

REFUGEE PROTECTION:

A Guide to International Refugee Law

*“Everyone has the right to seek and to enjoy
in other countries asylum from persecution.”*

Universal Declaration of Human Rights, Article 14(1)

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Foreword

The year 2001 marks the 50th Anniversary of the United Nations Convention relating to the Status of Refugees. The Convention was a landmark in the setting of standards for the treatment of refugees. It incorporated the fundamental concepts of the refugee protection regime and has continued to remain the cornerstone of that regime to the present day.

On 28 July 1951, when the Convention was originally adopted, it was to deal with the aftermath of World War II in Europe even as the Cold War set in. The inspiration for the Convention was the strong global commitment to ensuring that the displacement and trauma caused by the persecution and destruction of the war years would not be repeated. But during the decades that followed, it globalised, and the 1967 Protocol expanded the scope of the Convention as the problem of displacement spread around the world. In these origins lies the Convention's avowedly humanitarian character which ensures that its fundamental concepts remain intrinsically sound.

It has, though, to be recognised that in fifty years the world has been undergoing significant transformations which pose serious challenges to the capacity of States to respond to contemporary displacement situations. The recurring cycles of violence and systematic human rights violations in many parts of the world are generating more and more intractable displacement situations. The changing nature of armed conflict and patterns of displacement and serious apprehensions about "uncontrolled" migration in this era of globalisation are increasingly part of the environment in which refugee protection has to be realised. Trafficking and smuggling of people, abuse of asylum procedures and difficulties in dealing with unsuccessful asylum-seekers are additional compounding factors. Asylum countries in many parts of the world are concerned about the lack of resolution of certain long-standing refugee problems, urban refugee issues and irregular migration, a perceived imbalance in burden- and responsibility-sharing, and increasing costs of hosting refugees and asylum-seekers.

If the Convention is being challenged in a number of important ways, it has, though, proved its resilience. This is because the 1951 Convention has a legal, political and ethical significance that goes well beyond its specific terms: legal in that it provides the basic standards on which principled action can be based; political, in that it provides a truly universal framework within which States can co-operate and share the responsibility resulting from forced displacement; and ethical in that it is a unique declaration by those 141 States which currently are Parties to it of their commitment to uphold and protect the rights of some of the most vulnerable and disadvantaged people.

The Inter-Parliamentary Union has a long history of concern for the fate of refugees. Its resolutions have persistently urged States to accede to and implement the refugee instruments. In addition, it has never ceased to encourage all Parliaments to

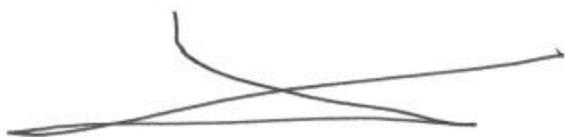
contribute to the consolidation of the international refugee protection regime through a strengthened and more effective implementation of the Convention.

As lawmakers, parliamentarians can encourage accession to the 1951 Refugee Convention and its 1967 Protocol, and to other related international and regional agreements that have not yet been ratified. They can also design and adopt national refugee legislation that conforms to international law and standards, and oversee their implementation.

This Handbook is the outcome of co-operation between the Inter-Parliamentary Union, the world organisation of Parliaments, and UNHCR, the organisation mandated by the United Nations to protect refugees and help them find solutions to their plight. Developed by two experts from the UNHCR (Ms. Kate Jastram and Ms. Marilyn Achiron) with close input from three seasoned parliamentarians (Ms. Beth Mugo, Kenya, Mr. Jim McKiernan, Australia, and Mr. Ricardo Vazquez, Argentina) and senior officials of both the UNHCR and the IPU, it aims to help members of Parliament to become familiar with the general principles of international refugee law and to learn how they are implemented, so they can fully discharge their responsibilities. Promoting refugee law and protection presupposes both knowledge and the ability to impart such knowledge.

Asylum-seekers have become something of a campaign issue in election situations, with governments and opposition parties vying with each other to appear toughest on the "bogus" asylum-seekers "flooding" into their countries. Asylum-seekers make a perfect target for people wanting to invoke the age-old prejudice against foreigners. Parliamentarians should thus take the lead in promoting respect and tolerance for refugees and in encouraging local populations to see refugees not only as people needing and deserving international protection, but also as persons with a real and enduring contribution to make to the betterment and diversification of their communities. Parliamentarians have a major role to play in ensuring that national debates take proper account of this important reality and of the many positive experiences countries have enjoyed in welcoming and integrating refugees into their societies.

The Handbook has therefore a twofold purpose: to inform parliamentarians about the founding principles and challenges of international refugee law and also to mobilise them, as policy makers, in the implementation of the law for securing adequate protection of refugees. ■



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Introduction

Throughout the world and over the centuries, societies have welcomed frightened, weary strangers, the victims of persecution and violence. This humanitarian tradition of offering sanctuary is often now played out on television screens across the globe as war and large-scale persecution produce millions of refugees and internally displaced persons. Yet even as people continue to flee from threats to their lives and freedom, governments are, for many reasons, finding it increasingly difficult to reconcile their humanitarian impulses and obligations with their domestic needs and political realities. At the start of the 21st century, protecting refugees means maintaining solidarity with the world's most threatened, while finding answers to the challenges confronting the international system that was created to do just that.

Partners in Protection

Protecting refugees is primarily the responsibility of States. Throughout its 50-year history, the United Nations High Commissioner for Refugees (UNHCR) has worked closely with governments as partners in refugee protection. In every region of the world, governments have generously granted asylum to refugees and allowed them to remain until conditions were conducive for the refugees to return to their homes in safety and with dignity. Governments have allowed UNHCR to operate on their territories and have provided financial assistance to refugees, both through their own domestic refugee programs and by funding UNHCR's protection and assistance operations.

- ***Some 22 million persons on five continents were in need of international protection in 2000.***
- ***According to statistics available to UNHCR, some 50,8 per cent of the population of concern to UNHCR were women.***
- ***An estimated 41 per cent of the population of concern to UNHCR were under the age of 18 and 12 per cent were under the age of five.***
- ***As of January 2001, UNHCR was providing protection and assistance to some 5.2 million internally displaced persons around the world.***

An increasing number of countries around the world have invited refugees to settle permanently on their territories. By offering naturalization, providing land and/or permitting legal employment, governments of both asylum countries and resettlement countries have offered a lasting solution to the problems of those refugees who could not be assured protection in their home countries or in their country of first asylum.

The legal framework that supports the international refugee protection regime was built by States. Through the years, States have affirmed their commitment to protecting refugees by acceding to the 1951 Convention relating to the Status of Refugees, the cornerstone document of refugee protection. The Convention, which was developed and drafted by States, enumerates the rights and responsibilities of refugees and the obligations of States that are parties to it. As of September 2001, 141 States had acceded to the Convention and/or its Protocol. In addition, as members of UNHCR's Executive Committee, 57 governments help shape the organization's protection policies and assistance activities.

Protection under threat

While the international community has generally responded swiftly and generously to refugee crises over the past half century, in recent years, some worrying trends have begun to emerge. Countries that once generously opened their doors to refugees have been tempted to shut those doors for fear of assuming open-ended responsibilities, of abetting uncontrolled migration and people-smuggling, or of jeopardizing national security. Real and perceived abuses of asylum systems as well as irregular movements, have also made some countries more wary of refugee claimants, and concerned that resources are not being sufficiently focussed on those in greatest need. Refugees have been refused admission to safety or have been expelled from asylum countries. Those who have reached a potential country of asylum have sometimes been turned away or sent back without being able to apply for asylum.

Refugees have been the targets of violent attacks and intimidation, largely because they were perceived as "different" from the communities in which they had temporarily settled. Tensions between refugees and local populations have erupted when refugees were seen as competitors for natural and economic resources. Armed combatants have been allowed to mingle freely with--and intimidate with seeming impunity--the civilians who sought safety in refugee camps and settlements. And, increasingly, governments have resorted to detention of illegal entrants, including women and children, many of whom are seeking asylum. Some have done so to discourage or to dissuade those who have already arrived from applying for refugee status. Some regard detention as an effective way of managing illegal entrants regardless of their asylum status

while identity, national security and the elements on which the claim to refugee status or asylum is based are explored, and that it facilitates removal of those who have no grounds to stay.

Some asylum countries around the world have become increasingly concerned about the economic and social costs of asylum and are moving to harmonise their refugee determination systems in part to address inequities which may result from different levels of entitlements. Some donor governments are struggling with the costs of their own domestic systems for receiving refugees and determining their claims, while also supporting large numbers of refugees over long periods of time in other, less wealthy, nations. Developing countries argue that the burdens of asylum are not shared equally: while they host thousands, and sometimes millions, of refugees, wealthier countries are restricting access to their own territories and reducing support to the countries of first asylum. UNHCR itself is facing budgetary shortfalls and has been forced to cut back on staff and programs.

The crucial role of parliamentarians

In this complex environment, parliamentarians can play a crucial role in protecting refugees and in finding solutions to their problems.

As opinion-leaders and decision-makers, parliamentarians can promote respect for refugees among their constituents and encourage informed debate on refugee protection issues.

As overseers of national budget appropriations, parliamentarians can ensure that adequate and cost-effective funding is provided both to their national refugee protection systems and to UNHCR, the only international agency mandated to protect refugees and promote durable solutions to their problems.

As lawmakers, parliamentarians can encourage accession to the 1951 Refugee Convention and its 1967 Protocol, and to other related international and regional agreements that have not yet been ratified. They can also design and adopt national refugee legislation that conforms to international law and standards, and oversee their implementation. ■

Chapter 1

The Legal Framework of the International Refugee Protection System

It is the responsibility of States to protect their citizens. When governments are unwilling or unable to protect their citizens, individuals may suffer such serious violations of their rights that they are forced to leave their homes, and often even their families, to seek safety in another country. Since, by definition, the governments of their home countries no longer protect the basic rights of refugees, the international community then steps in to ensure that those basic rights are respected.

In the aftermath of World War II, the United Nations General Assembly created the Office of the United Nations High Commissioner for Refugees (UNHCR). UNHCR is mandated to protect and find durable solutions for refugees. Its activities are based on a framework of international law and standards that includes the 1948 *Universal Declaration of Human Rights* and the four *Geneva Conventions* (1949) on international humanitarian law, as well as an array of international and regional treaties and declarations, both binding and non-binding, that specifically address the needs of refugees.

International laws and standards

➤ 1951 Convention relating to the Status of Refugees

The *Convention Relating to the Status of Refugees* is the foundation of international refugee law. The Refugee Convention defines the term “refugee” (see box on page 9) and sets minimum standards for the treatment of persons who are found to qualify for refugee status.

Because the Convention was drafted in the wake of World War II, its definition of a refugee focuses on persons who are outside their country of origin and are refugees as a result of events occurring in Europe or elsewhere before 1 January 1951. As new refugee crises emerged during the late 1950s and early 1960s, it became necessary to widen both the temporal and geographical scope of the Refugee Convention. Thus, a Protocol to the Convention was drafted and adopted.

Who is a refugee?

According to the **1951 Convention relating to the Status of Refugees**, a refugee is someone who:

- ❑ *Has a well-founded fear of persecution because of his/her*
 - *Race,*
 - *Religion,*
 - *Nationality,*
 - *Membership in a particular social group, or*
 - *Political opinion;*
- ❑ *Is outside his/her country of origin; and*
- ❑ *Is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution.*

The **Organization of African Unity [OAU] Convention Governing the Specific Aspects of Refugee Problems in Africa**, a regional treaty adopted in 1969, added to the definition found in the 1951 Convention to include a more objectively based consideration, namely

- ❑ *Any person compelled to leave his/her country owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality.*

In 1984, a colloquium of Latin American government representatives and distinguished jurists adopted the **Cartagena Declaration**. Like the OAU Convention, the Declaration adds a more objectively based consideration to the 1951 Convention refugee definition to include:

- ❑ *Persons who flee their countries “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”. ■*

See also Chapter 4, *Are They Entitled to Refugee Status: A Few Special Cases*

➤ 1967 Protocol relating to the Status of Refugees

The 1967 Refugee Protocol is independent of, though integrally related to, the 1951 Convention. The Protocol lifts the time and geographic limits found in the Convention's refugee definition.

Together, the Refugee Convention and Protocol cover three main subjects:

- ❑ The basic refugee definition, along with terms for cessation of, and exclusion from, refugee status
- ❑ The legal status of refugees in their country of asylum, their rights and obligations, including the right to be protected against forcible return, or *refoulement*, to a territory where their lives or freedom would be threatened (see box on *non-refoulement*, page 14)
- ❑ States' obligations, including cooperating with UNHCR in the exercise of its functions and facilitating its duty of supervising the application of the Convention

By acceding to the Protocol, States agree to apply most of the articles of the Refugee Convention (Articles 2 through 34) to all persons covered by the Protocol's refugee definition. Yet the vast majority of States have preferred to accede to both the Convention and the Protocol. In doing so, States reaffirm that *both* treaties are central to the international refugee protection system.

“The Conference calls on all Parliaments and Governments to be conscious of their responsibility to protect refugees and to receive victims of political persecution as defined in the 1951 Convention Relating to the Status of Refugees.”

78th Conference of the Inter-Parliamentary Union, October 1987

“The Executive Committee reaffirms that the 1951 Convention relating to the Status of Refugees and the 1967 Protocol remain the foundation of the international refugee regime.”

UNHCR Executive Committee Conclusion N° 87(f), 1999

The responsibilities of States parties to the Refugee Convention

As a general principle of international law, every treaty in force is binding upon the parties to it and must be performed in good faith. Countries that have ratified the Refugee Convention are obliged to protect refugees on their territory according to its terms.

Among the provisions that States Parties to the Refugee Convention and Protocol must apply are:

- ❑ **Cooperation with UNHCR** - Article 35 of the Refugee Convention and Article II of the 1967 Protocol contain an agreement for States Parties to cooperate with UNHCR in the exercise of its functions and, in particular, to help UNHCR supervise the implementation of the provisions found in those treaties.
- ❑ **Information on National Legislation** - The States Parties to the Refugee Convention agree to inform the UN Secretary-General about the laws and regulations they may adopt to ensure the application of the Convention.
- ❑ **Exemption from Reciprocity** - Where, according to a country's law, the granting of a right to an alien is subject to the granting of similar treatment by the alien's country of nationality (reciprocity), this will not apply to refugees. The notion of reciprocity does not apply to refugees since they do not enjoy the protection of their home country ■

➤ **States Parties to the 1951 Convention Relating to the Status of Refugees* and/or the 1967 Protocol**

141 as of September 2001 (*Entered into force on 22 April 1954)

Albania	Bolivia	Chile	Dominican Republic
Algeria	Bosnia and Herzegovina	China (People's Rep. of)	Ecuador
Angola	Botswana	Colombia	Egypt
Antigua and Barbuda	Brazil	Congo	El Salvador
Argentina	Bulgaria	Costa Rica	Equatorial Guinea
Armenia	Burkina Faso	Côte d'Ivoire	Estonia
Australia	Burundi	Croatia	Ethiopia
Austria	Cambodia	Cyprus	Fiji
Azerbaijan	Cameroon	Czech Republic	Finland
Bahamas	Canada	Democratic Republic of the Congo	France
Belarus	Cape Verde	Denmark	Gabon
Belgium	Central African Republic	Djibouti	Gambia
Belize	Chad	Dominica	Georgia
Benin			Germany

Ghana	Luxembourg	Republic of Korea	(United
Greece	Madagascar	Romania	Republic of)
Guatemala	Malawi	Russian Federation	The former Yugoslav
Guinea	Mali	Rwanda	Republic of
Guinea-Bissau	Malta	Saint Vincent and the	Macedonia
Haiti	Mauritania	Grenadines	Togo
Holy See	Mexico	Samoa	Trinidad and Tobago
Honduras	Monaco	Sao Tome and	Tunisia
Hungary	Morocco	Principe	Turkey
Iceland	Mozambique	Senegal	Turkmenistan
Iran (Islamic	Namibia	Seychelles	Tuvalu
Republic of)	Netherlands	Sierra Leone	Uganda
Ireland	New Zealand	Slovakia	United Kingdom
Israel	Nicaragua	Slovenia	United States of
Italy	Niger	Solomon Islands	America
Jamaica	Nigeria	Somalia	Uruguay
Japan	Norway	South Africa	Venezuela
Kazakhstan	Panama	Spain	Yemen
Kenya	Papua New Guinea	Sudan	Yugoslavia
Kyrgyzstan	Paraguay	Suriname	Zambia
Latvia	Peru	Swaziland	Zimbabwe ■
Lesotho	Philippines	Sweden	
Liberia	Poland	Switzerland	
Liechtenstein	Portugal	Tajikistan	
Lithuania		Tanzania	

“The Executive Committee encourages States and UNHCR to continue to promote, where relevant, regional initiatives for refugee protection and durable solutions, and to ensure that regional standards which are developed conform fully with universally recognized protection standards and respond to particular regional circumstances and protection needs.”

