

# CHAPTER ONE





## CHAPTER ONE

### RESETTLEMENT WITHIN UNHCR'S MANDATE: INTERNATIONAL PROTECTION AND THE SEARCH FOR DURABLE SOLUTIONS

#### Introduction

**Resettlement** involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status. The status provided ensures protection against *refoulement* and provides a resettled refugee and his/her family or dependants with access to rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalized citizen of the resettlement country.

#### Preconditions for resettlement consideration

- the applicant is determined to be a refugee by **UNHCR**;<sup>\*</sup> and
- the prospects for all durable solutions were assessed, and resettlement is identified as the most appropriate solution.

\* Exceptions can be made for non-refugee stateless persons for whom resettlement is considered the most appropriate durable solution, and also for the resettlement of certain non-refugee dependent family members to retain family unity.

#### Purpose

The purpose of this chapter is to:

- situate resettlement within UNHCR's mandate in the context of international refugee law and policy;
- review persons of concern to UNHCR; and
- describe the three durable solutions and some general principles applicable to them.

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## 1.1 INTERNATIONAL LEGAL FRAMEWORK

International protection begins with securing the admission of refugees to a country of asylum and ensuring respect of their rights as set out in international law, and continues until a durable solution has been found. Resettlement cannot be viewed in isolation from other protection interventions.

Within the context of international refugee law and policy, resettlement is a mechanism for refugee protection, a durable solution and an element of responsibility sharing with refugee-hosting countries.

This section provides an overview of the foundations of refugee law and policy that define UNHCR's mandate, govern state responsibilities to provide protection, and guide the use of resettlement. *Refugee status determination under UNHCR's mandate is covered in detail in Chapter 3.*

### 1.1.1 United Nations High Commissioner for Refugees: mandate and governance

UNHCR's Statute, which was adopted by the General Assembly in 1950,<sup>1</sup> defines UNHCR's functions as providing international protection to refugees and assisting governments in finding durable solutions for them. Initially established for only a three-year term, the UNHCR mandate was extended on a temporary basis through successive General Assembly Resolutions until 2003, when its existence was secured until such time as the refugee problem is resolved.

Subsequent UN General Assembly Resolutions have also expanded UNHCR's mandate, in particular to whom it considers persons of concern. Securing international protection and seeking durable solutions for persons of concern to UNHCR remain UNHCR's core objectives. Although these tasks are frequently referred to as distinct functions, in reality they are interdependent, and resettlement plays a vital role in achieving both of these objectives.

**International protection** can be defined as “*all actions aimed at ensuring the equal access and enjoyment of the rights of women, men, girls and boys of concern to UNHCR, in accordance with the relevant bodies of law (including international humanitarian, human rights and refugee law)*”. It includes interventions by States or UNHCR on behalf of asylum-seekers and refugees to ensure that their rights, security, and welfare are recognized and safeguarded in accordance with international standards. Such interventions include: ensuring respect for the principle of *non-refoulement*; admission to safety; access to fair procedures for the determination of refugee status; humane standards of treatment; and the implementation of durable solutions. UNHCR is the only United Nations agency with a mandate for the protection of refugees at the global level.

<sup>1</sup> UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), <http://www.unhcr.org/refworld/docid/3bo0fo715c.html>

## UNHCR's Executive Committee (ExCom)

The High Commissioner is elected every five years by the UN General Assembly. S/he reports annually to the General Assembly and the Economic and Social Committee (ECOSOC) and follows their policy directives. S/he is additionally assisted by an Executive Committee to the High Commissioner's Programme (ExCom), which was created in 1958 and consists of UN Member States with an interest in refugee issues. The ExCom meets once annually to advise the High Commissioner on policy issues, *inter alia* by adopting Conclusions on International Protection, and to issue decisions on budget matters.<sup>2</sup> It is supported by a Standing Committee which usually meets three times a year. UNHCR provides progress reports on resettlement to the Standing Committee on a biannual basis.<sup>3</sup>

### 1.1.2 The international legal framework

#### 1951 Convention and its 1967 Protocol

The 1951 *Convention Relating to the Status of Refugees*<sup>4</sup> (hereafter the 1951 Convention) represents the core instrument of international refugee law. It sets out who is a refugee and standards for their treatment. The 1951 Convention represented the first time that States agreed on a universal definition of a refugee. Until that time, refugees had primarily been defined by ethnic or national group or origin.

Unlike UNHCR's Statute, the 1951 Convention initially was limited to persons who became refugees as a result of events occurring before 1 January 1951, reflecting the focus on dealing with the aftermath of World War II. States were also permitted to apply a geographic restriction, limiting its reach to European refugees. New global challenges, particularly the refugee flows resulting from decolonization, led to the adoption of the 1967 Protocol to lift these time and geographic restrictions.<sup>5</sup>

Whether or not a refugee-hosting country is a signatory to the 1951 Convention and/or its 1967 Protocol, and whether or not it has implemented its Convention obligations and established effective asylum legislation has a profound impact on the refugees within its borders. An assessment of the protection environment is a key step in identifying appropriate durable solutions, including resettlement.



<sup>2</sup> See UNHCR, *Thematic Compilation of Executive Committee Conclusions (5th edition)*, January 2010, <http://www.unhcr.org/refworld/docid/4bace8f62.html>

<sup>3</sup> See for example, UNHCR, *Progress report on resettlement*, 31 May 2010, EC/61/SC/CRP.11, <http://www.unhcr.org/refworld/docid/4c5ac6942.html>

<sup>4</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.unhcr.org/refworld/docid/3be01b964.html>

<sup>5</sup> UN General Assembly, *Protocol Relating to the Status of Refugees*, 30 January 1967, United Nations, Treaty Series, vol. 606, p. 267, <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html> Note that given its global mandate, UNHCR was able to intervene in the years prior to the 1967 Protocol to provide international protection to Hungarian refugees following the uprising in 1956, Chinese refugees in Hong Kong and refugees who fled as a result of the war for Algerian independence.

## “Soft law” instruments supplement the 1951 Convention and its 1967 Protocol

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

### Regional refugee law instruments

Additional regional legal instruments reflect further evolution in international refugee law. In certain regions, the Convention refugee definition has been broadened to include victims of indiscriminate violence. The 1969 *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*<sup>6</sup> (hereinafter the OAU Convention) explicitly applies not only to persons fleeing persecution but also to those fleeing situations of generalized violence. In African countries, refugee status is widely provided, often on a *prima facie* basis, for persons fleeing such situations. In Latin America, the 1984 *Cartagena Declaration on Refugees*<sup>7</sup> (hereinafter the Cartagena Declaration) recommended a refugee definition which includes persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order. Although the Cartagena Declaration as such is not legally binding, this definition has served as the basis for recognition of refugee status in quite a number of Latin American States.<sup>8</sup>

While recognition under these broader regional instruments offers vitally-needed protection, in the context of resettlement, the resettlement applicant's eligibility under the 1951 Convention will likely need to be reviewed. *For further guidance see Chapter 3.1.3.*

### Relevant branches of international law

Refugee rights set out in refugee-specific legal instruments are supplemented by other relevant branches of international law, including international human rights, humanitarian and criminal law. The standards set in these laws are also applicable in the assessment of the availability of durable solutions.

<sup>6</sup> Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa* (“OAU Convention”), 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>

<sup>7</sup> Cartagena Declaration on Refugees, *Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.unhcr.org/refworld/docid/3ae6b36ec.html>

<sup>8</sup> In the same vein, a revised text of the 1966 *Bangkok Principles on the Status and Treatment of Refugees* was adopted by the Asian-African Legal Consultative Organization (formerly Committee) in 2001 and incorporates a refugee definition similar to that in the OAU Convention.

International human rights law is a particularly important complement to international refugee law. The right to seek asylum is recognized as a basic human right set out in the *Universal Declaration of Human Rights*.<sup>9</sup> International human rights law outlines and elaborates additional rights which should be enjoyed by refugees along with others, thus supplementing international refugee law and defining additional standards.

