It also prevents states from forcibly displacing civilian populations.
(i) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)	Provides for additional elements that can protect refugees and others of concern in armed conflict.
(ii) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts of 8 June 1977 (Protocol II)	Prior to the second protocol the only provision applicable to non-international armed conflicts was Article 3 common to all four Geneva Conventions of 1949. The aim of the present Protocol is to extend the essential rules of the law of armed conflicts to internal wars.
Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land of 18 October 1907	Jointly with Executive Committee Conclusion 94 (2002) this provides a framework for neutral states to identify, disarm, separate and intern combatants who are mixed with refugee populations.

International Criminal Law

(i) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime of 15 November 2000 (Palermo Protocol on Trafficking)	These protocols include specific measures to ensure protection of the human rights of victims of trafficking and smuggling although they largely focus on reduction of the power and influence of organized criminal groups that abuse migrants. They define smuggling and trafficking and specify that no action taken by states to combat trafficking or smuggling should contravene the principle of <i>non-refoulement</i> .
(ii) Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime of 15 November 2000 (Palermo Protocol on Smuggling)	

Miscellaneous

The Charter of the United Nations, 1945	Places certain general obligations on member states of the United Nations of particular relevance to UNHCR's international protection function.
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Annex 2: Physical security of refugees and others of concern

Checklist for addressing the physical protection and security of refugees

In situations which may threaten refugee security or give rise to tension and conflict between the refugee community and the local population, the following measures may be considered to address the specific causes of the problems:

- Did the Office negotiate with the host government and ensure that refugee camps are situated in an appropriate location at a safe distance away from international borders and from zones of conflict?
- Are the size and the design of the refugee camps and settlements effectively contributing to the maintenance of a peaceful environment and the security of refugees and local residents?
- Has the Government provided comprehensive security arrangements - through the use of a civilian police force and professional camp administration - upholding law and order within the camps and ensuring a peaceful environment?
- If not, has the Office discussed with the Government how to ensure the physical protection of refugees, including practical mechanisms in safeguarding their safety? And, has UNHCR supported the Government in ensuring its responsibility for refugee security with a “security package” type agreement?
- Has the Government initiated and facilitated measures for the early identification, separation, disarmament and internment of combatants?
- Has participatory assessment been undertaken with groups of women, girls, boys and men and is it done regularly?
- Have camp rules and regulations been developed with the women and men in the city and also promulgated?
- Do the police (and where applicable, other security forces) have and adhere to a Code of Conduct relating to their responsibilities in the refugee camp and do they have a gender balance?
- Are the local judicial and penal services adequate to cope with the added burden of a large refugee population, and if not, does UNHCR assist in any way?
- Do the camps have a participatory management structure including a refugee committee with 50% participation by women, and do refugees have a role in camp security? And does the camp management NGO use a community-based approach?
- If yes, to what extent are refugees involved in camp security, i.e. through refugee security volunteers, community watch teams with 50% women, etc.? Is the role and responsibilities of the refugees well-defined and integrated within the official authority, i.e. the camp administration and national police assigned to the camp?
- Is there effective interaction with the local host community and authorities?
- Has the local population been sensitized to the plight of the refugees through local media (programmes on radio and TV, articles in newspapers) and community leaders?
- Has the Office sensitized refugees to local customs, traditions and environmental considerations?
- Do camp management have adequate means of contacting camp security, local authorities and UNHCR in cases of emergency?
- Do the camps have adequate fire prevention strategies and fire fighting capacity in place, and are camp residents educated about fire hazards and has first aid training been provided to refugee volunteers?

- Are communal areas and/or central points provided with night lighting and has the shelter and/or camp been designed with the participation of women, men, girls and boys?
- Is the Government and Office aware of Executive Committee Conclusion No. 94 on the Civilian and Humanitarian Character of Asylum (2002), and where applicable are actions being taken accordingly?
- [if required] Have measures been introduced to identify, disarm and separate armed elements from bona-fide refugees, and intern combatants and ensure their eligibility within a programme of DDR?
- Have measures been introduced together with relevant actors to ensure special programmes in order to identify, disarm, separate, demobilize and reintegrate child soldiers, both girls and boys? Have the needs of camp-followers/family members been considered?
- Has the Office encouraged the host State to take measures to reduce the risk or prevent forced military recruitment of refugees, in particular of refugee children and adolescents?
- Sexual and gender-based violence:
- Is there gender-based persecution of, or violence against, refugee women or men? Any examples? What is being done to try to combat this? How have such cases been detected?
- Are staff aware of the Sexual and Gender-based Violence (SGBV) guidelines and applying them in practice? Are incidents of sexual and gender-based violence reported and data registered and compiled on a weekly/monthly basis?
- Have budgetary provisions been made to be able to deal with follow-up to SGBV cases (e.g. counselling, safe

houses, legal aid, support for medical exams, etc.)?

- Is there an adequate complaints mechanism in place to deal with SGBV?
- How is the Office working to create awareness on the need to address SGBV issues (including community-based discussions, training sessions, use of posters and leaflets, other measures)?

Activities to maintain security in camps

The following activities may be considered to address these issues:

- Establish mechanisms for the enforcement of law and order, such as the presence of an organized police force dedicated to camp security, legal redress mechanisms, and the physical aspects of the camp (e.g. design layout, maximal size, capacity, and location).
- Establish camp governance, management and maintenance systems incorporating transparent structures for encouraging effective refugee participation, including women, adolescents and groups with specific needs.
- Ensure systematic protection monitoring including the regular presence of UNHCR and NGO staff.
- Ensure community activities such as educational programmes, health and social services, self-reliance activities, youth schemes, activities and services which engage the host community with the refugee community, and refugee-managed infrastructure projects.
- Refugees themselves should have a role in ensuring their security. They should be empowered along with host community leaders and supported to develop of refugee volunteer guards /neighbourhood watch teams with 50% participation by women.

- Sensitize, and where warranted, strengthen the capacity of the local police to discharge its responsibilities effectively and efficiently.
- Refugee leaders and representatives should be elected among candidates that are committed to promoting the civilian and humanitarian character of their camp and should reflect a fair gender distribution.
- Refugees should be involved in the development of camp rules.
- Recognize both the legal rights and obligations that refugees have in a country of asylum.
- Maintain constant dialogue and cooperation with local populations and authorities.
- Develop effective, objective, and safe information channels as well as reporting and compliant mechanisms.
- Hold Codes of Conduct training for all involved parties – UN, NGO, and refugee committees.
- Develop a strategy for cooperation with national law enforcement authorities which includes their direct involvement with UNHCR training and monitoring.