UNHCR Executive Committee Conclusion N° 81(k), 1997

Regional laws and standards

➤ 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa

The conflicts that accompanied the end of the colonial era in Africa led to a succession of large-scale refugee movements. These population displacements prompted the drafting and adoption of not only the 1967 Refugee Protocol but also the 1969 *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*. Asserting that the 1951 Refugee Convention is "*the basic and universal instrument relating to the status of refugees*", the OAU Convention is, to date, the only *legally binding* regional refugee treaty.

Perhaps the most important portion of the OAU Convention is its definition of a refugee (see box page 9).

The OAU Convention follows the refugee definition found in the 1951 Convention, but includes a more objectively based consideration: any person compelled to leave his/her country because of "*external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality*".

This means that persons fleeing civil disturbances, widespread violence and war are entitled to claim the status of refugee in States that are parties to this Convention, regardless of whether they have a well-founded fear of persecution.

States Parties to the OAU Refugee Convention

*As of September 2001
(Entered into force on 20 June 1974)*

Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Congo, Cote d'Ivoire, Democratic Republic of the Congo, Egypt, Equatorial Guinea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Malawi, Mali, Mauritania, Morocco, Mozambique, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe ■

➤ The Cartagena Declaration

In 1984, a colloquium of government representatives and distinguished Latin American jurists was convened in Cartagena, Colombia to discuss the international protection of refugees in the region. This gathering adopted what became known as the Cartagena Declaration. The Declaration recommends that

The principle of non-refoulement

A refugee's right to be protected against forcible return, or *refoulement*, is set out in the 1951 Convention relating to the Status of Refugees:

“No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” Article 33(1).

Refoulement is also prohibited explicitly or through interpretation by the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (Article 3), the *Fourth Geneva Convention of 1949* (Art. 45, para. 4), the *International Covenant on Civil and Political Rights* (Article 7), the *Declaration on the Protection of All Persons from Enforced Disappearance* (Article 8), and the *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (Principle 5).

In addition, *refoulement* is prohibited explicitly or through interpretation in a number of regional human rights instruments, including the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (Article 3), the *American Convention on Human Rights* (Article 22), the *OAU Refugee Convention* (Article II), and the *Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World* (Article 2).

It is widely accepted that the prohibition of *refoulement* is part of customary international law. This means that even States that are not party to the *Refugee Convention* must respect the principle of *non-refoulement*.

States have an obligation under the *Refugee Convention* and under customary international law to respect the principle of *non-refoulement*. When this principle is violated or threatens to be, UNHCR respond by intervening with relevant authorities, and if it deems necessary, will inform the public. In some circumstances, persons facing *refoulement* may have recourse to relevant human rights mechanisms, such as the *Committee against Torture* (see a reference to these human rights mechanisms on page 17). ■

the definition of a refugee used throughout the Latin American region should include the 1951 Refugee Convention definition and also persons who have fled their country *"because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order"*.

Although the Declaration is not legally binding on States, most Latin American States apply the definition as a matter of practice; some have incorporated the definition into their own national legislation. The Declaration has been endorsed by the Organization of American States (OAS), the UN General Assembly, and UNHCR's advisory Executive Committee.

UN General Assembly resolutions - The 1967 Declaration on Territorial Asylum

In 1967, the UN General Assembly adopted a Declaration on Territorial Asylum directed toward States. The Declaration reiterates that granting asylum is a peaceful and humanitarian act that cannot be regarded as unfriendly by any other State, and notes that it is the responsibility of the country of asylum to evaluate a person's claim for asylum.

Asylum

"Everyone has the right to seek and to enjoy in other countries asylum from persecution."

Universal Declaration of Human Rights, Art. 14(1)

As acknowledged in the OAU Convention, the Cartagena Declaration and the 1967 UN Declaration on Territorial Asylum, granting asylum is a humanitarian and apolitical act. The word *"asylum"* is not defined in international law; but it has become an umbrella term for the sum total of protection provided by a country to refugees on its territory. Asylum means, at the very least, basic protection - i.e., no forcible return (*refoulement*) to the frontiers of territories where the refugee's life or freedom would be threatened - for a temporary period, with the possibility of staying in the host country until a solution outside that country can be found. In many countries it means much more, incorporating the rights set out in the 1951 Convention and even going far beyond those. ■

UNHCR's Executive Committee conclusions

UNHCR's Executive Committee (ExCom) advises the High Commissioner on the exercise of his/her functions (see Chapter 2.) The annual Conclusions adopted by ExCom form part of the framework of the international refugee protection regime. They are based on the principles of the Refugee Convention and are drafted and adopted by consensus in response to particular protection issues. Executive Committee Conclusions represent the agreement of more than 50 countries that have great interest in and experience with refugee protection. These and other countries often refer to ExCom Conclusions when developing their own laws and policies.

Rights crucial to refugee protection

Most of the rights crucial to refugee protection are also the fundamental rights stated in the 1948 *Universal Declaration of Human Rights*:

- Right to life, liberty and security of person
- Right to seek and enjoy asylum
- Freedom from torture, or cruel, inhuman or degrading treatment or punishment
- Freedom from slavery or servitude
- Recognition as a person before the law
- Freedom of thought, conscience, and religion
- Freedom from arbitrary arrest and detention
- Freedom from arbitrary interference in privacy, home and family
- Freedom of opinion and expression
- Right to be educated
- Right to participate in the cultural life of a community ■

See also box on *non-refoulement*, page 14

National laws and standards

The adoption of national refugee legislation that is based on international standards is key to strengthening asylum, making protection more effective and providing a basis for seeking solutions to the plight of refugees. Incorporating international law into national legislation is particularly important in areas on which the Refugee Convention is silent, such as procedures for determining refugee status.

UN Special Procedures on Human Rights available to or in favour of refugees

The United Nations Commission on Human Rights, a body comprised of 53 member States, has established various mechanisms to investigate human rights thematic issues and country situations. One of the features of these special procedures is that they allow action regardless of whether a State is party to the international human rights treaties or not. Under all special procedures, a study of the corresponding human rights situation is presented to the Commission at its annual session in Geneva. Under several of them, urgent appeals can be made on a strict humanitarian basis. As far as refugees are concerned, the following may be taken into consideration:

The Special Rapporteurs or special bodies of the UN Commission can intervene with the Government concerned to prevent refugees, asylum-seekers or internally displaced persons from being subjected to imminent **human rights abuses** or in response to allegations of the existence of such abuses.

When it concerns an imminent **violation of the principle of non-refoulement**, resorting to the following thematic mandates may, in certain instances, be particularly relevant:

- ❑ UN Special Rapporteur on Torture
- ❑ UN Special Rapporteur on Summary Executions
- ❑ UN Working Group on Enforced Disappearances

Parliamentarians may make use of and contribute to the above special procedures by:

- ❑ Providing information under the relevant procedures on the situation of refugees, internally displaced persons and asylum-seekers
- ❑ Requesting the relevant thematic procedure(s) to intervene when an individual or group is about to be sent back to a country in violation of the principle of non-refoulement or is arbitrarily detained. It should be borne in mind that such a situation can only be addressed by a country or thematic mechanism whose mandate covers the imminent abuse
- ❑ Urging their own governments to follow-up on requests for information or urgent appeals issued under the special procedures ■

International humanitarian law

International humanitarian law provides that victims of armed conflict, whether displaced or not, should be respected, protected against the effects of war, and provided with impartial assistance. Because many refugees find themselves in the midst of international or internal armed conflict, refugee law is often closely linked to humanitarian law. *The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (1949) contains an article that deals

Human rights law and refugee law: How they are related

International refugee law is part of a larger mosaic of international human rights law and international humanitarian law. Human rights law constitutes the broad framework within which refugee law provisions should be seen. The International Covenant on Civil and Political Rights has been interpreted to prohibit return to torture. In addition, nearly all of its provisions apply to non-citizens.

Refugees are entitled to two partially overlapping sets of rights: those rights accorded to them as individuals and guaranteed under international human rights standards and national law, and specific rights related to their status as refugees.

Two international human rights treaties have a particularly significant role in international refugee law:

- ***The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*** provides for protection from *refoulement*, or forced return, to situations where there is a substantial risk of torture. The *non-refoulement* provision of the Convention against Torture is absolute, unlike the *non-refoulement* provision of the Refugee Convention, which requires that protection be linked to a fear of persecution because of a person's race, religion, nationality, membership of a particular social group, or political opinion. In addition, no exceptions may be made to the Convention against Torture's *non-refoulement* obligation. Unlike the Refugee Convention, the Convention against Torture does not have any provision excluding perpetrators of particularly serious crimes or other undeserving persons from its protection.



- ***The Convention on the Rights of the Child***, to which nearly every State in the world is a party, applies to all children without discrimination, including child refugees and asylum-seekers. The Convention specifically stipulates that every child seeking refugee status has a right to protection and humanitarian assistance in the enjoyment of the rights set forth in that Convention and in others to which the State is a party. ■

specifically with refugees and displaced persons (Article 44). The Additional Protocol I (1977) provides that refugees and stateless persons are to be protected under the provisions of Parts I and III of the Fourth Geneva Convention.

But humanitarian law can protect refugees only where it applies, i.e., in situations of international or internal armed conflict. If a refugee flees armed conflict, but finds asylum in a country that is not involved in international or internal armed conflict, humanitarian law will not apply to that refugee. (For more information on humanitarian law in general, see *Respect for International Humanitarian Law, Handbook for Parliamentarians N°1*, 1999).

What parliaments and their members can do

Parliaments and their members have a crucial role to play in ensuring protection to refugees both in law and in practice. Key to that effect are the following steps:

➤ **Incorporate the principle of *non-refoulement***

The principle of *non-refoulement* should be incorporated into national legislation. To do so, laws concerning the entry of foreigners and border-control requirements must reflect the difference between those seeking asylum and others who may want to enter a country for other reasons. Review of national legislation on immigration may be necessary.

Asylum-seekers should be offered a fair and efficient procedure in which to present their claims for asylum.

➤ **Broaden the refugee definition**

Parliaments and their members may wish to consider incorporating an expanded refugee definition, such as that found in the OAU Convention and the Cartagena Declaration, in national legislation.

Parliamentarians may also wish to review the situation of internally displaced persons in their country, if any, to facilitate their protection and to bring their plight to the attention of the international community.

➤ **Accede to international treaties (see also Chapter 6)**

The government should be encouraged to take steps with a view to accession to the Refugee Convention and Protocol, if it has not already done so.

Accession to international human rights treaties relevant to refugee protection, particularly the *Convention against Torture* and the *Convention on the Rights of the Child*, and to international humanitarian law treaties should also be considered.

On the regional level, parliaments in African countries that have not acceded to the OAU Convention should consider accession. Regional human rights treaties in Africa, Europe and the Americas also provide standards relevant to refugee protection. Countries in those regions should consider acceding to them.

➤ **Review reservations and restrictive interpretations**

The validity of reservations and restrictive interpretations ought to be reviewed periodically.

In the absence of any steps to that effect by the Executive, Members of Parliament may put questions to the Government or even present a private Member bill.

➤ **Implement international standards**

In addition to the treaties mentioned above, inspiration can be drawn from a significant body of international standards - including the Conclusions adopted by UNHCR's Executive Committee and guidelines, produced by UNHCR, on a range of refugee-related issues - in devising national systems of refugee protection.

UNHCR offices can assist parliamentarians by providing information on these standards and commenting on proposed legislation.

➤ **Encourage cooperation with UNHCR**

Parliamentarians can ensure that their government provides UNHCR with information on the number and condition of refugees on the national territory, the implementation of the Refugee Convention, and the laws, regulations and decrees in force related to refugees. Parliamentarians can also seek UNHCR's views on matters related to refugee protection, including proposed or pending legislation, court cases and policy decisions.

Since UNHCR has offices in nearly 120 countries (see annex 3), parliamentarians in most countries will find a UNHCR office in their capital city. ■

Chapter 2

The Role of UNHCR

A humanitarian and non-political organization, UNHCR is mandated by the United Nations to protect refugees and help them find solutions to their plight. As the problem of displacement has grown in complexity over the past half century, UNHCR has also grown to meet the challenge. The Office, founded in 1950, has expanded from a relatively small, specialized agency with an envisioned three-year lifespan to an organization of over 4,000 staff members with offices in nearly 120 countries and an annual budget of US\$1 billion. In addition to offering legal protection, UNHCR now also provides material relief in major emergencies, either directly or through partner agencies. In its first fifty years, UNHCR has protected and assisted more than 50 million people and its work has earned two Nobel Peace Prizes.

At the international level, UNHCR promotes international refugee agreements and monitors government compliance with international refugee law. UNHCR staff promote refugee law among all people who are involved in refugee protection, including border guards, journalists, NGOs, lawyers, judges and senior governmental officials.

At the field level, UNHCR staff work to protect refugees through a wide variety of activities, including responding to emergencies, relocating refugee camps away from border areas to improve safety; ensuring that refugee women have a say in food distribution and social services; reuniting separated families; providing information to refugees on conditions in their home country so they can make informed decisions about return; documenting a refugee's need for resettlement to a second country of asylum; visiting detention centres; and giving advice to governments on draft refugee laws, policies and practices.

UNHCR seeks long-term solutions to the plight of refugees by helping refugees repatriate to their home country, if conditions are conducive to return, integrate into their countries of asylum, or resettle in second countries of asylum.

The mandate of UNHCR

The Refugee Convention and Protocol provide States Parties with a legal foundation for refugee protection. For its part, UNHCR has been given a mandate to provide international protection to refugees and seek permanent

solutions to their problems through its Statute, adopted by the UN General Assembly in December 1950.

The Statute sets forth the High Commissioner's functions, including his/her authority to protect refugees as defined in terms similar, although not identical, to the Refugee Convention. Over the years, the General Assembly has expanded UNHCR's responsibility to include protecting various groups of people who are not covered by the Refugee Convention and Protocol. Some of these people are known as "mandate" refugees; others are returnees, stateless persons and, in some situations, internally displaced persons.

UNHCR's mandate is now, therefore, significantly more extensive than the responsibilities assumed by States Parties to the Refugee Convention and Protocol. One of the challenges facing refugees and countries of asylum today consists of bridging the "protection gap" which exists in situations where UNHCR seeks to protect persons with respect to whom concerned States do not recognise that they have a responsibility under any of the refugee instruments.