### 1.1.3 Key principles

#### Responsibility of States

States that have ratified the relevant refugee law and human rights law instruments, both international and regional, have, in doing so, accepted specific obligations. In addition, according to customary law, the State is responsible for the protection of a number of human rights, regardless of the ratification of international treaties. States in principle retain primary responsibility for providing protection to their citizens and those within their territory, and international human rights law is relevant in determining rights and standards of treatment.

#### *Non-refoulement*

Key to refugee protection is the right not to be returned in any manner whatsoever to a country or territory where one's life or freedom may be threatened on one of the 1951 Convention grounds.<sup>10</sup> This is known as the principle of *non-refoulement* and is the cornerstone of international refugee law. The principle is also part of international human rights law, according to which no person may be returned to a country or territory where they are at risk of torture, or cruel, inhuman or degrading treatment or punishment.<sup>11</sup> Moreover, *non-refoulement* is generally considered a principle of customary international law, and is thus binding on States even if they have not signed or ratified the relevant refugee or human rights conventions.

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

<sup>10</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 33, <http://www.unhcr.org/refworld/docid/3be01b964.html>

<sup>11</sup> See *inter alia*, the UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: resolution / adopted by the General Assembly*, 10 December 1984, A/RES/39/46, Article 3, <http://www.unhcr.org/refworld/docid/3boof2224.html>. The Human Rights Committee has also interpreted the 1966 International Covenant on Civil and Political Rights to reflect the principle of *non-refoulement*, as has the European Court of Human Rights with respect to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR). See UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <http://www.unhcr.org/refworld/docid/3ae6b3aao.html>; and Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, ETS 5, <http://www.unhcr.org/refworld/docid/3ae6b3bo4.html>



## 1.1.4 Reaffirming the 1951 Convention

### Global Consultations

UNHCR initiated the Global Consultations on International Protection in 2000 to launch broad-ranging discussions on reinvigorating the existing international protection regime while ensuring its flexibility to address the new problems of the 21st century. The Consultations took a broad-based approach that focused not only on the 1951 Convention and its interpretation, but also on issues of relevance to asylum and to the protection of refugees as a whole. States adopted the *Declaration by States Parties to the 1951 Convention and/or its 1967 Protocol*<sup>12</sup> at a Ministerial Meeting held in 2001. The Declaration recognized the enduring importance of the 1951 Convention as the primary refugee protection instrument that, as amended by the 1967 Protocol, sets out rights and minimum standards of treatment that apply to persons falling within its scope.

### Agenda for Protection

The Global Consultations also led to the adoption of an *Agenda for Protection*, which was subsequently endorsed by ExCom and the General Assembly.<sup>13</sup> The *Agenda for Protection* represents the first comprehensive framework for global refugee policy since UNHCR was created, refocusing attention on the search for solutions, as well as the provision of international protection. The Agenda sets out clear goals for strengthening international protection, and practical strategies to supporting solutions that can enable refugees to start a new life with dignity, and bring about an end to their need for international protection.

The Agenda's six main goals are:

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

States endorsed these six main goals, and also agreed to specific objectives set out for them and UNHCR.

<sup>12</sup> UNHCR, *Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 16 January 2002, HCR/MMSP/2001/09, <http://www.unhcr.org/refworld/docid/3d60f557.html>

<sup>13</sup> UNHCR, *Agenda for Protection*, October 2003, Third edition, <http://www.unhcr.org/refworld/docid/4714a1bf2.html>. For an overview of the implementation of the Agenda for Protection, see also UNHCR, *Agenda for Protection: Review and Way Forward*, 48<sup>th</sup> Standing Committee, EC/61/SC/INF.1, May 2010, <http://www.unhcr.org/4c0527999.html>



## The Framework for Durable Solutions and Convention Plus

The Global Consultations also had a particular focus on the tools of protection: those presently available to the international community, and those in need of development for better global management of refugee problems. The intention was to make the international response more reliable and effective, as well as to ensure greater equity in the sharing of responsibilities and burdens, notably in the context of mass influxes and mixed migratory flows, and for durable solutions. The High Commissioner's Convention Plus initiative carried this forward with the goal of providing a framework for the adoption of multilateral "special agreements" to complement the 1951 Convention, which are intended to set in place joint arrangements in areas where multilateral commitments are called for and where they are negotiable. The *UNHCR Framework for Durable Solutions for Refugees and Persons of Concern*<sup>14</sup> incorporates the idea of close collaboration between the different actors concerned with refugees, including governments, local communities, refugees, UN agencies, national and international NGOs, development agencies and the donor community. It also provides for more international responsibility and burden-sharing by directing broader funding and resources, particularly development funding, to regions where voluntary repatriation or local integration is occurring.

Under the Convention Plus initiative UNHCR pursued generic multilateral agreements to tackle three further priority challenges: the strategic use of resettlement; the response to irregular secondary movements; and the targeting of development assistance for durable solutions to forced displacement. Building on the previous efforts of the Working Group on Resettlement as well as the experience of resettlement partners, the *Multilateral Framework of Understandings on Resettlement*<sup>15</sup> was developed to provide guidance to be tailored to specific situations to facilitate the strategic use of resettlement.

### 1.1.5 Addressing protection gaps

Patterns of displacement continue to evolve, and refugees increasingly move from one country or continent to another alongside other people whose reasons for moving may not be protection-related. Movement is also driven by population growth, urbanization, food and energy insecurity, water scarcity, natural disasters, climate change and the impact of economic crises and recessions. More often than not such movements are irregular, in the sense that they take place without the requisite documentation and frequently involve human smugglers and traffickers. The people who move in this manner often place their lives at risk, are obliged to travel in inhumane conditions and may be exposed to exploitation and abuse. States regard such irregular mixed movements as a threat to their sovereignty and security. It has become imperative for the

<sup>14</sup> UNHCR, *Framework for Durable Solutions for Refugees and Persons of Concern*, 16 September 2003, EC/53/SC/INF.3, <http://www.unhcr.org/refworld/docid/4a9ac93d.html>

<sup>15</sup> UNHCR, *Multilateral Framework of Understandings on Resettlement*, 16 September 2004, FORUM/2004/6, <http://www.unhcr.org/refworld/docid/41597doa4.html>

international community to address this phenomenon in a more coherent and comprehensive manner.

Unemployment, social unrest, violence and crime fuel not only local problems, but may well drive more internal and external displacement. These factors are becoming ever more interlinked. In particular, conflict, extreme deprivation and climate change are tending to act more and more in combination, a trend that is likely to intensify. The legal implications of displacement driven by forces other than persecution, human rights violations and war, and the appropriate protection responses to such displacement, are areas of exploration and dialogue for UNHCR.

### 10-Point Plan of Action

UNHCR has developed *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*<sup>16</sup> to assist States in ensuring that refugee protection needs are recognized and properly addressed in situations of mixed migration flows. The Plan of Action is a framework outlining ten areas that are relevant to asylum issues and in which UNHCR could play a role. Partnership with other actors is instrumental to the Plan, as UNHCR has emphasized that it does not consider itself a migration agency. However, the ten points represent key areas where there is a nexus between asylum and migration. Durable solutions, including resettlement, figure prominently as a point in this framework.