A comparison of UNHCR's Statute and the Refugee Convention and Protocol

The Statute serves as UNHCR's constitution. It sets forth the High Commissioner's functions and responsibilities and includes a definition of persons on behalf of whom the High Commissioner can act. This definition has been expanded in various UN General Assembly resolutions.

The Refugee Convention is an international treaty that is binding upon the signatory States. It specifies the rights and obligations of persons who are recognized as refugees according to the definition contained in the Convention.

Mandate refugees are persons considered by UNHCR to be refugees according to its Statute or under the broader mandate given by the General Assembly. UNHCR's determination of refugee status is not dependent upon the country of asylum being party to the Refugee Convention or Protocol.

Convention refugees are persons recognized as refugees by the authorities of States that have acceded to the Convention and/or Protocol. As such, they are entitled to claim the rights and benefits that those States have agreed to accord to refugees. ■

Persons of concern to UNHCR

"Persons of concern to UNHCR" are all persons whose protection and assistance needs are of interest to UNHCR. They include:

- ❑ Refugees under the Refugee Convention
- ❑ Persons fleeing conflict or serious disturbances of the public order (i.e., refugees under the OAU Convention and Cartagena Declaration definitions)
- ❑ Returnees (i.e., former refugees)
- ❑ Stateless persons
- ❑ Internally displaced persons (in some situations)

UNHCR's authority to act on their behalf is either based on the 1951 Convention and the OAU Convention, the Cartagena Declaration, or on UN General Assembly resolutions.

The special case of Palestinians

The **United Nations Relief Works Agency for Palestine Refugees in the Near East** (UNRWA) was created in 1948 to assist those Palestinians who had been displaced when the state of Israel was established. Almost 3 million Palestinians are registered with UNRWA, which operates in Jordan, Lebanon, Syria, Gaza and the West Bank.

UNRWA defines as Palestinian refugees those people, and their descendants, who lived in Palestine two years prior to the 1948 hostilities and who lost their homes and livelihood as a consequence of the conflict. UNRWA was not given a mandate to protect the Palestinian refugees; that responsibility was implicitly left to the countries in which they took refuge. Moreover, because they were already under the aegis of a UN agency, those Palestinians registered with UNRWA were effectively excluded from UNHCR's mandate when it was established in 1950. However, Palestinians outside the areas where UNRWA operates do fall under UNHCR's mandate.

The legal status of Palestinians varies according to both the date of their displacement, or that of their parents and grandparents, and to their current place of residence. Some 850,000 Palestinians – those and their descendants who remained in the new state of Israel after 1948 - now have Israeli citizenship. An unknown number have also acquired the nationality of countries outside the Middle East. Of the Arab states accommodating Palestinian refugees, only Jordan has granted them citizenship on any substantial scale. The status of the remainder has proved at best ambiguous and many Palestinians are in an intolerable situation. ■

Stateless persons

A stateless person is someone who is not considered to be a national by any State under the operation of its law. He/she may be, but is not necessarily, a refugee. There are millions of stateless persons around the world.

In 1996, the UN General Assembly called on UNHCR to promote accession to the two international conventions on statelessness and to provide governments with technical and legal advice on their nationality legislation. UNHCR thus works with governments drafting nationality legislation, helps coordinate emerging legal systems, assists and advises on individual and group cases of statelessness, and helps negotiate treaties related to statelessness.

UNHCR's involvement with stateless persons is based on the strong links between statelessness and displacement. For example:

- ❑ Displacement can cause statelessness (when, for example, a person's displacement is followed or accompanied by a redrawing of territorial boundaries).
- ❑ Displacement can be a consequence of statelessness (when stateless and denationalized populations are forced to leave their usual place of residence).
- ❑ Statelessness can be an obstacle to the resolution of refugee problems (when, for example, countries refuse to readmit former refugees on grounds of statelessness).

Statelessness is a problem that States should resolve. Governments must take steps to ensure they do not withdraw or withhold the benefits of citizenship from whole sections of the population who can demonstrate a genuine and effective link with that country and who, without State action, would otherwise be stateless.

“The Executive Committee reaffirms the importance of the right to a nationality and calls on States to adopt all necessary measures to prevent or reduce the incidence of statelessness, including through national legislation and, as appropriate, accession to and implementation of the Statelessness Conventions.”

UNHCR Executive Committee Conclusion N° 85(m), 1998

The two primary international Conventions on statelessness

The problem of statelessness is widespread in certain parts of the world and may be particularly acute among children of parents of mixed origin, or who are born in a country other than their parents' country of origin, since they do not necessarily gain citizenship of the place where they are born. Like refugees, stateless persons may be compelled to move because they cannot receive adequate protection. In 1994, UNHCR's Executive Committee urged UNHCR to strengthen its efforts with respect to statelessness, including promoting accession to the 1954 and 1961 conventions on statelessness, arranging for training, and systematic gathering of information on the dimensions of the problem. The resulting study, which is on-going, suggests that millions of people may be stateless worldwide.

The 1954 Convention relating to the Status of Stateless Persons helps regulate and improve the status of stateless persons and helps ensure that stateless persons enjoy fundamental rights and freedoms without discrimination.

The 1961 Convention on the Reduction of Statelessness defines ways in which persons who would otherwise be stateless can acquire or retain nationality through an established link with a State through birth or descent. The Convention covers such issues as the granting of nationality, the loss or renunciation of nationality, deprivation of nationality and transfer of territory. Retention of nationality, once acquired, is also emphasized.

Accession to the 1954 Convention provides stateless persons with many of the rights necessary to live a stable life. Accession to the 1961 Convention helps resolve many problems which result in statelessness. It also serves as a reference point for national legislation.

Nationality is a status from which other rights derive. The 1961 Convention on the Reduction of Statelessness states that a person may not be deprived of her nationality on racial, ethnic, religious or political grounds; sketches out measures to prevent statelessness resulting from the transfer of territory; and establishes rules for the granting of nationality to persons born in a country who would otherwise be stateless. It stipulates that a UN body would supervise claims under the Convention. That body was never established as such, but UNHCR has been entrusted with its functions by the UN General Assembly (resolution 3274 XXIX).



As of September 2001, the following were States Parties to the 1954 Convention (entered into force on 6 June 1960): Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Azerbaijan, Barbados, Belgium, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Chad, Costa Rica, Croatia, Denmark, Ecuador, Fiji, Finland, France, Germany, Greece, Guatemala, Guinea, Ireland, Israel, Italy, Kiribati, Latvia, Lesotho, Liberia, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Mexico, Netherlands, Norway, Republic of Korea, Saint Vincent and the Grenadines, Slovakia, Slovenia, Spain, Swaziland, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Uganda, United Kingdom of Great Britain and Northern Ireland, Yugoslavia, Zambia and Zimbabwe

As of September 2001, the following were States Parties to the 1961 Convention (entered into force on 13 December 1975): Armenia, Australia, Austria, Azerbaijan, Bolivia, Bosnia and Herzegovina, Canada, Chad, Costa Rica, Denmark, Germany, Guatemala, Ireland, Kiribati, Latvia, Libyan Arab Jamahiriya, Netherlands, Niger, Norway, Slovakia, Swaziland, Sweden, Tunisia, United Kingdom of Great Britain and Northern Ireland. ■

Internally displaced persons

Globally, an estimated 20-25 million persons live displaced within the borders of their home countries. These are people who have fled their homes, often during a civil war, but have not sought refuge in other nations. In general, internally displaced persons have many of the same protection needs as refugees but, since they have not crossed an international border, they are not covered by the Refugee Convention or by UNHCR's Statute.

“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.”

United Nations Guiding Principles on Internal Displacement, Introduction, para. 2

International concern for the plight of internally displaced persons has acquired a degree of urgency in recent years as greater numbers of people, uprooted by internal conflict and violence, are exposed to danger and death. However, there is no single international agency, nor is there an international treaty, that focuses on internal displacement. As a result, the international response to internal displacement has

been selective, uneven and, in many cases, inadequate. Large numbers of internally displaced persons receive no humanitarian assistance or protection at all. The international community is now exploring ways to provide more sustained and comprehensive protection and assistance to this group of people.

UNHCR has a concern in internally displaced persons because the causes and consequences of their forced flight are frequently linked closely with those of refugees. This concern, arising from UNHCR's humanitarian mandate and endorsed by successive UN General Assembly resolutions may take the form of UNHCR activity to:

- ❑ Advocate on behalf of internally displaced persons
- ❑ Mobilize support for them
- ❑ Strengthen the organization's capacity to respond to their problems
- ❑ Take the lead in protecting and assisting them in certain situations

UNHCR has been involved with internally displaced persons periodically since the early 1970s, whenever the UN General Assembly or the Secretary-General called upon it to participate in UN humanitarian operations in which UNHCR has particular expertise and experience. But the scale and scope of UNHCR's activities on behalf of internally displaced persons have increased dramatically in recent years. As of this writing, UNHCR is providing protection and assistance to some 5.2 million internally displaced persons around the world.

Guiding Principles on Internal Displacement

UNHCR's advocacy for internally displaced persons is based on the *Guiding Principles on Internal Displacement*. The *Guiding Principles*, which consolidate many of the most important international protection principles applied to internally displaced persons, were presented to the UN Commission on Human Rights in April 1998. The principles reflect and are consistent with human rights and humanitarian law and draw on relevant parts of refugee law. They address all phases of internal displacement and are intended to provide guidance to States, non-State actors, other authorities and inter-governmental and non-governmental organizations on issues of internal displacement.

In Conclusion N° 87(t), in 1999, the UNHCR Executive Committee reiterated the relevance of the *Guiding Principles* and reaffirmed its support for UNHCR's role with internally displaced persons on the basis of criteria specified by the General Assembly.

The Guiding Principles is available through the United Nations. A full text of the document can be found via the United Nations Organization for the Coordination of Humanitarian Affairs (OCHA) web site: www.reliefweb.int, click on OCHA On-line, click on Publications. ■

UNHCR works on behalf of internally displaced persons only if certain criteria, set by the UN General Assembly in 1993, are met. UNHCR must have:

- ❑ A request or authorization from the General Assembly or other competent principal organ of the United Nations
- ❑ The consent of the concerned State and, where applicable, other entities in the conflict
- ❑ Access to the affected population
- ❑ Adequate security for UNHCR staff and implementing partners
- ❑ Clear lines of responsibility and accountability with the ability to intervene directly on protection matters
- ❑ Adequate resources and capacity

UNHCR's strategy is oriented toward solutions. The agency will give priority to involvement in situations in which a political solution is already underway or is being contemplated. UNHCR works closely with the UN Emergency Relief Coordinator and other organizations in the area to promote a common understanding of their respective roles and responsibilities in assisting internally displaced people.

➤ **Estimates of Major Populations of Internally Displaced Persons of Concern to UNHCR During 2000**
(As at 31 December 2000)

<i>Regions</i>	<i>IDPs</i>	<i>Returned IDPs</i>
Eastern Europe	1,343,282	70,284
South-Eastern Europe	819,886	74,841
South-West Asia	758,625	0
South Asia	706,514	0
South America	525,000	0
East and Horn of Africa	384,834	0
Southern Africa	257,508	0
West and Central Africa	86,539	213,361
Great Lakes (Africa)	59,000	0
Central Asia	0	5,569
East-Asia / Pacific	0	5,000
Total	4,941,188	369,055

Returned IDPs: Returned to place of origin during the past two years.

The figures included here do not necessarily represent the total number of IDPs in the countries concerned.

The International Committee of the Red Cross and the internally displaced

In every case where internally displaced persons are exposed to violence related to conflict or disturbances, the ICRC would consider it as its duty to be actively involved, in accordance with its mandate and capacities, and to the extent that the relevant authorities or the security conditions allow. In geographical terms, this involvement may well go beyond the zones where active hostilities take place, so that the ICRC addresses protection problems affecting internally displaced persons, and indeed any other civilians, whatever part of the country they may be in.

The ICRC's criterion for involvement is that of being present and active primarily in specific situations. As a neutral intermediary in the event of armed conflict or unrest, the ICRC seeks to bring protection and assistance to the victims of international and non-international armed conflict and internal disturbances and tension. In these situations, it seeks to give priority to those in most urgent need, in accordance with the principle of impartiality. In this respect, the ICRC considers an internally displaced person to be first and foremost a civilian, who as such is protected by international humanitarian law.

All too often, the internally displaced suffer extreme deprivation, threatening their very possibility of survival, and all too often they are exposed to considerable danger, both during flight and while in displacement. Accordingly, the death toll among internally displaced persons has often reached extreme proportions, particularly among physically weaker persons such as children, the elderly or pregnant women. Hardships experienced by those left behind or by host communities compound the problem.

Given their precarious situation, internally displaced persons affected by armed conflict — who constitute one of the main categories of the displaced and who in many cases are also in the most life-threatening situation — would often constitute a primary target group for ICRC activities.

Although for numerous reasons displacement statistics are bound to remain rough estimates, the ICRC considers that of the close to five million persons assisted by it in the course of 1999, the great majority were internally displaced. For the year 2000, programmes specifically aimed at protecting and assisting internally displaced persons have been developed in thirty-one countries throughout the world. ■

See ICRC Website - www.icrc.org

Assistance

Assistance is help provided to meet the physical and material needs of persons of concern to UNHCR. It may include food items, medical supplies, clothing, shelter, seeds and tools, social services, psychological counselling, and the building or re-building of infrastructure, such as schools and roads. "Humanitarian assistance" refers to assistance provided by humanitarian organizations for humanitarian purposes, i.e., non-political, non-commercial and non-military purposes. In UNHCR's practice, assistance supports and complements protection.

When large numbers of refugees flee in short periods of time, it is critical to be able to move food, shelter supplies, medical supplies and other basic goods quickly. Material and logistical support can be procured in or provided by the country of asylum or from neighbouring or other donor countries. To respond rapidly to emergencies, UNHCR keeps emergency stockpiles in warehouses in a number of locations around the world.

“The Conference calls on States, on all parties to armed conflicts and on UN bodies and other organisations to give urgent attention to protection and assistance for the most vulnerable among refugee and internally displaced populations, particularly women and children who may be subjected to sexual violence, abuse or exploitation and exposed to risks arising from armed conflict, including the forcible recruitment of children”

103rd Conference of the
Inter-Parliamentary Union, May 2000

In several recent refugee operations, it has been necessary to use the logistical capacity of the military forces of some donor countries to deliver humanitarian assistance. This is done only in exceptionally large emergencies and as a last resort.

Because of their scale and cost, these emergency assistance measures require additional funding and are not deployed at the expense of funds that would otherwise have been available to UNHCR.

While the use of military forces to deliver humanitarian assistance has undoubtedly saved lives, it has also raised questions about the relationship between humanitarian organizations and the military.

UNHCR's approach is that humanitarian operations must maintain their civilian character and appearance.

The principles of impartiality and independence from political considerations must be respected.

How protection and assistance complement each other

When UNHCR was founded, it operated primarily in Europe, where material assistance was generally provided by the countries that had granted asylum to refugees. Later, as many refugee problems began to arise in developing countries, UNHCR, with the support of the international community, was called upon to provide material assistance and protection to refugees in those countries as well.

“The Conference calls on governments and parliaments to consider measures to guarantee the safety of displaced persons, including internally displaced persons, and their property during and after repatriation.”

99th Conference of the Inter-Parliamentary Union, April 1998

In practice, protection and assistance are often interrelated. Makeshift tents made from UNHCR blue plastic sheeting have become immediately recognizable symbols of protection in major emergencies from the Balkans to central Africa to East Timor. Though UNHCR's mandate remains refugee *protection*, offering assistance often helps a country accept refugees, since it relieves some of the financial responsibility of hosting them. Refugees need effective legal protection, but they must also be able to meet their basic needs – shelter, food, water, sanitation and medical care. UNHCR coordinates the provision and delivery of such items, and has designed specific projects for women, children and the elderly who, together, make up 80 per cent of a typical refugee population.