### Urban refugees

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

- to ensure that cities are recognized as legitimate places for refugees to reside and exercise the rights to which they are entitled; and,
- to maximize the protection space available to urban refugees and the humanitarian organizations that support them.<sup>17</sup>

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

<sup>16</sup> UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, January 2007, Rev.1, <http://www.unhcr.org/refworld/docid/45b0c9b2.html>. For examples of initiatives and practical guidance for implementation see UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011, <http://www.unhcr.org/refworld/docid/4d9430e2.html>

<sup>17</sup> UNHCR, *UNHCR Policy on Refugee Protection and Solutions in Urban Areas*, September 2009, <http://www.unhcr.org/refworld/docid/4ab8e7f2.html>



## Essential reading

- UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, A/Res/428(V), 14 December 1950, <http://www.unhcr.org/refworld/docid/3bo0fo715c.html>
- UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.unhcr.org/refworld/docid/3be01b964.html>
- UN General Assembly, *Protocol Relating to the Status of Refugees*, 30 January 1967, United Nations, Treaty Series, vol. 606, p. 267, <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>
- UNHCR, *Agenda for Protection*, October 2003, Third edition, <http://www.unhcr.org/refworld/docid/4714a1bf2.html>
- UNHCR, *Protection Gaps Framework for Analysis: Enhancing Protection of Refugees*, June 2006, <http://www.unhcr.org/refworld/docid/430328bo4.html>
- UNHCR, *Progress report on resettlement*, 31 May 2010, EC/61/SC/CRP.11, <http://www.unhcr.org/refworld/docid/4c5ac6942.html>

## 1.2 PERSONS OF CONCERN TO UNHCR

Under its Statute and subsequent General Assembly and ECOSOC resolutions, and in conjunction with the 1951 Convention, the High Commissioner's responsibilities relate primarily to several groups of people known collectively as "persons of concern to UNHCR". These generally include refugees and asylum-seekers, returnees, stateless persons and, under certain conditions, internally displaced persons (IDPs).

This section reviews who is considered a "person of concern" to UNHCR, and touches briefly on their eligibility for resettlement.

### 1.2.1 Refugees

#### 1951 Convention definition of a refugee

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

## UNHCR's definition of a refugee under its mandate

UNHCR's mandate to protect refugees also extends to persons who are affected by the indiscriminate effects of armed conflict or other events which have seriously disrupted public order.

In addition to individuals who meet the criteria in the 1951 Convention definition, **UNHCR recognizes as refugees** persons who are outside their country of nationality or habitual residence and unable to return there owing to **serious** and **indiscriminate threats** to life, physical integrity or freedom resulting from **generalized violence** or **events seriously disturbing public order**.

## Exclusion from refugee protection

The above refugee definitions refer to the so-called “inclusion clauses”; they define positively who is a refugee. Certain persons are, however, excluded from refugee status either because they do not need, or do not deserve, international protection. These include persons who could be considered persecutors, having committed one or more of the following:<sup>18</sup>

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

These criteria are called “exclusion clauses”. People who meet these criteria are “excludable” and will not benefit from the rights of refugees, even if they meet the inclusion requirements.

## Cessation clauses

Additionally, both the 1951 Convention and the UNHCR Statute provide for so-called “cessation clauses”, or situations where refugee status ceases, generally because the refugees have found a durable solution or because the events that led refugees to leave their countries of origin have ceased to exist.

## Individual or group determination of refugee status

Refugees may be recognized through individualized determination procedures or, in the absence of evidence to the contrary, through group-determination procedures on a *prima facie* basis. The latter approach is often relied upon in mass influx situations, where the reasons for flight are generally known and the number of arrivals would overwhelm capacities to determine refugee status individually. The *prima facie* group determination is more easily applied in States which accept a wider definition of a refugee that includes indiscriminate or generalized violence.

<sup>18</sup> 1951 Convention, Article 1(F) (a)-(c) Inclusion and exclusion provisions are explained in greater detail in [Chapter 3](#).

## Prima facie recognition

**Prima facie** (“in absence of evidence to the contrary”) refers to the process of group determination of refugee status, as opposed to individual determination, which is usually conducted in situations where a need to provide urgent assistance or other practical difficulties preclude individual determination, and where the circumstances of the flight indicate that members of the group could be considered individually as refugees.<sup>19</sup>

*Refugee status determination, including the careful application of the exclusion clauses, is explained further in Chapter 3.*

## Complementary forms of protection

UNHCR’s definition of a refugee under its mandate is broader than the one set out in the 1951 Convention. Where States have not agreed to this broader definition of a refugee, and are thus not bound to it, they have often nonetheless given permission for persons fleeing from, for example, generalized conflict, to stay on their territory, albeit with a different status. Whatever the particular name given to the status by a State, UNHCR has referred to this as a “complementary” form of protection, in that it is complementary to the protection granted under the 1951 Convention.

## Temporary protection

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

Thus, persons eligible for Convention refugee status or complementary protection may in an emergency situation receive temporary protection instead. However, persons granted temporary protection should still be able to pursue individualized status determination procedures subsequent to lifting of temporary protection if they so wish.<sup>20</sup>

<sup>19</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, January 1992, <http://www.unhcr.org/refworld/docid/3ae6b3314.html>

<sup>20</sup> The distinction between complementary and temporary protection was highlighted by States participating in the Global Consultations meeting on complementary protection: see UNHCR, *Global Consultations on International Protection: Report of the Third Meeting in the Third Track*, (EC/GC/02/2), 16 April 2003 para 15, <http://www.unhcr.org/refworld/docid/3d6264e54.html>



## Refugee status and resettlement

Although UNHCR applies both the 1951 Convention definition and the broader refugee definition when examining eligibility for refugee status, it is important for resettlement consideration to seek to identify the basis for eligibility under the 1951 Convention.

In practice, it may be more challenging for UNHCR to resettle a refugee recognized only under the broader refugee definition, as many States do not have provisions to accept refugees who do not meet the 1951 Convention criteria.

### 1.2.2 Asylum-seekers

Asylum-seekers, as possible refugees, are people of concern to UNHCR and should be granted protection until such stage as their claims for refugee status have been determined. However, refugee status determination is a precondition for resettlement consideration.

### 1.2.3 Stateless persons

Addressing statelessness is one of UNHCR's core mandates, and resettlement may in some situations be assessed to be an appropriate durable solution for stateless persons. States are specifically encouraged to: "*co-operate with UNHCR on methods to resolve cases of statelessness and to consider the possibility of providing resettlement places where a stateless person's situation cannot be resolved in the present host country or other country of former habitual residence, and remains precarious.*"<sup>21</sup>

Both the UNHCR Statute and the 1951 Convention refer to stateless persons who meet the criteria of the refugee definition. UNHCR's mandate responsibilities concerning statelessness were expanded following the adoption of the *1954 Convention Relating to the Status of Stateless Persons* (hereafter the 1954 Convention),<sup>22</sup> and the *1961 Convention on the Reduction of Statelessness* (hereafter the 1961 Convention).<sup>23</sup> The United Nations General Assembly subsequently conferred upon UNHCR a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons. This mandate has continued to evolve as the General Assembly has endorsed the conclusions of the Executive Committee, notably ExCom Conclusion No. 106 of 2006 on *Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*.

<sup>21</sup> UNHCR, *General Conclusion on International Protection*, 10 October 2003, No. 95 (LIV) - 2003, para. (v), <http://www.unhcr.org/refworld/docid/3f93aed7.html>

<sup>22</sup> UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, <http://www.unhcr.org/refworld/docid/3ae6b384o.html>

<sup>23</sup> UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, <http://www.unhcr.org/refworld/docid/3ae6b3962o.html>

## Stateless definition

As set out in the definition of a stateless persons found in the 1954 Convention and customary international law, a stateless person is someone who is *not considered as a national by any State under the operation of its law*<sup>24</sup> (sometimes referred to as *de jure* statelessness). Accordingly, whether or not a person is stateless can be determined based on an assessment of relevant nationality laws and how these laws are implemented by the State.

In principle, most human rights are to be enjoyed by every person, regardless of nationality status. Some internationally recognized rights, however, such as political rights, the right to a passport and the unrestricted right to enter and reside in a State, are only extended to citizens. Because States often also limit the enjoyment of a broader range of rights to nationals, those who are not nationals of any State may not be able to enjoy these rights anywhere. As a consequence, stateless persons can have problems accessing formal employment, identity and travel documents, housing, medical care and education, even though they may have been born and lived their entire lives in a particular country.