Aware of the gap that usually exists between emergency assistance and longer-term development aid undertaken by other agencies, UNHCR developed the concept of Quick Impact Projects. These assistance projects, first implemented in Central America and later in other parts of the world, usually involve rebuilding or repairing basic infrastructure, such as schools and clinics, roads, bridges and wells. As their name suggests, the projects aim to restore a sense of normalcy to life as soon as possible after a displacement crisis.

UNHCR around the world

➤ **Field Offices: Close to the refugees**

A quick look at a map of the world's trouble spots is an easy way to find UNHCR's field offices (see the list of UNHCR Offices in Annex 3). UNHCR staff and their implementing partners work alongside refugees in some of the most dangerous, desolate and remote places on earth. Increasingly, they are working in areas of

armed conflict or in places where there is little or no effective government authority. International presence in insecure areas is in itself a form of protection, since it can provide a powerful means of discouraging abuses. Nearly 85 per cent of UNHCR's 4,000-plus staff members work outside of its Headquarters in Geneva. UNHCR staff can be deployed to a major emergency within 72 hours, and stand-by arrangements with partner agencies are in place for rapid deployment of their staff, as well.

➤ **Capitals: Close to decision-makers**

As part of its responsibility to supervise the application of the Refugee Convention, UNHCR maintains offices in the capital cities of many countries. UNHCR's main liaison is generally the Ministry of Foreign Affairs. However, because refugee protection issues cut across many lines of responsibility, UNHCR often works with ministries or offices in charge of interior matters, justice, immigration, human rights, police and the military.

UNHCR also serves as a resource to parliamentarians by making submissions to parliamentary committees on issues related to refugee law. By monitoring proposed legislation, UNHCR can work with parliamentarians to be sure that the legislation eventually adopted conforms to international refugee law and standards. UNHCR is available to brief parliamentarians on particular refugee situations in their own or other countries or on other issues of concern.

Because of its limited funding, UNHCR does not have an office in every capital. However, every country has a UNHCR office nearby; and UNHCR often promotes a regional approach in refugee matters.

Administration

➤ **The UN General Assembly**

The UN General Assembly elects the High Commissioner upon the nomination of the Secretary-General, generally for a five-year term. The High Commissioner reports to the UN General Assembly through the Economic and Social Council (ECOSOC).

➤ **The High Commissioner**

The current High Commissioner, Mr. Ruud Lubbers, was elected by the General Assembly in October 2000. Mr. Lubbers is a former Dutch statesman and academic who served as Prime Minister of the Netherlands from 1982 to 1994.

➤ The Executive Committee

UNHCR's Executive Committee (ExCom) was created by ECOSOC in 1958, following a request from the UN General Assembly, and consists of member States. Its main tasks are to approve the High Commissioner's assistance programs, advise the High Commissioner in the exercise of his/her statutory functions, notably international protection, and scrutinize all financial and administrative aspects of the agency. Members of ExCom are elected by ECOSOC. ExCom meets annually for one week in October in Geneva; Standing Committee meetings are held up to five times per year.

UNHCR's partnership with States

➤ Executive and administrative bodies

Governments work with UNHCR by granting asylum to refugees and permitting them to stay in their countries. Many governments also help refugees settle in their country by providing financial assistance.

UNHCR works with governments to help share the responsibility of protecting refugees and encourages governments to resolve the causes of refugee flows. When internal disputes cause an international refugee problem, it is the responsibility of all nations, especially neighboring countries, to help restore peace and security within the troubled country. Countries of asylum shoulder the heaviest burden during a refugee crisis, since providing refuge often means disruption in the areas in which refugees arrive. But these countries need not assume the responsibility alone. Other countries, both in the region and beyond, can share the responsibility by providing support, both financial and material, to maintain and protect refugees. UNHCR helps mobilize and channel this assistance.

In some countries, UNHCR assists the government in examining the claims of people seeking asylum (see Chapter 3). UNHCR's participation varies depending on the circumstances and needs in each country.

➤ Parliaments

Parliaments and their Members hold the key to creating a national legal framework for protecting refugees and so are important partners with UNHCR.

In countries that have not yet acceded to the Refugee Convention or Protocol, or to the two conventions on statelessness, UNHCR promotes such accessions.

In countries that have already acceded to these conventions, UNHCR emphasizes the need to implement international standards by passing legislation and appropriating the necessary funding.

“The Conference calls on members of parliament to work actively to solve the problem of refugees by enacting laws and regulations which embody the principle of burden-sharing.”

102nd Conference of the Inter-Parliamentary Union, October 1999

UNHCR can brief parliamentarians and provide materials, as requested, on refugee situations. The agency encourages parliamentarians to use their positions to draw attention to the worth of refugees' contributions to their country and to advocate respect for them as human beings.

UNHCR has a close working relationship with the Inter-Parliamentary Union (IPU). UNHCR and IPU are cooperating to enhance parliamentarians' understanding of the international framework for refugee protection and to explain the responsibilities of States and the mandate of UNHCR for protecting refugees and seeking solutions to their problems. The two organizations are also working together to provide information and guidance on the crucial role parliamentarians can play in refugee protection and to explore how individual countries and the international community, as a whole, can overcome current challenges to the international refugee protection regime.

The Inter-Parliamentary Union has regularly reaffirmed that the Refugee Convention and Protocol are central to securing refugee protection, and has called on States that have not yet acceded to these instruments to do so and fulfil their consequent obligations. A resolution adopted in May 2000 expressed support for UN action to secure respect for the rights of refugees and displaced persons and appealed to parliaments to *“pursue cooperative and innovative action with UNHCR ... to strengthen the framework for international protection.”*

A year later, the IPU highlighted in a resolution to mark the fiftieth anniversary of the adoption of the Convention *“the need to develop new approaches, tools and standards to ensure the continuing vitality and relevance of the Refugee Convention, against a background of debate around large and protracted refugee situations, the high costs of asylum seekers in industrialised countries, the burden on developing countries hosting refugees, and the real or perceived abuse of asylum seekers.”*

Being *“alarmed at the expanding number of refugees around the world and their terrible plight as well as the growing challenge faced by the Office of the United Nations High Commissioner for Refugees (UNHCR)”*, the IPU encouraged parliaments to take an interest in and contribute to consolidating the international refugee protection regime by a strengthened and more effective implementation of the Convention.

➤ The Judiciary

Judges play an important role in refugee protection, particularly where the national protection system is based on legislation and not solely on administrative discretion. UNHCR assists judges by offering professional development workshops on refugee law and on human rights conditions in refugees' home countries. In certain instances, UNHCR can offer its views on a particular law, issue or individual case to assist judges in their deliberations.

UNHCR collaborates closely with the International Association of Refugee Law Judges (IARLJ). The IARLJ helps foster within the judiciary an understanding of the obligations created by the Refugee Convention, encourages the use of the judicial process to adjudicate the rights of refugee claimants, helps develop an understanding of judicial independence within the context of refugee law in emerging democracies and developing countries, and provides a forum to exchange information, share best practices and develop consistent approaches to the interpretation and application of refugee law.

UNHCR's partnership with UN agencies and others

UNHCR is one of a network of UN funds, programs, specialized agencies and commissions. UNHCR's most frequent partners include:

- ❑ World Food Program (WFP), which supplies relief food aid
- ❑ UN Children's Fund (UNICEF), which helps governments with programs that focus on children's health, nutrition, education, training and social services. UNICEF also works to protect unaccompanied minors and to reunite families that may have been separated when fleeing their home country
- ❑ World Health Organization (WHO), which directs and coordinates international health work and is active in, among other things, immunization and AIDS campaigns
- ❑ UN Development Program (UNDP), which coordinates all UN development activities, oversees long-term development plans after emergencies, and plays an important role in integration and re-integration programs
- ❑ UN Office of the High Commissioner for Human Rights (OHCHR), which plays a leading role on human rights issues, coordinates UN action for human rights, and responds to severe violations of human rights
- ❑ UN Office for the Coordination of Humanitarian Affairs (OCHA), which coordinates UN assistance in humanitarian crises that go beyond the capacity and mandate of any single humanitarian agency

- Another important partner is the International Organization for Migration (IOM), an inter-governmental body that is not part of the UN system, which helps transfer refugees, displaced persons and others in need of internal or international migration services.
- UNHCR also works with regional bodies, such as the Organization for African Unity, the Organization of American States, the Council of Europe, the Organization for Security and Cooperation in Europe, and the Asian-African Legal Consultative Organization.

UNHCR's partnership with ICRC and IFRC

A key partner in protection is the International Committee of the Red Cross (ICRC), an independent agency that acts to help all victims of war and internal violence and tries to ensure implementation of humanitarian rules restricting armed violence. As a neutral intermediary, ICRC offers protection and assistance to victims of both international and internal conflict and unrest. Internally displaced persons constitute one of the primary target groups for ICRC's activities. During 2000, ICRC developed programmes aimed at protecting and assisting internally displaced persons in 31 countries around the world.

Through its national Red Cross and Red Crescent societies, the International Federation of Red Cross and Red Crescent Societies (IFRC) also complements UNHCR's work by providing humanitarian relief to people affected by emergencies and by promoting international humanitarian law.

UNHCR's partnership with NGOs

NGOs vary greatly in size, breadth of programs, source of funds and style of operation. Some are international, some are national, but have international activities, others are solely nationally- or locally-based. The importance of NGOs' role in protecting refugees was recognized by the UN General Assembly when, in adopting UNHCR's Statute, it called on the High Commissioner to establish contact with "private organizations" (now known as NGOs) dealing with refugee questions and to help coordinate the efforts of those organizations.

"The Conference commends non-governmental organizations responsible for providing relief and assistance to refugees and displaced persons, and stresses the need for States to support those organizations."

78th Conference of the Inter-Parliamentary Union, October 1987

UNHCR works with more than 500 NGOs as implementing partners. Most NGOs working with refugees provide material assistance and/or assist in the establishment and maintenance of camps and other settlements, putting them in a position to monitor and report on rights violations that may occur in the camps or settlements.

Other types of private professional or religious-based organizations offer legal counseling or representation to asylum-seekers, visit detention centers, assist resettled refugees and advocate for individual refugees and for national laws and procedures that will implement their country's international obligations. NGOs may not be specifically mandated through international conventions to offer protection to refugees. Through their work, however, many NGOs operate under mission statements that commit them to providing protection. In doing so, they perform an urgent and valuable service that can make a critical difference in the effective protection of refugees. ■

“The Conference underlines the importance of the safe and unrestricted access of humanitarian personnel to civilians affected by armed conflict, including refugees and internally displaced persons, and the protection of humanitarian assistance to them, and calls on States and concerned parties to take all possible measures to guarantee the safety, security and freedom of movement of UN and associated humanitarian personnel.”

103rd Conference of the Inter-Parliamentary Union, May 2000

Ensure protection and solutions: What you can do

Establish an adequate legal framework

- You can invite UNHCR to assist you in establishing a national legal framework for protecting refugees and finding solutions to their problems.
- You can seek UNHCR's comments on proposed legislation and ensure that UNHCR's views are reflected in any parliamentary debate or discussion on relevant protection matters.

Ensure adequate funding

- You can appropriate sufficient funds for refugee protection structures within your own country and can consider contributing funds to UNHCR. This funding is particularly valuable when it comes from a country that has not previously contributed to UNHCR, since it indicates a widening of the agency's international support and promotes the independence of the Office.



Facilitate UNHCR's duty to supervise the application of the Refugee Convention

- ❑ You can facilitate UNHCR's duty to supervise the application of the Refugee Convention and Protocol by ensuring that the agency has information on the number and condition of refugees living in your country and on the laws and procedures in place.
- ❑ UNHCR must have access to refugees. If necessary, you can encourage the government to provide such access.

Oversee the actions of the government

- ❑ You can oversee the actions of the government with regard to the application of the Refugee Convention and Protocol by visiting refugee facilities and camps, among other activities. ■

➤ **Persons of Concern to UNHCR** As at 31 December 2000 (subject to change)

Refugees	12, 148,017
Asylum-seekers	896,557
Returnees	793,104
IDPs	5,265,335
Returned IDPs	369,055
Various	1,653,892
Total	21,125,960

➤ **Persons of Concern by Region**

<i>Region</i>	<i>Total Concern 1 January 1999</i>	<i>Total Concern 1 January 2000</i>
Africa	6,284,950	6,250,540
Asia	7,474,740	7,308,860
Europe	6,212,550	7,285,800
Latin America and the Caribbean	102,400	90,170
North America	1,305,400	1,241,930
Oceania	79,510	80,040
Total	21,459,550	22,257,340

➤ **Persons of Concern per Category (1 January 2000)**

<i>Region</i>	<i>Refugees</i>	<i>Asylum seekers</i>	<i>Returned refugees</i>	<i>IDPs and Others of Concern</i>	<i>Total</i>
Africa	3,523,250	61,110	933,890	1,732,290	6,250,540
Asia	4,781,750	24,750	617,620	1,884,740	7,308,860
Europe	2,608,380	473,060	952,060	3,252,300	7,285,800
Latin America and Caribbean	61,200	1,510	6,260	21,200	90,170
North America	636,300	605,630	--	--	1,241,930
Oceania	64,500	15,540	--	--	80,040
Total	11,675,380	1,181,600	2,509,830	6,890,530	22,257,340

➤ **Origin of Major Refugee Populations in 1999: Ten Largest Groups**

<i>Country of Origin</i>	<i>Main Countries of Asylum</i>	<i>Total</i>
Afghanistan	Iran, Pakistan, India	2,562,000
Iraq	Iran, Saudi Arabia, Syria	572,500
Burundi	Tanzania, D.R. Congo	525,700
Sierra Leone	Guinea, Liberia, Gambia	487,200
Sudan	Uganda, D.R. Congo, Ethiopia, Kenya, Cent. African Rep., Chad	467,700
Somalia	Ethiopia, Kenya, Yemen, Djibouti	451,600
Bosnia and Herzegovina	F.R. Yugoslavia, Croatia, Slovenia	448,700
Angola	Zambia, D.R. Congo, Congo	350,600
Eritrea	Sudan	345,600
Croatia	Yugoslavia, Bosnia and Herzegovina	340,400

An estimated 3.5 million Palestinians who are covered by a separate mandate of the U.N. Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) are not included in this table. However, Palestinians outside the UNRWA area of operations such as those in Iraq or Libyan Arab Jamahiriya, are considered to be of concern to UNHCR.

Statistics reflecting the countries of origin of a large number of refugees in more developed countries are not available. Also, many refugees have acquired the citizenship of the asylum country — for example, Vietnamese in the USA — and therefore are not included in the refugee statistics.