In addition to stateless persons as defined by the 1954 Convention, several international instruments refer to *de facto* statelessness persons who possess a nationality but where that nationality is ineffective. Traditionally the term has been used to describe a person who, outside his/her country of nationality, is denied protection, i.e. the diplomatic and consular protection/assistance of his/her country, for example by being denied a passport or return from abroad.

Statelessness may arise as a result of conflict of laws when children are born of parents of different nationalities, or when children are born abroad and unable to acquire either the nationality of the State where they are born or the parents' nationality. This is because, depending on the State, citizenship may be passed on either through the parents (by *jus sanguinis*), or by birth in the territory of the State (the principle of *jus soli*). Statelessness may also occur because of:

- State succession such as the break-up of States into smaller countries or transfer of territory from one State to another;
- discrimination against women in the right to transmit nationality to children;
- discriminatory practices based on ethnicity, religion or race in determining who is a national of the State;
- governments arbitrarily depriving people of their nationality;
- a person voluntarily renouncing her/his nationality without acquiring another one first;
- marriage, or its dissolution, in situations where this automatically affects the woman's nationality; or
- failure or inability to register children at birth so that the child has no means of proving her/his entitlement to nationality.

<sup>24</sup> Article 1.1 UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, <http://www.unhcr.org/refworld/docid/3ae6b384o.html>



## Stateless persons may be, but are not necessarily, refugees

Stateless persons may be refugees, and thus the standards of treatment set out *inter alia* in the 1951 Convention would extend to them. Not all stateless persons are refugees, however. The 1954 Convention and the 1961 Convention aim to reduce the occurrence of statelessness, and set standards for the treatment of stateless persons. Relatively few States have acceded to or ratified these Conventions to date, although they still provide valuable guidance in terms of standards to be applied and in UNHCR's work with stateless people.<sup>25</sup>

As with refugees, international human rights law is relevant to setting additional standards of treatment for stateless people. The right to a nationality as a fundamental right is set out in the *Universal Declaration of Human Rights*.<sup>26</sup> Regional instruments, including *inter alia* the 1997 *European Convention on Nationality* adopted by the Council of Europe, may also be relevant, particularly with respect to preventing statelessness from occurring.

## Fulfilling UNHCR's mandate for stateless persons

At the time of writing, there are an estimated 12 million stateless people worldwide, compared to a global refugee population of around 15.2 million. To fulfil its global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons, UNHCR engages in the following types of activities:

- promoting accession to the 1954 and 1961 Conventions;
- providing legal advice to all interested States on the preparation and implementation of nationality laws and assisting them to build capacity in their state procedures;
- cooperating with States and other partners to facilitate identification, mapping and resolution of statelessness problems;
- training government officials and UNHCR staff on statelessness issues;
- gathering and sharing information on the problem of statelessness worldwide;
- reporting regularly to ExCom on its activities in this field.<sup>27</sup>

In specific cases, addressing protection problems faced by stateless persons may require seeking solutions outside of both the country of habitual residence and of other countries with which they have links through former nationality, birth, descent or former habitual residence.

<sup>25</sup> Promoting further accessions to the Statelessness Conventions and identifying more effective ways to respond to the statelessness problem are among the key goals of the 60th Anniversary Commemorations in 2011.

<sup>26</sup> See Article 15. UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (II), <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>

<sup>27</sup> For more information see UNHCR, *UNHCR Action to Address Statelessness: A Strategy Note*, March 2010, <http://www.unhcr.org/refworld/docid/4b9e0c3d2.html> as well as the forthcoming UNHCR *Note on Statelessness*, Standing Committee, June 2011.

Resettlement of non-refugee stateless persons is challenging however, due to the criteria of resettlement States. ExCom Conclusion No. 95 (2003) encourages States

*“to cooperate with UNHCR on methods to resolve cases of statelessness and to consider the possibility of providing resettlement places where a stateless person’s situation cannot be resolved in the present host country or other country of former habitual residence, and remains precarious.”<sup>28</sup>*

Additional guidance on resettlement of non-refugee stateless persons is provided in [Chapter 7.2.2](#) of this Handbook.

## 1.2.4 Returnees

Voluntary repatriation may take place under less than ideal conditions, particularly in a post-conflict situation. Though UNHCR’s mandate was traditionally thought to end once refugees crossed the border into their countries of origin, subsequent ExCom Conclusions have confirmed UNHCR’s legitimate interest in the consequences of return and in returnee monitoring. UNHCR’s responsibilities include a substantive involvement in securing protection and providing assistance to returnees in the country of origin and in monitoring returnee operations. UNHCR can also have an important capacity-building role through training programmes, development of infrastructure and material support.

Where there are indications or evidence that the freedom or security of returnees is at risk, UNHCR, as part of its returnee monitoring activities, should do whatever it can to remedy the situation and relieve the plight of the returnees. UNHCR must intervene where severe discrimination or human rights abuses come to light. Where problems and abuses are not isolated and there appears to be a risk of future occurrences, UNHCR does not promote further repatriation until the problems are rectified.

If UNHCR’s intervention fails to solve the problem and fails to prevent the risk of further harm, and such risk is serious and imminent, measures may have to be taken by suitable actors to ensure that the affected returnees can leave the country to seek safety as refugees once again. These actions may, in special cases, include consideration of resettlement.

## 1.2.5 Internally displaced persons (IDPs)

**Internally displaced persons** are “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”<sup>29</sup>

<sup>28</sup> UNHCR, *General Conclusion on International Protection*, 10 October 2003, No. 95 (LIV) - 2003, para. (v), <http://www.unhcr.org/refworld/docid/3f93aede7.html>

<sup>29</sup> United Nations, *Guiding Principles on Internal Displacement*, 22 July 1998, E/CN.4/1998/53/Add.2, <http://www.unhcr.org/refworld/docid/3c3da07f.html>

Thus, in many cases the causes for internal displacement do not differ from those of refugee flight, the only difference between the two being that internally displaced persons have not crossed an international boundary, but remain within their own State. IDPs are *not* eligible for third country resettlement under UNHCR's auspices, although some States do have humanitarian migration programmes for persons at risk within their own country, which may include internally displaced persons.

UNHCR has been involved with internally displaced persons since the early 1970s. Whereas the number of refugees has remained fairly stable since the late 1990s, fluctuating between 13 million and 16 million, the global number of IDPs has steadily increased from a total of around 17 million in 1997. At the end of 2010, the number of people internally displaced across the world by armed conflict, generalized violence and human rights violations reached 27.5 million.<sup>30</sup> In 2009 UNHCR was assisting about 15.6 million in 22 countries, including the four with the largest IDP populations – Colombia, Pakistan, Iraq and Sudan.<sup>31</sup> Millions more are displaced by natural disasters, although updated statistics are not available.

States have the primary responsibility to protect, respect and fulfil the rights of internally displaced persons, just as for any other citizens. However, in reality internally displaced persons are often without adequate protection and assistance, and their situation is a legitimate concern of the international community. The 1998 *Guiding Principles on Internal Displacement*, developed under the aegis of the first UN Representative on the Internally Displaced, provide important guidance to all actors involved with internally displaced persons. It draws on relevant principles of international human rights, humanitarian and, by analogy, refugee law, to set out standards of treatment for the internally displaced.

The Special Rapporteur on the Human Rights of Internally Displaced Persons builds upon the work of his predecessors in raising awareness of IDP rights issues, promoting and disseminating the Guiding Principles at the national, regional and international levels, undertaking country missions, providing support for capacity building of non-governmental organizations and other relevant institutions, and conducting policy-oriented research.

## Finding solutions for IDPs

Finding durable solutions for internally displaced persons focuses on restoring their rights, thereby ensuring that they no longer have any specific assistance and protection needs that are directly linked to their displacement and can enjoy their human rights without discrimination on account of their displacement.