➤ **Asylum Applications Submitted in Selected Countries**
(in 1999)

<i>Country of Asylum</i>	<i>Main Countries of Origin</i>	<i>Asylum Applications</i>
Germany ¹	F.R.Yugoslavia, Turkey, Iraq, Afghanistan, Iran Azerbaijan, Viet Nam, Armenia, Syria, Russian Federation, Bosnia and Herzegovina, Pakistan, India	95,110
United Kingdom ²	F.R. Yugoslavia, Somalia, Sri Lanka, Russian Federation, Afghanistan, Turkey, China, Pakistan, Romania, Poland, Iraq	71,150
Switzerland	F.R. Yugoslavia, Iraq, Bosnia and Herzegovina	46,070
Netherlands	Afganistan, Iraq, F.R. Yugoslavia, Somalia, Azerbaijan, Sudan, Angola, Iran	39,300
Belgium	F.R.Yugoslavia, Romania	33,780
Italy	F.R.Yugoslavia, Iraq	33,360
United States of America ³	China, Guatemala, El Salvador, Mexico, Haiti, Somalia	31,740
France	China, F.R.Yugoslavia, D.R. of Congo, Turkey, Sri Lanka, Mali	30,910
Canada	Sri Lanka, China, Pakistan, Hungary	29,390
Austria	F.R. Yugoslavia, Iran, Afganistan, Iraq	20,100

1. Excluding applications which have been "re-opened"

2. Figures concern number of applications. On average, there are some 1.3 persons per asylum application.

3. Figures concern number of applications. On average, there are some 1.45 persons per application.

➤ **Major Voluntary Repatriation Movements**
(In 1999, by destination: Ten Largest Movements)

<i>To</i>	<i>From</i>	<i>Total</i>
F.R. Yugoslavia	Albania, F.Y.R. of Macedonia, Germany, Turkey, Switzerland, Bosnia and Herzegovina	755,450
Afghanistan	Iran, Pakistan	
East Timor	Indonesia	
Liberia	Côte d'Ivoire, Guinea	56,490
Congo	D.R. of Congo	52,200
Rwanda	D.R. of Congo	38,180
Cambodia	Thailand	36,200
Bosnia and Herzegovina	Germany, F.R. Yugoslavia, Croatia	31,810
Somalia	Ethiopia, Yemen	
Iraq	Iran	20,700

Chapter 3

Recognizing Refugees

Improvements in international communication and transportation networks have made it easier for people to move between countries and continents. The vast majority of countries encourage international travellers visiting for business, family or tourism reasons. Many countries also allow for the permanent immigration of selected non-citizens. At the same time, however, many countries are faced with the problem of undocumented, or even smuggled, arrivals.

As a general rule, no country is obliged to allow foreigners onto its territory. It is one of the elements of State sovereignty that a country may decide if and how it will permit non-citizens to enter.

The exception to this general rule is that States may not return a refugee, in any manner whatsoever, to the frontiers of territories where his/her life or freedom would be threatened because of his/her race, religion, nationality, membership of a particular social group or political opinion (the principle of *non-refoulement*). This is true even if the refugee entered the host country illegally. A refugee who poses a danger to the security of the country or to the community, cannot claim this protection.

Other individuals are specifically excluded from the outset from Convention protection; for example those with respect to whom there are serious reasons for considering that they are war criminals or have committed a serious non-political crime.

As regards protection against return under the *non-refoulement* provisions of the Convention Against Torture, together with other human rights instruments, there is no category of excluded persons as such.

Refugees and migrants: What is the difference?

Unlike migrants, refugees do not *choose* to leave their countries; they are forced to do so. Economic migrants are persons who leave their countries of origin purely for economic reasons, to seek material improvements in their lives. The key difference between economic migrants and refugees is that economic migrants enjoy the protection of their home countries; refugees do not. Economic migrants do not fall within the criteria for refugee status and are therefore not entitled to benefit from international protection as refugees. ■

Are they entitled to refugee status?

A Few Special Cases

❑ **Can a soldier be a refugee?**

A refugee is a civilian. A person who continues to pursue armed action against his or her country of origin from the country of asylum cannot be considered a refugee.

❑ **Can a draft evader be a refugee?**

Every country has the right to call on its citizens to bear arms in periods of national emergency. However, citizens should have an equal right to conscientious objection. In cases where the option of conscientious objection is not observed, or where the conflict underway manifestly violates international norms, draft evaders who fear persecution (for example, on the basis of political opinions which authorities could impute to them) may be eligible for refugee status.

❑ **Can a criminal be a refugee?**

A person fleeing from prosecution for a common crime is not fleeing persecution. However, a person accused of these or other non-political crimes – whether innocent or guilty – may also be persecuted for political or other reasons, and is thus not necessarily excluded from refugee status. Furthermore, people convicted of the "crime" of political activism may well be refugees.

❑ **Can a war criminal be a refugee?**

Persons who have participated in war crimes and massive violations of international humanitarian and human rights law – including the crime of genocide – are specifically excluded from the protection and assistance accorded to refugees. Any person against whom there exist serious grounds for considering that he/she has committed such a crime should not be given protection as a refugee. However, in large camps with very difficult security conditions there are enormous practical difficulties involved in identifying, and extracting, such persons; UNHCR is neither judge nor police force. In practice, given the scale of this problem, the most viable approach consists of providing maximum support to international initiatives to bring war criminals to justice. UNHCR is obligated to share with the competent authorities and relevant UN organs any pertinent information which comes to its knowledge (while bearing in mind the need to be sensitive in releasing information which refugees have confidentially divulged to field staff). The work of the international tribunals investigating war crimes and genocide in Rwanda and former Yugoslavia is particularly vital, since only the pursuit of swift and equitable justice can establish genuine peace and reconciliation – and thus ensure lasting repatriation.



❑ **Can a woman facing attack because she refuses to comply with social constraints be a refugee?**

Obviously, women may be persecuted for political, ethnic or religious reasons, on the basis of their race or membership of many kinds of social groups. In addition, UNHCR considers that someone who is fleeing severe discrimination or other inhumane treatment – amounting to persecution – for her failure to conform to strict social codes does have grounds to be considered for refugee status. Such persecution may emanate from a government authority or – in the absence of adequate government protection – from non-state actors. Sexual violence, such as rape, may constitute persecution.

A woman who fears attack for her refusal to wear restrictive clothing, or because of her desire to choose her own spouse and live an independent life, may indeed be a refugee. In 1984, the European Parliament determined that women facing cruel or inhuman treatment because they seemed to transgress social mores should be considered a particular social group for the purposes of determining refugee status. Australia, Canada, the United Kingdom and the United States have exhaustive guidelines relating to gender-related persecution, and there has been similar progress in Germany, the Netherlands and Switzerland. UNHCR encourages other countries to formally adopt this position.

❑ **Can a woman who fears that she, or her infant daughter, will be genitally mutilated if she returns to her country be a refugee?**

In France, Canada and the United States, it has been officially recognized that genital mutilation represents a form of persecution and that women who fear genital mutilation in their countries do have a real claim to refugee status. In one recent case, a woman who feared persecution in her country *because of her refusal to inflict genital mutilation on her infant daughter* was recognized as a refugee. UNHCR encourages other countries to take this stance.

❑ **Can a person who fears persecution because of sexual orientation be a refugee?**

Homosexuals may be eligible for refugee status on the basis of persecution because of their membership of a particular social group. It is the policy of UNHCR that persons facing attack, inhumane treatment, or serious discrimination because of their homosexuality, and whose governments are unable or unwilling to protect them, should be recognized as refugees.

❑ **Are there guidelines on stowaways, or people rescued at sea, who claim asylum?**

Ships' masters have a fundamental obligation under international law to rescue any persons in distress at sea. In some cases, such as the exodus of Vietnamese boat-people, such persons have been asylum-seekers. Ships may also discover that they are carrying clandestine stowaways, who may also be asylum-seekers.



There is no binding international convention relating to stowaway asylum-seekers, and practice with respect to them varies very widely. UNHCR advocates that, wherever possible, stowaways should be allowed to disembark at the first port of call, where their refugee status may be determined by the local authorities.

If a port State does not allow a stowaway to disembark, and the ship's next port of call is in a State where the stowaway's life is threatened, then the action is tantamount to *refoulement*. In such cases, UNHCR officers are instructed to try to arrange for an interview on board, and if the asylum seeker is found to be a refugee, they are to assist in finding a durable solution – usually third-country resettlement. ■

To protect refugees, a State must know who they are. A State must be able to differentiate those in need of international protection from other people seeking entry to its territory. How a State does so will largely depend on whether a claim for asylum can be examined individually or whether people are arriving in such large numbers that a group determination is the most practical.

The relationship between asylum and *non-refoulement*: The Universal Declaration of Human Rights and the Refugee Convention

The right to seek and enjoy asylum is recognized in international human rights law and is critical for protecting refugees. In 1992, the UNHCR Executive Committee stated that *"the institution of asylum, which derives directly from the right to seek and enjoy asylum set out in Article 14(1) 1 of the Universal Declaration of Human Rights, is among the most basic mechanisms for the international protection of refugees"* (Conclusion N° 28(c)). Asylum serves two purposes: it provides a framework for protection and ensures that solutions to the problems of refugees can be pursued.

"The Inter-Parliamentary Council ...welcomes the UN General Assembly resolution adopted on 4 December 2000 deciding that, as of 20 June 2001, the date of 20 June will be commemorated as "World Refugee Day", and encourages parliaments to engage in activities supporting refugees on that day."

Council of the Inter-Parliamentary Union, April 2001

Additional protection under human rights law

In addition to the Refugee Convention's provision against *refoulement*, human rights law sets out the obligation not to return someone to danger, though in somewhat different language. The Convention against Torture, which has 131 States parties as of September 2001, prohibits expulsion or return to a place where there is a substantial danger of torture.

➤ **States Party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Entered into force on 26 June 1987

Afghanistan, Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Chad, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, Indonesia, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Latvia, Lebanon, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Malawi, Mali, Malta, Mauritius, Mexico, Monaco, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saint Vincent and The Grenadines, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Somalia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, The Former Yugoslav Republic of Macedonia, Togo, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Kingdom, United States of America, Uruguay, Uzbekistan, Venezuela, Yemen, Yugoslavia and Zambia ■

(September 2001)

In addition, the International Convention on Civil and Political Rights and the European Convention on Human Rights have been interpreted to prohibit expulsion or return to torture (see box on *non-refoulement*, page 14).

What rights and obligations does a refugee have?

A refugee has the right to safe asylum. However, international protection comprises more than physical safety. Refugees should receive at least the same rights and basic help as any other foreigner who is a legal resident, including certain fundamental entitlements of every individual. Thus refugees have basic civil rights, including the freedom of thought, of movement, and freedom from torture and degrading treatment.

Similarly, economic and social rights apply to refugees as they do to other individuals. Every refugee should have access to medical care. Every adult refugee should have the right to work. No refugee child should be deprived of schooling.

In certain circumstances, such as large-scale inflows of refugees, asylum states may feel obliged to restrict certain rights, such as freedom of movement, the freedom to work, or proper schooling for all children. Such gaps should be filled, wherever possible, by the international community. Thus, when there are no other resources available from the government of the country of asylum or other agencies, UNHCR provides assistance to refugees and other persons of concern who cannot meet their own basic needs. The assistance may be in the form of financial grants; food; equipment, such as kitchenware, tools, sanitation and shelter; or in programs to establish schools or clinics for refugees who are living in a camp or other communal groupings. UNHCR makes every effort to ensure that refugees can become self-sufficient as swiftly as possible; this may require formal income-generating activities or skills training projects.

Refugees also have certain obligations. In particular, they should conform to the laws and regulations of their country of asylum and with measures taken by the authorities to maintain public order. ■

The *non-refoulement* provisions of the Refugee Convention and the Convention against Torture overlap to some extent. In countries that have acceded to both treaties, asylum-seekers are increasingly likely to apply for protection under both Conventions. There are a number of reasons for this: some claims have been erroneously denied under refugee criteria, some people do not meet the refugee definition yet nevertheless are in need of international protection, and some claims fall within the exceptions of the Refugee Convention. The UN Committee against Torture, the expert body that oversees the Convention against Torture, has decided a number of cases in favor of asylum-seekers whose claims had been rejected by refugee status determination authorities in the country of asylum.

➤ **Scope of *non-refoulement*: A comparison**

Refugee Convention and Protocol

- ❑ **Who is protected?** Refugees: those with a well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group, or political opinion

- ❑ **From what harm?** Threat to life or freedom

- ❑ **Exceptions?** Reasonable grounds for regarding asylum seekers as a danger to the security of the asylum country or having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- ❑ **Who is protected?** Any person

 - ❑ **From what harm?** Substantial grounds for believing that he/she would be in danger of being subjected to torture

 - ❑ **Exceptions?** No exceptions
-

Some countries have established procedures to examine a claim under the criteria of both the Refugee Convention and the Convention against Torture at the same time. This can be more efficient, as long as it is done in the context of a full and inclusive application of the Refugee Convention. One concern is that people who receive the benefit of *non-refoulement* under the Convention against Torture often fail to receive the rights and benefits accorded to refugees, since such rights are not set forth in the Convention against Torture. Therefore, if these persons meet the refugee criteria, they should be recognized under the Refugee Convention.

Individual status determination

The right to seek asylum requires that individual asylum-seekers have access to fair and efficient procedures for the examination of their claims. In some cases, at the request of the State concerned, UNHCR undertakes refugee status determination. It is the responsibility of States to identify refugees in order to give effect to their obligations under the Refugee Convention and to prevent *refoulement*.

Parliamentarians can have their greatest impact on refugee protection by adopting legislation consistent with the Refugee Convention and Protocol and other international standards. National procedures for determining refugee status

are a particularly important focus for parliamentarians because those procedures are essential to protection and because the Refugee Convention leaves the content of such procedures to the country of asylum.

Asylum-seekers and refugees: What is the difference?

"Asylum-seeker" is a general term for a person who has not yet received a decision on his/her claim for refugee status. It could refer to someone who has not yet submitted an application or someone who is waiting for an answer. Not every asylum-seeker will ultimately be recognized as a refugee, but many will.

Until the claim is examined fairly, the asylum-seeker is entitled to not be returned, according to the principle of *non-refoulement*, and to benefit from humanitarian standards of treatment.

As a matter of international law, a person is a refugee as soon as the criteria contained in the definition are fulfilled.

Recognition of refugee status is declaratory, that is, it states the fact that the person is a refugee. A person does not become a refugee because of recognition, but is *recognized* because he/she is a refugee. ■

The methods used to decide whether to recognize someone as a refugee vary around the world, reflecting the variety of legal traditions, local circumstances and national resources. Given this diversity, UNHCR's Executive Committee has established general guidance on minimum standards for procedures.

The advisory role of the UNHCR: UNHCR has a great deal of legal and practical experience in interpreting and applying the Refugee Convention. In many countries, UNHCR plays an advisory role in status determination procedures. UNHCR is notified of asylum applications, is guaranteed access to files and decisions and is entitled to submit its observations. In some countries, UNHCR is part of the appeals body that reviews negative asylum decisions. UNHCR is sometimes substantially involved in special procedures at airports or in expulsion and deportation procedures affecting recognized refugees.

Fair procedures: A checklist

The 1951 Convention sets no specific requirements for national refugee determination systems. The questions below are based on the Executive Committee's guidance and UNHCR's experience and expertise and can be used to assess fair procedures for an asylum-seeker.

Access

- Does the asylum-seeker have access to a determination procedure, i.e., is he/she allowed to submit a claim?

Before the interview

- Has the asylum-seeker received guidance on the procedure?
- Has the asylum-seeker been given the opportunity to contact UNHCR?
- Is enough time allowed for the asylum request to be prepared?

The interview

- Does a qualified official of the authority competent to determine refugee status conduct a complete personal interview?
- Is the interpreter qualified and neutral?
- Does the applicant have access to legal representation?
- Is there a qualified female interviewer, and interpreter if needed, when the asylum-seeker is a woman?
- What arrangements have been made for interviewing children who are separated from their families?

Appeals

- Is there a formal appeal mechanism in case of a negative decision in the first instance?
- Does another authority handle the appeal?
- Except when a case is clearly abusive, is the asylum-seeker allowed to stay in the country while his/her appeal is pending?

UNHCR's supervisory role

- Does UNHCR have full access to information on the asylum-seeker and to the proceedings? ■

Effective procedures

Procedures should be effective as well as fair. Parliamentarians can promote effectiveness by allocating sufficient resources for refugee status determination. Refugees benefit when they can receive a decision promptly, be assured of safety, and begin to rebuild their lives. The public is more inclined to support refugee protection when it is clear that national authorities are responding to the presence of asylum-seekers. The government benefits when claims are handled expeditiously and in a cost-effective manner as well as with due respect to human rights principles. Individuals who are not entitled to international protection are identified and returned promptly.