The Guiding Principles state that IDPs should have access to a durable solution. The 2010 *Inter-Agency Standing Committee Framework for Durable Solutions for*

<sup>30</sup> Internal Displacement Monitoring Centre (IDMC), *Internal Displacement: Global Overview of Trends and Developments in 2010*, 23 March 2011, <http://www.unhcr.org/refworld/docid/4d8afef82.html>

<sup>31</sup> UNHCR, *2009 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, June 2010, <http://www.unhcr.org/refworld/docid/4caee652.html>

*Internally Displaced Persons*<sup>32</sup> develops the understanding of the principles and criteria that govern efforts to achieve durable solutions for IDPs.

A **durable solution to internal displacement** can be achieved through:

- sustainable **reintegration** at the place of origin (**return**);
- sustainable **local integration** in the area where IDPs have taken refuge; or
- sustainable **settlement elsewhere in the country**.<sup>33</sup>

There is no inherent hierarchy between the three types of solutions, and solutions can only be “durable” if a number of conditions are fulfilled. In general, IDPs who have achieved a durable solution will enjoy without discrimination the following rights:

- long-term safety, security and freedom of movement;
- an adequate standard of living, including at a minimum access to adequate food, water, housing, health care and basic education;
- access to employment and livelihoods; and
- access to effective mechanisms that restore IDPs’ housing, land and property or provide them with compensation.

In a number of contexts, it will also be necessary for IDPs to benefit, without discrimination, from the following to achieve a durable solution:

- access to, and replacement of, personal and other documentation;
- voluntary reunification with family members separated during displacement;
- participation in public affairs at all levels on an equal basis with the resident population; and
- effective remedies for displacement-related violations, including access to justice, reparations and information about the causes of violations.

## UNHCR and the Cluster Approach

International efforts at assistance and protection do not aim to replace national protection, but rather to reinforce it. Thus, no organization has been given a global mandate for internally displaced persons. In September 2005, the Inter-Agency Standing Committee (IASC) established the “Cluster Approach” which aims at ensuring greater predictability, accountability and partnership in response to humanitarian crises. In line with its expertise and experience, UNHCR agreed

<sup>32</sup> Brookings-Bern Project on Internal Displacement, *IASC Framework on Durable Solutions for IDPs*, April 2010, <http://www.unhcr.org/refworld/docid/4c5149312.html>

<sup>33</sup> Note that the *Guiding Principles on Internal Displacement* refer to two solutions: “return” and “resettlement” in another part of the country. The latter option refers to settlement elsewhere in the country other than in one’s place of origin. It encompasses the option for IDPs to settle permanently in the locality where they first arrived while displaced, as well as the possibility to move to another part of the country altogether. Given the specific meaning of “resettlement” in the refugee context as relocation to a third country, UNHCR refers to, and would generally recommend, that in contexts of internal displacement, the *IASC Framework for Durable Solutions for IDPs* terms “local settlement” and “settlement elsewhere” be used instead.

to assume the lead or co-lead role in three of the eleven areas of response: protection, emergency shelter, and camp coordination and management (the latter two only for conflict-induced emergencies).

UNHCR, as the Cluster Lead Agency for protection, provides vision and leadership in setting the protection agenda, establishing strategic priorities and coordinating support activities of the Global Protection Cluster (GPC) to field operations. The GPC is now the main forum at the global level for coordinating all protection activities in humanitarian action applying the cluster approach. The GPC also has five Areas of Responsibility (AORs) coordinated by focal point agencies with mandate expertise for the activities within them.<sup>34</sup> The AORs encompass child protection; housing, land and property rights; prevention of, and response to gender based violence; rule of law and justice and mine action. The GPC includes United Nations humanitarian, human rights and development agencies as well as non-governmental and other international organizations active in protection.

At the Global Cluster level, UNHCR is responsible for leading the development of standards and policies for protection of the internally displaced, building capacities among participating agencies, and coordinating operational support for new and ongoing emergencies. It is also responsible for ensuring that activities carried out under other clusters will be executed with protection in mind, and that protection issues are mainstreamed in all operations, at all levels, and in every sector.

As a concrete example, UNHCR coordinated the inter-agency collaborative process of producing the *Handbook for the Protection of Internally Displaced Persons*<sup>35</sup> under the auspices of the GPC. The Handbook provides operational guidance and tools to support effective protection responses in situations of internal displacement.

Unlike for Emergency Shelter and Camp Coordination and Camp Management, UNHCR's lead role in the Protection Cluster is not limited to situations where the causes of internal displacement are similar to those of refugees. Under certain circumstances UNHCR may also lead the Protection Cluster or become involved in a support role in situations of natural disaster, as it did in the wake of the December 2004 tsunami, the January 2010 Haiti earthquake, and the 2010 flooding in Pakistan. Clusters are not applicable in refugee situations, as UNHCR has the overall mandate for the protection, assistance and coordination response.

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<sup>34</sup> The Areas of Responsibility are as follows: rule of law and justice (OHCHR and UNDP); prevention of and response to GBV (UNFPA and UNICEF); protection of children (UNICEF); Land, Housing and Property Rights (UN-HABITAT) and Mine Action (UNMAS).

<sup>35</sup> Inter-Agency Standing Committee, *Handbook for the Protection of Internally Displaced Persons*, June 2010, <http://www.unhcr.org/refworld/docid/4790cb02.html>

## Essential reading

- UNHCR, *UNHCR Action to Address Statelessness: A Strategy Note*, March 2010, <http://www.unhcr.org/refworld/docid/4b9e0c3d2.html>
- UNHCR/Inter-Parliamentary Union, *Nationality and Statelessness: A Handbook for Parliamentarians*, 2005, <http://www.unhcr.org/refworld/docid/436608b24.html>
- General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, <http://www.unhcr.org/refworld/docid/3ae6b39620.html>
- General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, <http://www.unhcr.org/refworld/docid/3ae6b3840.html>
- Inter-Agency Standing Committee, *Handbook for the Protection of Internally Displaced Persons*, June 2010, <http://www.unhcr.org/refworld/docid/4790cbc02.html>



## 1.3 THE THREE DURABLE SOLUTIONS

This section gives an overview of each of the three durable solutions,<sup>36</sup> including reference to UNHCR's mandate and role, key legal and policy guidance, and challenges faced in the implementation of the solutions.

A durable solution for refugees is one that ends the cycle of displacement by resolving their plight so that they can lead normal lives. Seeking and providing durable solutions to the problems of refugees constitutes an essential element of international protection, and the search for durable solutions has been a central part of UNHCR's mandate since its inception.

The three durable solutions are:

- **Voluntary repatriation**, in which refugees return in safety and with dignity to their country of origin and re-avail themselves of national protection;
- **Local integration**, in which refugees legally, economically and socially integrate in the host country, availing themselves of the national protection of the host government;
- **Resettlement**, in which refugees are selected and transferred from the country of refuge to a third State which has agreed to admit them as refugees with permanent residence status.

The **three solutions are complementary** in nature and, when applied together, can form a viable and comprehensive strategy for resolving a refugee situation.

All three durable solutions should be given full consideration before resettlement is identified as the most appropriate solution.



<sup>36</sup> For a more detailed introduction to international protection and durable solutions, see *Self-study module 1, An Introduction to International Protection: Protecting Persons of Concern to UNHCR*, 2005, <http://www.unhcr.org/refworld/docid/4214cb4f2.html>

### 1.3.1 Self-reliance – an important precursor to solutions

Self-reliance is not a durable solution in and of itself, but rather an important precursor to all three durable solutions. UNHCR, together with NGOs, has sought to help increase the self-reliance of refugees through various means, including income-generating, agricultural or community development projects. Self-reliance projects often benefit local communities as well, allowing refugees to become agents of development.