Other considerations in status determination

Deciding whether someone is entitled to protection as a refugee is a two-step process. First, does the person meet the refugee definition? Second, if the person does meet the definition, is there any reason that he/she should, nevertheless, not receive international protection?

➤ How to account for changed circumstances?

One issue that arises in examining claims is whether the circumstances that gave rise to refugee status have ceased to exist. Although the so-called cessation clauses of the Refugee Convention (Article 1, C, 5) are directed toward terminating the status of an already recognized refugee, the same considerations are often applied in the context of the initial status determination. UNHCR's Executive Committee has cautioned that States must not resort to the cessation clause in haste. They must ensure that the need for international protection has in fact ended.

The cessation clause may be invoked when changes in the country of origin are major, profound, and substantial. Those changes must also meet the test of time.

Since cessation due to changed circumstances is based on the objective situation in a country of origin, it can be applied as a rebuttable presumption to all refugees from that country. However, individuals must have the opportunity to request a review of their particular situation.

Even when there is no longer a need for international protection, there may be compelling reasons, arising out of previous persecution, which could make it unreasonable to expect a person, or members of his/her family, to return to the country of origin. Severely traumatized persons, for example, should not be forced to return to their country of origin.

“States must carefully assess the fundamental character of the changes in the country of nationality or origin, including the general human rights situation, as well as the particular cause of fear of persecution, in order to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist.”

UNHCR Executive Committee Conclusion No. 69 (1992)

➤ What about people who do not merit protection?

Countries are not required to protect a person who is not deserving of international protection. According to the Refugee Convention (Article 1, F), a person does not deserve international protection if there are serious reasons for considering that the person has committed a crime against peace, a war crime or a crime against humanity; has committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee; or that he/she has been guilty of acts contrary to the purposes and principles of the United Nations.

In addition, a person who continues to take part in military activities against his/her country of origin is not a refugee. Armed struggle is not compatible with the civilian and humanitarian character of refugee status.

UNHCR recommends that national legislation on exclusion from refugee status adopt the language of the relevant provisions of the Refugee Convention.

➤ Can States impose their own criteria?

A State is free to adopt more inclusive refugee criteria than are found in the Refugee Convention, e.g., the definition found in the OAU Convention and in the Cartagena Declaration. Indeed, a country may grant asylum to anyone in the exercise of its sovereignty. A signatory State may not, however, impose more restrictive criteria on the refugee definition, such as refusing to recognize disabled refugees or refugees from a particular country. Such people, if they meet the definition, must benefit from protection. Appropriate assistance and solutions must be found for them, possibly with international aid in the country of asylum or, for urgent or compelling cases that require resettlement, in another country of asylum.

Refugees and HIV/AIDS

The United Nations Programme on HIV/AIDS (UNAIDS) estimates that more than 36 million people around the world now live with HIV/AIDS. Eighty-nine per cent of them live in sub-Saharan Africa and the developing countries of Asia. It is widely recognized that conflict, instability, food insecurity, poverty and deprivation provide fertile ground for the spread of HIV/AIDS. It is also recognized that these are the conditions in which most refugees in the world are forced to live.

In refugee camps, the damaging effects of these conditions are only intensified. Refugee situations are conducive to forced, high-risk sexual behaviour and sexual abuse. Women and girls are often coerced into sex to gain access to basic needs, such as food, shelter and security. Women and children are also exposed to a greater risk of violence, including rape. (Nearly 80 per cent of women raped during the genocide in Rwanda in 1993-94, who opted for voluntary counselling and testing, were found to be HIV-positive.) Young people in camps may start sexual activity early and engage in reckless practices, such as unprotected sex, multiple partners and the exchange of sex for gifts from older males. Among adult refugees, commercial sex, alcohol abuse and the poor social status of women are among the major causes of the spread of HIV in camps.

In 1996, UNHCR, UNAIDS and the World Health Organization issued *Guidelines for HIV Interventions In Emergency Settings*, designed to enable governments and cooperating agencies to adopt measures to prevent the spread of HIV in emergencies and to care for those affected by the disease. The issue of HIV/AIDS must be addressed during the earliest stages of a refugee emergency. The basic response to prevent HIV transmission is known as the “essential minimum package” and consists of five measures:

- ❑ Provide information and skills training to refugees to help them protect themselves from HIV infection
- ❑ Ensure that people have the means to protect themselves from HIV, including access to condoms
- ❑ Provide gloves and other supplies to enforce universal precautions to avoid the transmission of HIV
- ❑ Ensure a safe blood supply by screening all donated blood for HIV
- ❑ Gather information regarding the prevalence of HIV/AIDS and programme interventions in regions of origin and in the host country



As a refugee situation stabilizes, prevention programmes should be expanded to cover the entire refugee community, and comprehensive care should be provided for people with HIV and AIDS. Planning and implementing HIV/AIDS programmes should be done within the context of an integrated primary health care programme. Since HIV/AIDS is not just a health issue, but one that can affect the economy, development, and human rights of a community, it calls for a multi-sectoral approach, involving education, community services and site planning. Refugees themselves should help plan HIV/AIDS programmes, since community-based approaches will be the most effective in preventing the spread of HIV and in caring for those with HIV/AIDS.

People living with HIV/AIDS, including refugees, are entitled to live with dignity, free from discrimination. Individual HIV testing is not against UNHCR policy; and resources for HIV testing should be devoted to ensure that the blood supply at the refugee site is safe. But UNHCR strictly opposes mandatory HIV testing of refugees. Mandatory HIV testing does nothing to stop the spread of the virus and may result in the violation of human rights through discrimination against those individuals who test positive for HIV. In 1990, UNHCR and the International Organization on Migration issued a joint policy statement opposing the use of mandatory HIV screening, and any restrictions based on a refugee's HIV status, by potential asylum or resettlement States. ■

See also: Handbook for Legislators on HIV/AIDS, Law and Human Rights, UNAIDS-IPU, 1999

Refugees arriving in large numbers

When large numbers of refugees cross the border at once, their arrival may overwhelm the local capacity to protect and assist them. The international community needs to share the responsibility of assisting the country of asylum. Nevertheless, the observance of fundamental protection principles such as *non-refoulement* is an independent obligation and cannot be conditioned on burden-sharing. UNHCR makes every effort to assist asylum States to keep borders open, and to mobilize international support. The right response to a large-scale influx of refugees will save lives, promote regional stability and encourage international cooperation.

When refugees are pouring across a border, it is impractical if not impossible to examine individual asylum requests, even when there may be a doubt that the people should be recognized as refugees. When the circumstances under which large numbers of people flee indicate that members of the group could be considered individually as refugees, it makes sense for the country of asylum to

use *"prima facie"* or group status determination. This allows for basic protection and assistance to be extended to those in need, pending arrangements for a durable solution, without initially addressing the question of their status under the Refugee Convention and Protocol.

"The Executive Committee recognizes that international solidarity and burden-sharing are of direct importance to the satisfactory implementation of refugee protection principles; stresses, however, in this regard, that access to asylum and the meeting by States of their protection obligations should not be dependent on burden-sharing arrangements first being in place, particularly because respect for fundamental human rights and humanitarian principles is an obligation for all members of the international community."

UNHCR Executive CommitteeN° 85(p) (1998)

➤ Temporary protection

Temporary protection is an immediate, short-term response when large numbers of people arrive after fleeing armed conflict, massive violations of human rights or other forms of persecution. The purpose of temporary protection, as developed by European countries for people fleeing the former Yugoslavia, is to ensure protection in the "frontline" countries of asylum as well as to provide a coherent regional response. Temporary protection is based on the principles of the international refugee protection regime, since all those displaced are refugees within UNHCR's mandate and many also fulfil the Refugee Convention definition.

"The Conference urges governments and parliaments to condemn the use of refugees either as human shields in armed conflicts or as political pawns."

99th Conference of the Inter-Parliamentary Union, April 1998

Countries of asylum may end temporary protection when there is a fundamental change in the circumstances that prompted people to flee. When such change occurs, experience shows that the vast majority of people can and will return home voluntarily, even when the situation is far from ideal. Countries of asylum should take care not to push for premature returns, since that can destabilize the home country. Too rapid a return of too many people can put great pressure on a fragile peace and on what is likely to be a devastated infrastructure.

In addition, countries of asylum must identify and protect the small minority who cannot return to their home countries, including those who have compelling reasons arising out of past persecution. Those who do not want to return should be given access to asylum procedures.

Temporary protection should not continue for too long, even if the underlying circumstances have not improved, because people should not be left under minimum conditions of protection indefinitely. States should either employ their usual asylum procedures, or regularize the beneficiaries' residence. UNHCR can offer advice on such issues as when to institute temporary protection, what treatment should be accorded beneficiaries, and when and how such protection should be ended.

“The Conference urges the international community to provide timely and speedy humanitarian assistance and support to countries affected by an influx of refugees and displaced persons, and to help them particularly with the care and maintenance of large populations.”

99th Conference of the Inter-Parliamentary Union, April 1998

“In situations of large-scale influx, asylum seekers should be admitted to the State in which they first seek refuge, and if that State is unable to admit them on a durable basis, it should always admit them at least on a temporary basis and provide them with protection according to the principles set out below.”

UNHCR Executive Committee Conclusion N° 22 (1981)

Providing protection for persons not meeting the refugee definition: Complementary protection

There are people who need international protection even though, after examination of their claims, they are not found to meet the definition contained in the Refugee Convention. These are, generally speaking, persons fleeing armed conflict, serious internal disorder, or other forms of serious harm, with no link to a specific Convention ground. Such people fall within the broader definition of a refugee contained in the OAU Convention and the Cartagena Declaration, and are also within UNHCR's responsibility. They should be given a formal, legal status for the necessary period of time, with defined rights and obligations. Parliamentarians may wish to ask UNHCR for guidance in determining when it is appropriate to end this so-called “complementary protection” for refugees.

Adopting minimum standards of treatment for refugees arriving in large numbers

“In situations of large-scale influx, asylum seekers should be admitted to the State in which they first seek refuge and if that State is unable to admit them on a durable basis, it should always admit them at least on a temporary basis and provide them with protection.” (UNHCR Executive Committee Conclusion N° 28(c), 1982)

UNHCR’s Executive Committee has recommended minimum standards of treatment for refugees arriving in large numbers such that their status cannot be quickly determined.

These standards should improve over time if the situation does not improve quickly so that return in safety and with dignity is possible. The standards should include:

- ❑ Admission to safety without discrimination
- ❑ Protection from *refoulement*
- ❑ Provision of adequate reception facilities, including prompt registration
- ❑ Temporary right of residence in the country of asylum
- ❑ Treatment in accordance with the minimum humanitarian standards as set forth by UNHCR’s Executive Committee, which include:
 - Provision of shelter
 - Provision of assistance, or access to employment
 - Access to basic health care
 - Access to education for children
- ❑ Respect for fundamental human rights, including access to justice and freedom of movement
- ❑ Possibility of joining separated family members in other countries of asylum and arrangements for tracing missing family members

Parliamentarians should establish proper procedures for such situations, including a means of determining on-going protection needs once the crisis has ended. Parliamentarians may wish to consider establishing, within the legislation, an advisory role for UNHCR. ■

Refugee status determination procedures

As a general introduction to the process of drafting legislation on refugee status determination procedures, parliamentarians may wish to consider the following recommended elements based on international standards and practice. The Refugee Convention does not specify procedures for determining refugee status. However, UNHCR has a wealth of expertise and experience in advising on national legislation. Local UNHCR offices may be consulted for assistance with specific draft legislation or any questions or concerns.

□ **Registration and identification of asylum-seekers**

Personal documentation is a key tool in refugee protection. It provides proof of identity and status as a protected person, and gives countries of asylum an important means of ensuring that no refugee will be returned to danger. UNHCR has helped a number of countries set up registration and documentation systems using modern technology.

Asylum-seekers should be given an identity document and proof of their claim that can be considered as a residence permit and that is valid until a final decision on their request has been made. Female asylum-seekers should have equal rights in obtaining such documentation independent of their male relatives and should have the documentation issued in their own names.

There should be clearly designated authorities who receive and register asylum claims and who have been given clear instructions on their duties and obligations. Such authorities should include designated personnel at border entry points, at airports, train stations and seaports, as well in various local government departments/agencies in different localities. Designated personnel at ports should be authorized to receive claims of stowaway asylum-seekers who are on board vessels located in territorial waters of the State.

□ **Legal advice and representation**

The notion of refugee status is not always clearly understood by refugees themselves; and most refugees do not know the legal procedures of the country in which they are seeking asylum. Unfortunately, many refugees rely on advice from uninformed sources, which can often complicate their cases. Provision of advice and information about the process is one way to make national procedures more fair and efficient.



An asylum-seeker should receive legal counselling and information, in a language he/she understands, about the procedures to be followed, and his/her rights and obligations during the process.

Female asylum-seekers should be counselled on their rights, including the right to submit an individual application when family members accompany them.

The country of asylum should provide all necessary facilities to the asylum-seeker to ensure that he/she is able to comply with all formalities, including, free of charge, the services of qualified and neutral interpreters.

Female interpreters should be made available for female asylum-seekers to reduce the obstacles posed by gender-related cultural barriers.

Many female asylum-seekers do not feel comfortable discussing the details of their experiences with male officials, especially if they have been victims of sexual violence.

A legal representative should be designated for a child separated from his/her family to represent the child's best interests.

❑ **Opportunity to contact UNHCR**

National authorities should inform asylum-seekers that they have the opportunity to contact UNHCR as well as a legal advisor or representative of their choice. Where appropriate, asylum-seekers should also be allowed access to refugee assistance or other concerned human rights organizations.

❑ **Time to prepare the asylum request**

Both the asylum-seeker and the country of asylum benefit from a prompt examination of the asylum request, so that those who need protection find it, and those who do not are processed under ordinary migration procedures. The asylum-seeker should be given the assistance and facilities to lodge his/her request at the earliest opportunity.

Nevertheless, there are many reasons why an asylum-seeker may have difficulty in lodging a timely request, ranging from psychological issues, such as trauma, to practical issues, such as the inability to locate or pay for legal assistance. An applicant may be required to explain any unreasonable delay in submitting the application when the claim is considered. However, there should be no time limit for lodging the application. Experience shows that rigidly enforced time limits can lead to the *refoulement* of refugees, since not all of them will be able to submit their claims on time.



□ **Personal interview with a qualified official**

It is both desirable and generally advantageous for both parties that the asylum-seeker should have the opportunity to present his/her case in person to a qualified official competent to make an individual, objective and impartial decision. The official should take into consideration and seek to establish all the relevant facts and allow the asylum-seeker to present a substantial description, and provide proof, of the circumstances of the case.

The asylum-seeker must present all the facts and circumstances known to him/her and give access to all available evidence. Most refugees, in fact, have nothing but their personal testimony to support their claim. Recognition of refugee status is not dependent on the production of any particular formal evidence and may be based solely on the asylum-seeker's credible testimony.

The personal hearing is important, given the difficulty of assessing credibility solely on the basis of an interview transcript or report. A personal hearing allows the decision-maker to assess the asylum-seeker's manner and demeanor and to ask supplementary and detailed questions. Qualified interpreters should be provided free of charge. Female interviewers and interpreters should be provided for female asylum-seekers, since women may feel ashamed or dishonored discussing the details of their claims with male authorities, particularly if the women had been victims of sexual violence.

Special provision should be made for minors separated from their families, guided by the "best interests" principle of the *Convention on the Rights of the Child* (see box on page 73) and by UNHCR's *Guidelines on Policies and Procedures in dealing with Unaccompanied Minors Seeking Asylum*.