#### Defining self-reliance

**Self-reliance** can be defined as the “*social and economic ability of an individual, a household or a community to meet essential needs (including protection, food, water, shelter, personal safety, health and education) in a sustainable manner and with dignity*”.

As a programme approach, self-reliance refers to developing and strengthening livelihoods of persons of concern in an effort to reduce their vulnerability and long-term reliance on humanitarian and external assistance.<sup>37</sup>

Self-reliance among refugees thus:

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

#### Framework agreements

UNHCR supports an international responsibility sharing framework to assist hosting States in order to ensure greater equity in the sharing of responsibilities, notably in the context of mass influxes and mixed migratory flows, as well as for durable solutions.

UNHCR has sought to engage in partnerships with State and non-State actors to increase the host State's capacity to provide for refugees pending realization of a durable solution.

The *UNHCR Framework for Durable Solutions*<sup>38</sup> introduced in 2003, provides overarching frameworks for international institutional collaboration in the promotion of durable solutions through three programme concepts, namely:

<sup>37</sup> See also UNHCR, *Handbook for Self-Reliance*, 2005, <http://www.unhcr.org/refworld/docid/4a54bbf4o.html>

<sup>38</sup> UNHCR, *Framework for Durable Solutions for Refugees and Persons of Concern*, 16 September 2003, EC/53/SC/INF.3, <http://www.unhcr.org/refworld/docid/4a9eac93d.html>



- Development Assistance for Refugees (DAR) programme approach to prepare refugees for solutions;
- Repatriation, Reintegration, Rehabilitation and Reconstruction (4Rs) approach to facilitate sustainable return and reintegration; and
- Development through Local Integration (DLI) approach to promote local integration in host countries, where feasible.

### 1.3.2 Complementarities of the three durable solutions

There is no formal hierarchy among the durable solutions. While in the early years of UNHCR's existence, resettlement and local integration appeared to be the most viable durable solutions for many refugees, over time most refugees have sought and attained voluntary repatriation. The three solutions are complementary in nature and, when applied together, can form a viable and comprehensive strategy for resolving a refugee situation. Even if voluntary repatriation becomes generally feasible, it may not be appropriate for the entire refugee population, and local integration or resettlement may still be more appropriate durable solutions for certain refugees. Particularly in post-conflict situations, it may take quite some time before peace and order are fully re-established, and administrative and judicial institutions are functioning effectively. In such situations, refugees – especially those who have serious trauma that could worsen upon return to their countries of origin or who might face particular protection problems in their countries of origin – may be better served by local integration or resettlement. Whichever solution is identified, its success will depend on the various parties concerned working in partnership.

While a complementary approach to durable solutions may arise naturally, the Global Consultations and the Convention Plus initiative have focused on opening possibilities for voluntary repatriation and local integration through a comprehensive approach to durable solutions.

### Comprehensive approaches to durable solutions

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

### 1.3.3 Voluntary repatriation

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

UNHCR's responsibilities to facilitate or promote voluntary repatriation derive from its Statute. Though the 1951 Convention does not speak directly to voluntary repatriation, its provisions on cessation are relevant.<sup>39</sup> The UN General Assembly (GA) has repeatedly affirmed UNHCR's function of promoting/facilitating the voluntary repatriation of refugees and, in recognition of the importance of sustainable return, has widened its mandate to include providing assistance for their rehabilitation and dealing with the consequences of their return. Where peace and reconciliation are durable, UNHCR promotes voluntary repatriation. Under less ideal conditions (e.g. when the sustainability of the peace process is not assured, but refugees are returning on their own), UNHCR may facilitate the return process.

UNHCR has developed a *Handbook on Voluntary Repatriation: International Protection*<sup>40</sup> that sets out basic principles, and a *Handbook for Repatriation and Reintegration Activities*<sup>41</sup> to guide operations. During a particular voluntary repatriation operation, UNHCR often signs specific agreements with the States concerned that set out the principles and standards of treatment in that operation.

#### Weighing the possibilities

When looking at this possible durable solution, it is important to identify the indicators which may determine that voluntary repatriation could be an option in the near or foreseeable future. For example, are peace talks underway in the country of origin, or is there a likelihood they will be in the near future? Have there been any spontaneous returns of refugees or internally displaced persons? Has the security situation in the country of origin improved? Are the minimum safeguards as to treatment upon return and conditions required to promote voluntary repatriation being met in the country of origin? Is continued asylum for those who remain refugees ensured? These and a number of other factors, as delineated in the UNHCR *Handbook on Voluntary Repatriation*, determine the involvement of UNHCR in any voluntary repatriation.

<sup>39</sup> See in particular Articles 1C (4), 1C (5) and 1C (6) of the 1951 Convention. The 1969 OAU Convention does refer explicitly to voluntary repatriation.

<sup>40</sup> UNHCR, *Handbook - Voluntary Repatriation: International Protection*, January 1996, Section 2.4, <http://www.unhcr.org/refworld/docid/3ae6b351o.html> issued in 1996 and in the process of being updated.

<sup>41</sup> UNHCR, *Handbook for Repatriation and Reintegration Activities*, May 2004, <http://www.unhcr.org/refworld/docid/416bd194.html>

In summary, UNHCR's mandate for voluntary repatriation includes the following:

- verify the voluntary character of refugee repatriation;
- promote the creation of conditions that are conducive to voluntary return in safety and with dignity;
- **facilitate** the voluntary return of refugees when it is taking place spontaneously, even if conditions are not conducive to return;
- disseminate information about the conditions in the country of origin;
- create an enabling environment to allow return in physical, legal and material safety and with dignity;
- **promote** the voluntary repatriation of refugees once conditions are conducive to return;
- organize, in cooperation with NGOs and other agencies, the documentation, transportation and reception of returnees, provided that such arrangements are necessary to protect their interests and well-being;
- **monitor** the status of returnees in their country of origin and intervene on their behalf if necessary;
- raise funds from the donor community in order to assist governments by providing material and financial support to repatriation and reintegration programmes;
- act as a catalyst for medium and long-term rehabilitation assistance provided by NGOs, specialized agencies and bilateral donors; and
- undertake activities in support of national legal and judicial capacity-building to help States address causes of refugee movements.

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

## Voluntary

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

## Return in safety and with dignity

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

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

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

**Physical safety** must be assured by the national authorities, which may need support from the international community. Insecurity can be a general threat, but returnees may also be specifically targeted. In such cases, the capacity of national authorities to protect them and uphold law and order needs to be considered carefully. Furthermore, even where the overall security situation has improved, there may be pockets where physical security cannot be assured. The presence of landmines, for example, may pose threats in specific localities.

Particularly in post-conflict situations, legal and judicial systems may need to be recreated or reformed in order to remove legal and administrative barriers to return. Examples of this are to ensure that returnees' personal and civil status (including citizenship) is recognized, and to make provision for the return of property, or for adequate compensation where possible. Another type of **legal safety** measure for returning refugees is amnesty against prosecution for having fled, for example, for avoiding military conscription. Amnesties may cover a range of crimes, but perpetrators of war crimes or crimes against humanity should not be amnestied.

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

## Reintegration

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

involved with the initial stages of return. This helps ensure that early efforts are integrated into development agendas, and the needs of returnees reflected in longer-term plans.<sup>42</sup>

## UNHCR assistance for individual voluntary repatriation

Some resettlement States have procedures and financial provisions available to assist refugees with voluntary repatriation. UNHCR Headquarters should be approached for advice and possible assistance for individual refugees living in countries with no special provisions for voluntary repatriation and where the refugee has no access to financial resources, including from NGOs or other actors.

### 1.3.4 Local integration

Local integration is a legal, economic and socio-cultural process aiming at providing the refugee with the permanent right to stay in the country of asylum, including, in some situations, as a naturalized citizen. Local integration follows the formal granting of refugee status, whether on an individual or *prima facie* basis, and assistance to settle in order for the refugee to live independently within the community.