□ **The decision**

An authority, preferably a central authority, should be clearly designated to decide first on the asylum claim. The deciding authority should have the asylum-seeker's file as well as all interview notes and recommendations of the various authorities involved in the process. This authority should reach a decision by considering all relevant information presented by the asylum-seeker in light of country-of-origin information and by assessing whether the applicant's case would fall within the refugee criteria or any other protection criteria employed by the country of asylum.

In the case of unaccompanied minors, a decision should be reached based on the child best interest.

Applicants must be informed, in writing, of the decision.



□ Appeals

Asylum-seekers whose requests have been rejected must be allowed a reasonable time to apply to have their cases formally reconsidered and must be informed of the procedures for doing so. The appellate body should be independent and impartial and empowered to review the facts, as well as the law, in any given case. It should be a different authority from that which denied the request or, at a minimum, should involve different individuals from those who comprised the initial authority.

An applicant should be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.

□ Cessation of Status

The cessation clauses in the Refugee Convention are exhaustive, meaning that national legislation should not vary or add to them. If a person does fall within the cessation clauses due to changed circumstances in the home country, provision should be made to examine his/her individual situation to see if an alternative status should be found to allow continued residence in the country of asylum. UNHCR should also play a role in determining whether the cessation clause, related to changed circumstances in the home country, should be invoked.

Legislation should provide for procedures whereby the refugee is informed of the grounds on which a withdrawal of refugee status is being considered. The concerned refugee should also be allowed to make representations before the appropriate body on any reasons why refugee or another appropriate status should be retained. The deciding body should preferably be the same as the one deciding on refugee status and there should be an opportunity to appeal to a higher authority within a reasonable time period.

□ Cancellation of Status

Cancellation should only be undertaken as an exceptional measure and only under two restrictively defined situations:

- When it becomes known that the individual had intentionally misrepresented or concealed material facts in order to obtain refugee status
- When new evidence emerges revealing that the individual ought not to have qualified as a refugee, for example, because he/she was excludable



□ **UNHCR's supervisory role**

There are a number of ways that UNHCR can supervise application of the Refugee Convention depending on local conditions, available resources, and the legal structures of the country involved. At a minimum, UNHCR should have full access to information on asylum-seekers and to the proceedings. The local UNHCR office can advise parliamentarians, at their request, on the various forms that UNHCR's involvement might take. ■

➤ **Annual totals worldwide of persons of concern to UNHCR**
[as at 1st Jan. 2001]

1990	14,916,498
1991	17,209,722
1992	17,007,483
1993	18,998,777
1994	23,033,000
1995	27,437,000
1996	26,103,200
1997	22,729,000
1998	22,376,300
1999	21,459,620
2000	22,257,340
2001	21,793,300

➤ **Estimated number of persons of concern who fall under the mandate of UNHCR [by region]**

Region	1 Jan. 2000	1 Jan. 2001
Asia	7,308,860	8,450,000
Africa	6,250,540	6,072,900
Europe	7,285,800	5,571,700
North America	1,241,930	1,047,100
Latin America & Caribbean	90,170	575,600
Oceania	80,040	76,000
Total	22,257,340	21,793,300

➤ Numbers at a glance

At the start of the year 2001 the number of people of concern to UNHCR was 21.8 million. They included 12 million refugees (55%), 0.9 million asylum seekers (4%), 0.8 million returned refugees (4%), 6 million internally displaced of concern to UNHCR (27%), 0.4 million returned IDPs (2%) and 1.7 million others of concern (8%).

The global refugee population increased by 4% during 2000 to 12 million.

At the end of 2000, Asia hosted the largest refugee population (44.6%), followed by Africa (30%), Europe (19.3%) North America (5.2%), Oceania (0.6%) and Latin America and the Caribbean (0.3%).

When all persons of concern to UNHCR are included, Asia hosted 38.8%, Africa 27.9%, Europe 25.6%, North America 4.8%, Latin America and the Caribbean 2.6% and Oceania 0.3%.

During 2000 an estimated 800,000 refugees returned to their home country, 50% less than in 1999 when 1.6 million refugees, including 800,000 Kosovars had repatriated. Approximately 91,200 refugees were resettled in 2000 from first asylum countries, including almost 40,000 refugees assisted by UNHCR. This was a 32% agency increase compared to 1999.

Generally, 50% of the population of concern to UNHCR are females. In the category aged 60 and over, the proportion of females is 55%, reflecting their longer life expectancy.

An estimated 50% of the population for which information was available were aged below 18 and 15% below the age of five. Almost 8% were aged 60 years and over.

The number of asylum applications submitted in 39, mostly industrialized, countries fell from 648,300 in 1999 to 629,800 in 2000, a 3% decrease. Eighteen percent of asylum decisions taken during 2000 resulted in refugee status, while another 15% resulted in a permission to stay on humanitarian grounds.

Compared to the size of the national population, the main refugee hosting countries during 2000 were Armenia, with 80 refugees per 1,000 inhabitants, followed by Guinea (59 per 1,000) Yugoslavia (46 per 1,000) and Congo (43 per 1,000). ■

Chapter 4

International Protection in Practice

The Conventions, Declarations, national legislation and «soft law» discussed in earlier chapters form the legal skeleton that supports the body of actions intended to protect refugees and asylum-seekers. The humanitarian worker on the ground should be guided by the general principles and standards codified in international refugee and human rights law.

Conversely, parliamentarians should also be familiar with some of the basic, practical actions that are taken in response to specific refugee protection problems.

Three of the most common protection challenges are:

- ❑ Responding to a refugee emergency
- ❑ Protecting refugee women, children and families
- ❑ Seeking durable solutions to refugees' problems

Refugee emergencies

➤ What is a refugee emergency?

Refugee emergencies are times of crisis for the refugees and often for the country of asylum. Lives are at stake and a speedy response is essential. The country of asylum may be under tremendous pressure, and often under media scrutiny, and may not have had experience in handling the arrival of large numbers of hungry, sick, wounded or frightened people.

Refugee emergencies almost always occur in the context of armed conflict and, in that sense, can be seen as an emergency within a larger catastrophe.

Defining a refugee emergency

UNHCR's working definition of a refugee emergency is: «any situation in which the life or well-being of the refugees will be threatened unless immediate and appropriate action is taken, and which demands an extraordinary response and exceptional measures.»

More important than a definition is the ability to recognize *quickly* the development of a situation in which an extraordinary response will be required. ■

Parliamentarians can take steps ahead of time to help ensure that refugees are protected during such difficult times. If a national legal framework and institutional structures are in place, UNHCR can mobilize international support much more quickly and effectively.

➤ Responsibilities in an emergency

The aim of emergency response is to provide protection and ensure that the necessary assistance reaches people in time. The country of asylum is responsible for the safety of, assistance to, and law and order among refugees on its territory. Governments often rely on the international community to help share the financial burden; UNHCR provides assistance to refugees at the request of governments.

UNHCR is usually responsible for coordinating the response of the UN system, working closely with the World Food Program, UNICEF, the United Nations Development Program (UNDP), and others. NGOs play a critical role in assisting refugees in emergencies. Through implementing arrangements, the country of asylum, UNHCR and the various NGOs involved in the emergency divide responsibilities. Ideally, well-designed implementing arrangements avoid duplicated efforts and close gaps in assistance.

Protection in emergencies

➤ When people flee war: Defining a refugee

While within Africa and some Latin American States people fleeing from armed conflict are defined as refugees (under the OAU Convention and the Cartagena Declaration, respectively), people *anywhere* fleeing from armed conflict are refugees within UNHCR's mandate. However, in countries outside of Africa and Latin America, there may be a gap between the protection provided by States under the Refugee Convention, which requires that the person have a well-founded fear of persecution linked to one of the five Convention grounds, and the protection provided by UNHCR under its broader mandate. This legal gap can result in very practical problems for victims of armed conflict. Parliamentarians can ensure that national legislation makes full provision for protection under the wider refugee definition, including for victims of armed conflict.

□ Relationship between conflict and persecution

Conflict and persecution can exist side by side; indeed, conflict may be the very method chosen by the persecutor to repress or eliminate certain groups. In most cases, people who are fleeing from armed conflict will fit within the definition of a refugee found in the Refugee Convention. That is, *in addition* to being caught up in war, they will have a well-founded fear of persecution because of their race, religion, nationality, membership of a particular social group, or political opinion.

People fleeing from «ethnic cleansing» in the former Yugoslavia or from genocide in Rwanda, for example, were escaping persecution based on a Convention ground, in which the means of persecution was the war itself. These are examples of large-scale persecution that were conducted along with, or as part of, military campaigns. Individuals may also be targeted for persecution during armed conflict for reasons reflected in the Refugee Convention definition.

❑ **Protection for people who do not fit the Refugee Convention definition**

Those who flee from armed conflict are not always recognized as refugees in asylum countries that do not use the wider definition of refugee found in the OAU Convention and the Cartagena Declaration. Nevertheless, in practice it is recognized that people escaping from war cannot be returned to their home countries. Most States grant these individuals some type of permission to remain under domestic legislation or administrative discretion. Parliamentarians in countries that do not adopt the expanded refugee definition may want to consider making provision in national law for persons who do not meet the Refugee Convention definition but who are, nevertheless, in need of protection. Suggested standards for such protection are set out later in this chapter.

❑ **Group determination**

In a refugee emergency, securing protection is the first priority. When it is obvious that large numbers of people are fleeing armed conflict or other mass violations of human rights, it is neither practical nor necessary to examine individual claims for refugee status. UNHCR and States usually resort to refugee status determination for the entire group based on their knowledge of objective conditions in the country of origin. Every member of the group is considered a refugee *prima facie*, i.e., in the absence of evidence to the contrary.

❑ **Relationship between mass influx and asylum**

In countries that haven't used *prima facie* recognition on a group basis, temporary protection has usually been offered, allowing people immediate access to safety and protecting their basic human rights. Temporary protection is a device used to respond to an emergency when there are clear protection needs but little or no possibility to determine such needs quickly on an individual basis. Temporary protection needs to last only until there is a fundamental change in the circumstances that prompted people to flee. When this fundamental change occurs, the country of asylum may presume that the need for protection no longer exists and that the vast majority of beneficiaries can return in safety. Nevertheless, countries of asylum must be aware that some people will continue to be in need of protection, including for reasons related to past persecution. States will have to have a mechanism, normally the refugee status determination system, for identifying such people.

□ Exclusion

Some people do not deserve international protection (see Chapter 3). Individuals can be excluded from refugee status even if a group determination has been made. Identifying and returning excludable individuals may be very difficult for the country of asylum. It is advisable that States seek UNHCR's advice and assistance at the outset of an emergency to assess the profile of the refugee population and the resources available for separating those excluded from protection from the rest of the refugees.

Facing a refugee emergency: What to do?

UNHCR's Executive Committee has agreed to a set of internationally recognized basic standards of treatment applicable in refugee emergencies.

Ensure that borders are kept open to allow access to safety

Make sure that people have access to safety by providing a legislative framework for their reception before the need arises.

Adopt the expanded refugee definition

Use of the expanded refugee definition, as found in the OAU Convention, the Cartagena Declaration and the national legislation of many countries, will provide the foundation for protection in a refugee emergency.

Provide temporary protection when needed

When the refugee definition used in the country of asylum is the narrower definition found in the Refugee Convention, parliamentarians can provide protection for others in need through temporary protection, which covers victims of armed conflict and other widespread human rights violations.

Adhere to standards of treatment applicable in refugee emergencies

As agreed to by UNHCR's Executive Committee:

- Refugees and asylum-seekers should not be penalized or exposed to any unfavorable treatment solely because their presence in the country is considered unlawful. They should not be subject to restrictions on their movements other than those that are necessary in the interests of public health and public order.
- Refugees and asylum-seekers should enjoy the fundamental civil rights recognized internationally, in particular those set out in the Universal Declaration of Human Rights.



- ❑ Refugees and asylum-seekers should receive all necessary assistance and be provided with the basic necessities of life, including food, shelter and basic sanitary and health facilities. In this respect the international community should conform with the principles of international solidarity and burden-sharing.
- ❑ Refugees and asylum-seekers should be treated as persons whose tragic plight requires special understanding and sympathy. They should not be subjected to cruel, inhuman or degrading treatment.
- ❑ There should be no discrimination on the grounds of race, religion, political opinion, nationality, country of origin, or physical incapacity.
- ❑ Refugees and asylum-seekers are to be considered as persons before the law, enjoying free access to courts of law and other competent administrative authorities.
- ❑ The location of asylum-seekers should be determined by their safety and well-being as well as by the security needs of the receiving State. Asylum-seekers should, as far as possible, be located at a reasonable distance from the frontier of their country of origin. They should not become involved in subversive activities against their country of origin or any other State.
- ❑ Family unity should be respected.
- ❑ All possible assistance should be given to trace relatives.
- ❑ Adequate provision should be made for the protection of minors and unaccompanied children.
- ❑ The sending and receiving of mail should be allowed.
- ❑ Material assistance from friends or relatives should be permitted.
- ❑ Appropriate arrangements should be made, where possible, for the registration of births, deaths and marriages.
- ❑ Refugees should be granted all the necessary facilities to enable them to obtain a satisfactory durable solution.
- ❑ Refugees should be permitted to transfer assets that they have brought into a territory to the country where the durable solution is obtained.
- ❑ All steps should be taken to facilitate voluntary repatriation.

Provide protection to victims of war who do not meet the Refugee Convention definition

Some persons fleeing war will not be recognized under the Refugee Convention, even if they have undergone individual status determination. Given the disruption and trauma they have suffered, a certain degree of security and stability is due them. Simply withholding deportation is not sufficient.



People should have a formal legal status with defined rights and obligations and should be issued with documents certifying that status. The status should last long enough to allow these persons to regain some normalcy in their lives. It should provide for basic rights as defined in relevant international and regional treaties. In some countries, domestic or regional human rights provisions may require higher standards than the minimal standards set forth below:

- ❑ Civil and political rights:
 - Protection from *refoulement* and expulsion
 - Non-discrimination
 - Protection from torture or cruel, inhuman or degrading treatment or punishment
 - Freedom of movement
 - Access to the courts
- ❑ Economic and social rights comparable to those generally available in the asylum country are also important, including access to adequate housing, assistance or employment, health care and primary and secondary education.
- ❑ Respect for family unity is fundamental, and countries of asylum should help close family members be reunited. The longer the period of time spent in the host country, the greater the need for family reunification.

Protection for victims of war can be ended when it is no longer necessary. Objective criteria for assessing when protection may be withdrawn should be set out in writing, preferably in legislation. UNHCR's guidance should be sought when deciding when to withdraw this protection.

Call for international support and responsibility-sharing

Parliamentarians can support calls for international solidarity and responsibility-sharing by publicizing the needs of the refugees and the contributions already made by their country in giving asylum and allowing access to humanitarian organizations.

Ask the government to ensure security in camps

Parliamentarians can call upon the government to do its utmost to protect the refugees as well as the local and international humanitarian aid workers who are trying to protect and assist them. Public safety and order are the responsibility of the country of asylum. In cases where international support for this function is needed, the government of the country of asylum should explore ways of receiving the necessary assistance.



Human and social impact: Advocate for refugees

During emergencies, parliamentarians can make a great difference in how refugees are treated. They can call for the country to honor its international humanitarian commitments. They can show sympathy with and solidarity for the refugees by informing themselves about the situation. They can visit refugee camps, settlements or detention centers. They can address the questions and concerns of the local population and attempt to defuse any negative attitudes that might arise from lack of information, misunderstanding, or prejudice. ■

Protecting refugee women

➤ **Specific conditions affecting women as refugees**

Women comprise at least half of any refugee population. Refugee women have many of the same needs as refugee men: protection against forced return, respect for their human rights while in exile and help in finding durable solutions to their plight. However, they also have different and additional needs throughout their experience as refugees.