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

### The process of local integration

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

- **legal:** refugees are granted a progressively wider range of rights (similar to those enjoyed by citizens) leading eventually to permanent residency and, in some situations, to naturalization;

<sup>42</sup> For more details see UNHCR, *Handbook for Repatriation and Reintegration Activities*, May 2004, <http://www.unhcr.org/refworld/docid/416bd1194.html>

- **economic:** refugees gradually become less dependent on aid from the country of asylum or on humanitarian assistance and become increasingly self-reliant to support themselves and contribute to the local economy;
- **social and cultural:** the interaction between refugees and the local community allows refugees to participate in the social life of their new country without fear of discrimination or hostility while not obliged to abandon their own culture.

## Refugees for whom local integration may be particularly appropriate

Local integration is an important facet of comprehensive strategies to develop solutions to refugee situations, particularly those of a protracted nature. While many refugees may voluntarily repatriate, and some may benefit from resettlement, local integration may be the preferred durable solution for others. Refugees who are unwilling to voluntarily repatriate might include those who have experienced acute trauma in the country of origin or who have attained a considerable degree of socio-economic integration by establishing, for example, close family, social, cultural and economic links in their country of asylum. Local integration may, for example, be appropriate for refugees who are born in countries of asylum, who have no ties with their parents' country of origin and who for this reason may be, or risk becoming, stateless. This concern has been recognized in ExCom Conclusions.<sup>43</sup> Overall, ethnic, cultural, or linguistic links with the local community can increase the chances of successful local integration.

## States with developed asylum systems

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

## Constraints and benefits

There are serious constraints to local integration. Some asylum countries are not signatories to universal or regional instruments concerning refugees and/or do not apply practices akin to the rights enumerated under the 1951 Convention. General socio-economic conditions, the desire to protect scarce resources, the risk of security problems, concerns about migration, and potential antagonism towards refugees or migrants in general often prevent the local integration of refugees. Obstacles to local integration grow when stagnated local economies increase competition in the labour market, exacerbate the struggle over already limited resources, and trigger xenophobia.

<sup>43</sup> See in particular UNHCR, *Conclusion on Local Integration*, 7 October 2005, No. 104 (LVI) 2005, <http://www.unhcr.org/refworld/docid/4357a91b2.html>

However, local integration can also provide benefits to the host country as well as to refugees. Refugees may bring with them skills and cultural diversity that can assist and enrich the host country; and can contribute to the socio-economic development of local communities.

### 1.3.5 Resettlement

Resettlement is the transfer of refugees from the country in which they have sought asylum to another State that has agreed to admit them as refugees and to grant them permanent settlement and the opportunity for eventual citizenship. Resettlement is the third durable solution UNHCR is mandated to implement, in cooperation with States, as derived from its Statute and set out in subsequent UN General Assembly Resolutions. Resettlement is not a right, and there is no obligation on States to accept refugees through resettlement. Even if their case is submitted to a resettlement State by UNHCR, whether individual refugees will ultimately be resettled depends on the admission criteria of the resettlement State.

#### **Resettlement serves three equally important functions:**

*First*, it is a tool to provide international protection and meet the specific needs of individual refugees whose life, liberty, safety, health or other fundamental rights are at risk in the country where they have sought refuge.

*Second*, it is a durable solution for larger numbers or groups of refugees, alongside the other durable solutions of voluntary repatriation and local integration.

*Third*, it can be a tangible expression of international solidarity and a responsibility sharing mechanism, allowing States to help share responsibility for refugee protection, and reduce problems impacting the country of asylum.

### Resettlement submission

To be submitted for resettlement, individuals or families must:

- meet the preconditions for resettlement consideration; and
- fall under one or more of the UNHCR resettlement submission categories.

#### **Preconditions for resettlement consideration**

- the applicant is determined to be a refugee by **UNHCR**;<sup>\*</sup> and
- the prospects for all durable solutions were assessed, and resettlement is identified as the most appropriate solution.

<sup>\*</sup> Exceptions can be made for non-refugee stateless persons for whom resettlement is considered the most appropriate durable solution, and also for the resettlement of certain non-refugee dependent family members to retain family unity.



Once vulnerable individuals or groups potentially in need of resettlement have been identified, it is necessary to prioritize among possible cases by assessing the urgency of their individual resettlement need and the applicability of the resettlement categories in order to identify the cases to be submitted to a resettlement country.

### **Resettlement submission categories**

**Legal and/or Physical Protection Needs** of the refugee in the country of refuge (this includes a threat of *refoulement*);

**Survivors of Torture and/or Violence**, where repatriation or the conditions of asylum could result in further traumatization and/or heightened risk; or where appropriate treatment is not available;

**Medical Needs**, in particular life-saving treatment that is unavailable in the country of refuge;

**Women and Girls at Risk**, who have protection problems particular to their gender;

**Family Reunification**, when resettlement is the only means to reunite refugee family members who, owing to refugee flight or displacement, are separated by borders or entire continents;

**Children and Adolescents at Risk**, where a best interests determination supports resettlement;

**Lack of Foreseeable Alternative Durable Solutions**, which generally is relevant only when other solutions are not feasible in the foreseeable future, when resettlement can be used strategically, and/or when it can open possibilities for comprehensive solutions.

The **universal imperative** requires that the identification of resettlement needs must be transparent, consistent and coordinated with the protection and durable solutions strategies to ensure equitable resettlement delivery. This means that when UNHCR submits a refugee with a certain profile within a given population for resettlement, it should, as a general rule, be willing to submit all cases with a similar profile.

### **Resettlement as a tool of refugee protection**

Refugees may be denied basic human rights in a country of refuge. Their lives and freedom may be threatened or they may have vulnerabilities or specific needs which render their asylum untenable. The authorities in the country of refuge may be unable or unwilling to provide effective protection or address specific needs. In such circumstances, timely relocation through resettlement becomes a principal objective, and an important means of protecting refugees. Resettlement as a tool of protection under UNHCR auspices is geared to the specific needs of refugees under the Office's mandate whose life, liberty, safety, health or other fundamental human rights are at risk in the country where they sought refuge.

The use of resettlement as a tool of refugee protection requires effective methods for the early identification of vulnerable or “at-risk” individuals or families within a population of refugees.

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

Resettlement of refugees should strengthen, not diminish, asylum and protection prospects for the entire refugee population. By offering an appropriate solution to refugees with individual protection or specific needs, UNHCR seeks to reinforce asylum in host countries by relieving the strain on them, thereby promoting durable solutions benefiting the entire refugee population concerned. More specifically, agreement may be sought with host countries to enhance their protection capacities for refugees who remain in their territory – e.g. by institutionalizing fair and efficient asylum procedures and granting adequate asylum conditions for refugees – against resettling those with specific needs to third countries. The interface with protection capacity building and responsibility sharing aspects is evident in such settings.

See [Chapter 5](#) for guidance on the identification of resettlement needs, [Chapter 6](#) for guidance on the resettlement submission categories, and [Chapter 7](#) for details on the prioritization and processing of case submissions.



## Resettlement as a durable solution

A foundation of resettlement policy is that it provides a durable solution for refugees unable to voluntarily return home or remain in their country of refuge. Absence of durable solutions for refugees will eventually become a protection concern, and hence the search for durable solutions constitutes an element of providing international protection. Resettling refugees who do not have immediate protection concerns in the country of refuge, but who have no prospects for voluntary repatriation or local integration, provides them with a durable solution.

A decision to use the resettlement option should be based on a realistic and comparative prognosis as to the viability and the protection impact of each of the durable solutions in the foreseeable future as well as in the longer term. The potential for other durable solutions must be reviewed simultaneously with assessing resettlement as an option. The pursuit of one solution at the expense of the two others may result in considerable delays or misdirected efforts in a durable solution.

The *Agenda for Protection* provides a useful framework for cooperation among States, NGOs and UNHCR on refugee matters, and has helped UNHCR identify its priorities globally and on a country-by-country basis. Particularly relevant for resettlement is Goal 5, which calls for the expansion of resettlement opportunities, and more efficient use of resettlement both as a protection tool and as a durable solution, and Goal 3 which calls on States and UNHCR to use resettlement more effectively as a tool of responsibility and burden-sharing. The commitments of States to meet their objectives and to collaborate with UNHCR on the overall goals keep the *Agenda for Protection* alive as an important lobbying and advocacy tool.<sup>44</sup>

## Resettlement as an element of responsibility sharing

While UNHCR has been mandated to provide international protection and seek durable solutions for refugees, the principal responsibility for providing international protection for refugees lies with States and is in the interest of the entire international community. Respect by States for their international protection responsibilities towards refugees is strengthened through international solidarity and the refugee protection regime is enhanced through committed international cooperation in a spirit of effective responsibility and burden-sharing among all States.<sup>45</sup>

Through the Working Group on Resettlement and the Annual Tripartite Consultations on Resettlement, resettlement partners strive continuously to enhance the use of resettlement as a responsibility sharing tool, especially where the prospects of other durable solutions is remote or absent. This includes ongoing efforts to expand and support the resettlement programmes of countries offering resettlement for the first time, and generally expanding the resettlement base.

## Strategic use of resettlement

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

<sup>44</sup> See Chapter 1.1.4 for the list of goals, UNHCR, *Agenda for Protection*, October 2003, Third edition <http://www.unhcr.org/refworld/docid/4714a1bf2.html>

<sup>45</sup> Agreed under the UNHCR *Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 16 January 2002, <http://www.unhcr.org/refworld/docid/3d60f5557.html>

The **strategic use of resettlement** is defined as “*the planned use of resettlement in a manner that maximizes the benefits, directly or indirectly, other than those received by the refugee being resettled. Those benefits may accrue to other refugees, the hosting state, other states or the international protection regime in general*”.<sup>46</sup>

Examples of how UNHCR has systematically used resettlement in a strategic manner to enhance protection are outlined in the June 2010 *UNHCR Position Paper on the Strategic Use of Resettlement*.<sup>47</sup>

While strategic use of resettlement as a responsibility sharing tool can be promoted by a single State, coordination with other resettlement countries and UNHCR is likely to maximize derivative benefits. Such coordination may involve negotiation of mutually agreeable arrangements between the international community and the State of first asylum, possibly requiring a multi-year commitment by the international community, as well as assistance to further local integration or enhance life for refugees in first asylum countries. The 2004 *Multilateral Framework of Understandings on Resettlement*<sup>48</sup> provides guidance on concluding such agreements, which aim to strengthen the international refugee protection system through a more strategic use of resettlement for the benefit of a greater number of refugees. Specifically, to guide parties to situation-specific multilateral agreements (namely, UNHCR, refugee-hosting countries, resettlement countries, countries of origin, the International Organization for Migration (IOM) and other relevant resettlement partners) in designing comprehensive arrangements which involve multilateral resettlement operations. Under the framework resettlement countries are also urged to develop selection criteria with the flexibility to resettle persons of concern to UNHCR who may not fall within the terms of the 1951 Convention, which has been particularly important for the group resettlement methodology.

These multilateral processes and specific follow-ups on the *Agenda for Protection* goals were quickly integrated into UNHCR work, and continue to support the development of additional tools and collaborative efforts to expand the use of resettlement as a durable solution within comprehensive solutions strategies.<sup>49</sup>

## Group resettlement methodology

The Multilateral Framework also highlights the role that a group resettlement methodology, as opposed to the usual individualized approach, could serve in

<sup>46</sup> UNHCR, *The Strategic Use of Resettlement*, 3 June 2003, <http://www.unhcr.org/refworld/docid/41597a824.html>

<sup>47</sup> UNHCR, *Position Paper on the Strategic Use of Resettlement*, 4 June 2010, <http://www.unhcr.org/refworld/docid/4cod1oac2.html>

<sup>48</sup> UNHCR, *Multilateral Framework of Understandings on Resettlement*, 16 September 2004, FORUM/2004/6, <http://www.unhcr.org/refworld/docid/41597doaa4.html>. The application of the framework is examined further in the next section of this chapter.

<sup>49</sup> For an overview of the implementation of the Agenda for Protection, see UNHCR, *Agenda for Protection: Review and Way Forward*, 48<sup>th</sup> Standing Committee, EC/61/SC/INF.1, May 2010, <http://www.unhcr.org/4c0527999.html>

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

## Protracted refugee situations

Of particular relevance is using resettlement strategically to unlock protracted refugee situations. The problem of protracted refugee situations is not new, but has in recent years found a prominent place on the international humanitarian agenda. The issue was a central concern of the 2002 *Agenda for Protection*, and was highlighted again in a June 2004 Standing Committee paper that demonstrated the dimensions of the problem throughout the world and presented the following definition of the “protracted refugee situation” concept:

**A protracted refugee situation** is any situation “*in which refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile. A refugee in this situation is often unable to break free from enforced reliance on external assistance.*”<sup>50</sup>

Such refugee situations are often created by impasses in the country of origin that preclude voluntary repatriation as a viable option in the near future. Local integration may also be unobtainable, due to, for example, the heavy economic and social burden on the host country. Refugees in protracted situations often face restrictions on freedom of movement, being confined to camps, as well as limitations on employment. The strategic use of resettlement could therefore entail negotiating provisions for the relaxation of restrictions imposed on refugees by the country of asylum in connection with enhanced resettlement from that country. Even where other durable solutions remain unavailable in a protracted refugee situation, resettlement can be used strategically to ensure that more benefits accrue to refugees who remain in the host country, or to ensure continued access to asylum. Another important strategic objective is achieving possibilities for self-reliance, which is an important precursor to all three durable solutions. *More detail on responses to protracted refugee situations is provided in Chapter 2.2.3.*

<sup>50</sup> Definition used in UNHCR, *Protracted Refugee Situations*, Standing Committee to the Executive Committee of the High Commissioner's Programme, 30<sup>th</sup> meeting, EC/54/SC/CRP.14, 10 June 2004, <http://www.unhcr.org/refworld/docid/4a54bcood.html>

## Essential reading on durable solutions



- UNHCR, *Framework for Durable Solutions for Refugees and Persons of Concern*, 16 September 2003, EC/53/SC/INF.3, <http://www.unhcr.org/refworld/docid/4ae9ac93d.html>
- UNHCR, *Handbook - Voluntary Repatriation: International Protection*, January 1996, <http://www.unhcr.org/refworld/docid/3ae6b3510.html>
- UNHCR, *Handbook for Repatriation and Reintegration Activities*, May 2004, <http://www.unhcr.org/refworld/docid/416bd1194.html>
- UNHCR, *Handbook for Self-Reliance*, August 2005, First edition, <http://www.unhcr.org/refworld/docid/4a54bbf40.html>
- UNHCR, *Multilateral Framework of Understandings on Resettlement*, 16 September 2004, FORUM/2004/6, <http://www.unhcr.org/refworld/docid/41597doa4.html>
- UNHCR, *Position Paper on the Strategic Use of Resettlement*, 4 June 2010, <http://www.unhcr.org/refworld/docid/4cod1oac2.html>
- UNHCR, *The Strategic Use of Resettlement*, 3 June 2003, <http://www.unhcr.org/refworld/docid/41597a824.html>
- UNHCR, *Handbook for Emergencies*, February 2007, Third edition, <http://www.unhcr.org/refworld/docid/46a9e29a2.html>
- UNHCR, *Handbook for Planning and Implementing Development Assistance for Refugees (DAR) Programmes*, January 2005, <http://www.unhcr.org/refworld/docid/428076704.html>