In the often-chaotic conditions of a large-scale refugee emergency, women are extremely vulnerable to sexual and other forms of violence. In addition, they frequently bear responsibility for other, more vulnerable, family members such as children and the elderly. Women are often separated from male family members who may be taking part in the conflict or staying behind to guard the family's property.

In camp situations, the disruption of traditional patterns of decision-making may leave women without a voice in matters that affect their daily lives and their security. For example, if men, or a certain faction of men, control the distribution of aid, women may be forced to exchange sexual favors for food. Women may also be at risk of sexual violence from other refugees, the local population, nearby combatants and the police or security forces in the country of asylum.

In countries with individual status determination procedures, women travelling with male family members may not be given an opportunity to present their own claim, even if the man's claim is denied. Women may find it more difficult to

Speak frankly to a male interviewer or through a male interpreter, particularly if some aspect of their refugee claim involves sexual violence or questions of family honor.

In addition to procedural obstacles in status determination systems, there may be legal impediments to the accurate assessment of gender-related claims.

➤ Gender-related persecution

Gender-related persecution is a term used in international refugee law to describe a variety of claims, including some presented by men. While gender is not specifically mentioned in the Refugee Convention (the fear of persecution must be on account of race, religion, nationality, membership of a particular social group, or political opinion), it is accepted that gender can influence or dictate the type of persecution suffered and/or the reasons for such treatment.

Gender-related claims have typically encompassed acts of sexual violence, family violence, coerced family planning, female genital mutilation, punishment for transgression of social mores and homosexuality. These claims may be quite different from each other in that they mix *forms* of persecution with *reasons* for persecution. What they have in common, however, is gender as a relevant factor

The Executive Committee notes with appreciation special efforts by States to incorporate gender perspectives in asylum policies, regulations and practices; encourages States, UNHCR and other concerned actors to promote wider acceptance, and inclusion in their protection criteria, of the notion that persecution may be gender-related or effected through sexual violence; further encourages UNHCR and other concerned actors to develop, promote and implement guidelines, codes of conduct and training programs on gender-related refugee issues, in order to support the mainstreaming of a gender perspective and enhance accountability for the implementation of gender policies.

UNHCR Executive Committee Conclusion No. 87(n) (1999)

in determining the claim. In this light, persecution is not necessarily or only caused by the victim's gender, but by the perpetrator's ideology: that people deviating from their proscribed gender role shall be persecuted. For example, women who fear persecution because they transgress social mores are not usually persecuted because they are women, but because they refuse to be «proper» women.

The Refugee Convention definition must be interpreted in a gender-sensitive way. Just as information about an asylum applicant's home country is crucial for determining a «typical» refugee claim, so is understanding the socially-defined roles in the home country essential to correctly interpreting the refugee definition. This approach has been endorsed by a number of international bodies, including UNHCR's Executive Committee.

➤ Examining women's asylum requests

UNHCR and a few States have issued guidelines on how to examine women's asylum requests, including gender-related claims. There is a growing body of jurisprudence on such cases and many States have expressed an interest in incorporating this thinking into their protection framework.

In addition to the general body of international human rights law applicable to all people, there are a number of human rights standards that directly address the situation of women refugees and asylum-seekers. The pre-eminent international legal instrument is the *Convention on the Elimination of All Forms of Discrimination against Women* and its *Optional Protocol*.

This Convention establishes standards for States in a number of areas that are important to refugee women, including:

- ❑ Suppression of all forms of traffic in women and exploitation of prostitution
- ❑ Nationality
- ❑ Education
- ❑ Employment
- ❑ Health care
- ❑ Particular problems of rural women
- ❑ Equality before the law
- ❑ All matters pertaining to marriage and family relations

Other relevant international standards include the UN General Assembly Declaration on the Elimination of Violence against Women, which recognizes refugee women as one of the groups especially vulnerable to violence and calls upon States to adopt measures directed toward the elimination of violence against women.

Protecting refugee children

An estimated 41 per cent of the population of concern to UNHCR are under the age of 18; 12 per cent are under the age of five. Refugee children must benefit from the same protections as adult refugees; and given their special needs and vulnerabilities, refugee children should also receive special protection and assistance.

In a refugee emergency, refugee children can easily become separated from their families. Therefore, registration and tracing efforts should be instituted immediately. Separated children are at even greater risk than other refugee children of being recruited as child soldiers or of being sexually exploited. Because of the normal developmental needs of growing children, even children who remain with their families suffer tremendously from the trauma and disruption of flight.

Refugee Children: Guidelines on Protection and Care

Children are vulnerable. They are susceptible to disease, malnutrition and physical injury.

Children are dependent. They need the support of adults, not only for physical survival, particularly in the early years of childhood, but also for their psychological and social well-being.

Children are developing. They grow in developmental sequences, like a tower of bricks, each layer depending on the one below it. Serious delays interrupting these sequences can severely disrupt development.

Refugee children face far greater dangers to their safety and well-being than the average child. The sudden and violent onset of emergencies, the disruption of families and community structures as well as the acute shortage of resources with which most refugees are confronted, deeply affect the physical and psychological well-being of refugee children. It is a sad fact that infants and young children are often the earliest and most frequent victims of violence, disease and malnutrition which accompany population displacements and refugee outflows. In the aftermath of emergencies and in the search for solutions, the separation of families and familiar structures continue to affect adversely refugee children of all ages. Thus, helping refugee children to meet their physical and social needs often means providing support to their families and communities. ■

Preface, Refugee Children: Guidelines on Protection and Care, UNHCR

In countries where adult refugees are detained, children are at great risk of being detained, too, unless special provision is made for parents to be released. Children should not be detained unless there is absolutely no other way to ensure family unity.

During individual status determination procedures, a guardian should be appointed to represent the best interests of a separated child. In assessing the child's request for refugee status, consideration should be given to the child's degree of mental development, level of maturity and ability to articulate a claim in light of his/her personal, family and cultural background. Determining the claim may call for a liberal application of the benefit-of-the-doubt principle.

Children affected by armed conflict have the right to special protection and treatment given their particular vulnerability to being forcibly exposed to the risks of injury, exploitation and death. Other important rights of refugee children include education, adequate food and the highest attainable standard of health.

The best interests of the child and the role of the family as the primary source of protection and well-being for children must guide all decisions about refugee children. This principle is given its full legal expression in the *Convention on the Rights of the Child* (CRC), to which nearly every country in the world is a State Party. The CRC has a specific provision on refugee children, but also states that all its provisions apply to all children without discrimination. Similarly, the *African Charter on the Rights and Welfare of the Child* provides for specific protection for refugee and internally displaced children.

The best interests of child refugees and asylum-seekers

The Convention on the Rights of the Child states in Article 3 that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. In each circumstance, in each decision affecting the child, the various possible solutions must be considered and due weight given to the child's best interests. Such an approach prevails in all cases, from direct interventions by States in their jurisdictions to the private context of family life, where States may intervene indirectly, through local authorities, for example, to ensure and protect children's rights.



The 'best interests of the child' means that legislative bodies must consider whether laws being adopted or amended will benefit children in the best possible way.

Children who are refugees or asylum-seekers receive special attention under the Convention on the Rights of the Child, Article 22, which requires States Parties to take measures to ensure that such children receive appropriate protection and humanitarian assistance.

UNHCR's *Refugee Children: Guidelines on Protection and Care* defines goals and objectives, as well as principles and practical measures for the protection and assistance of refugee children, covering such topics as the rights of the child, culture, psychosocial well-being, health and nutrition, prevention and treatment of disabilities, personal liberty and security, legal status, education, separated children and durable solution. ■

Protecting the refugee family

The most effective way to protect vulnerable refugees is to protect refugee families. Families headed by a single parent need special support. All members of refugee families face problems when separated during flight or when countries of asylum do not facilitate reunification with other family members. This can be particularly difficult for persons living under temporary arrangements since they often have fewer rights than recognized refugees.

The Conference, ... considering that the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee, and that such unity is constantly threatened, recommends Governments to take the necessary measures for the protection of the refugee family, especially with a view to:

- (1) Ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country,***
- (2) The protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption.***

Final Act of the 1951 United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, IV B.

Protecting refugee women, children and families: What to do?

Make special provisions for women and children in status determination procedures

- ❑ Parliamentarians can make special provisions for women and children in status determination procedures, including the use of female interviewers and interpreters.
- ❑ All those who make decisions on refugee status should have access to information on human rights conditions and social roles in countries of origin as they affect women and children.
- ❑ Parliamentarians may wish to consider asking their government to establish guidelines for gender-related claims, using existing guidelines as a model.
- ❑ Separated children should have a legal guardian appointed to represent their best interests.
- ❑ All family members should be recognized if the principal applicant is recognized, and each family member should have the opportunity to present his/her own claim.
- ❑ Women and children should receive documentation of their refugee status in their own names.

Prohibit detention

- ❑ Parliamentarians can take steps to prohibit the detention of children and should provide alternative means for their protection and care.
- ❑ Women should not be detained, especially those traveling with children or other dependents, and those who are pregnant or breastfeeding.

Create possibilities for family reunification

- ❑ Parliamentarians can adopt measures to allow rapid reunification of family members separated in flight, provide liberal criteria in deciding which family members can be admitted, and promote the self-sufficiency of adult family members to enhance their capacity to support their dependents. ■

Key to protecting refugee families is family reunification. UNHCR's Executive Committee has underscored the need to protect the unity of refugee families by:

- ❑ Reuniting family members separated in flight
- ❑ Considering liberal criteria when deciding which family members can be admitted
- ❑ Recognizing all family members as refugees when the principal applicant is recognized and providing for each family member to submit any claim he/she may have
- ❑ Establishing family unity as a priority in the early stages of all refugee operations
- ❑ Promoting the self-sufficiency of adult family members to enhance their capacity to support their dependents

Seeking Solutions

For the vast majority of the world's refugees, the solution to their plight will be to return to their home country. Voluntary repatriation should occur in conditions of safety and dignity, and on the basis of an informed decision by the refugee him/herself. Some refugees are allowed to stay permanently in the country in which they first sought asylum. This is known as local integration. Finally, a very small percentage of refugees are resettled to a second country of asylum. Although resettlement is the solution for the smallest number of refugees, it is an extremely important protection tool as well as a durable solution.

➤ Voluntary repatriation

Voluntary repatriation is the preferred solution of the majority of refugees and asylum countries. Most refugees seek asylum near their home country so they will be able to return at the first possible opportunity to resume their lives and help re-build their communities.

In the **best-case scenario**, conflict has ceased and threats to physical security, such as landmines, have been removed, or other improvements in the human rights situation have eliminated the causes of refugee flight. Refugees make a free decision to return based on full knowledge of conditions in their home country and with sufficient international protection and assistance to return in safety and with dignity. Their legal status is ensured through a tri-partite agreement among UNHCR, the country of asylum and the home country. Gaps between the relief phase of the operation and longer-term development assistance have been bridged. Reconciliation among warring parties in the population has begun.

Unfortunately, reality rarely resembles that scenario. Too often, the protection offered and the assistance available in a country of asylum are insufficient. Refugees must choose between the lesser of two evils and often opt to return home in the hope that conditions might have improved during their absence. Repatriation under such circumstances carries a great risk that the returning refugees will be forced to flee a second time.

UNHCR requires a certain level of physical safety and security before it actively promotes voluntary repatriation. However, when refugees return spontaneously, of their own free will, to a country still in the midst of conflict, UNHCR will try to help them as much as possible.

The Conference calls on governments and parliaments to facilitate the early and voluntary return, the resettlement and the rehabilitation of refugees and displaced persons; the disarming, demobilization and subsequent training and reintegration of former combatants, especially child soldiers, into civilian life, and the rehabilitation of traumatized populations, in particular women and children.

99th Conference of the Inter-Parliamentary Union, April 1998

Returnees often face economic, legal and social problems back in their home countries. With national infrastructures devastated by war, returnees may have difficulties in regaining their property or in obtaining restitution for it. UNHCR, often working with NGOs on the ground, monitors refugees' return to resolve any protection problems that may arise. UNCHR and Harvard Law School have recently launched a project called «Imagine Coexistence» which aims to promote co-existence in the short term during post-conflict reintegration, in order to prevent the recurrence of violence in divided communities and to promote long term reconciliation. One of the means used is community-based income-generating activities which bring different communities together.

➤ **Local integration**

UNCHR's Statute mentions as one solution to refugees' plight their assimilation into new national communities. The Refugee Convention provides that States shall, as far as possible, facilitate the assimilation and naturalization of refugees. A number of countries, particularly those accustomed to receiving immigrants, allow the naturalization of recognized refugees as a matter of routine.

Other countries of asylum have been willing to consider allowing refugees to stay permanently, especially when they contribute to the local economy. In recent years, fewer countries have felt themselves to be in a position to offer local integration, although there are some notable exceptions, such as Mexico's naturalization of thousands of refugees from Guatemala.

➤ **Traditional resettlement countries**

Australia, Canada, Denmark, Finland, Netherlands, New Zealand, Norway, Sweden, Switzerland, United States of America

➤ **Emerging resettlement countries**

Argentina, Benin, Brazil, Burkina Faso, Chile, Iceland, Ireland, Spain ■

➤ **Resettlement**

The relatively few refugees who are considered for resettlement are at risk in their country of first asylum or there is no other durable solution to their plight. Certain countries regularly offer resettlement spaces; others do so on an *ad hoc* basis. In order to be recommended for resettlement, refugees must meet UNHCR's criteria and must also be accepted under the criteria of the resettlement country. ■

*Finding solutions to refugees' problems:
What to do?*

In countries of asylum

- ❑ To ensure that repatriation is truly voluntary, parliamentarians can ascertain that no refugee is returned home against his/her will, unless the Refugee Convention's cessation clause has been properly invoked.
- ❑ Parliamentarians can also urge that refugees be allowed a «look-see» visit home to assess the conditions there without losing the right to re-enter the asylum country.



- ❑ If national conditions permit, parliamentarians can consider extending possibilities for naturalization to recognized refugees.

In countries of origin

- ❑ Parliamentarians can ensure that the legal framework for protecting returnees' rights is in place.
- ❑ Property rights, restitution and compensation are key issues for legislative action. Citizenship for refugee children born outside the country should be provided, as should national identity documentation.
- ❑ Parliamentarians can call upon the government to allow access to UNHCR and to NGOs so they can monitor the returnees' situation.

In resettlement and potential resettlement countries

- ❑ Resettlement countries can consider increasing the number of spaces available to resettle refugees, as well as adding emergency spaces for instances when UNHCR has to move a refugee quickly for urgent security reasons.
- ❑ Countries that are not yet regular resettlement countries could consider becoming one, or at least indicate their willingness to UNHCR to consider resettlement submissions on a case-by-case basis.

In donor and potential donor countries

- ❑ Donor countries can ask for, and support, improvements in the quality of asylum so that people are not forced to choose to return to an unstable and unsafe environment.
- ❑ Donors can bring political pressure to bear so that the underlying causes of the refugee flow are addressed.
- ❑ Donors can also support the full range of activities needed for successful repatriation or local integration, including de-mining programs, income-generating projects and long-term development assistance. ■

Chapter 5

Providing Alternatives to Detention and Protecting Refugees Against Discrimination

Refugee protection does not occur only at borders. Asylum-seekers and recognized refugees can remain vulnerable even in countries of asylum that have acceded to the Refugee Convention, where implementing legislation and established procedures for examining claims for refugee status are in place. There remains a whole range of protection issues relevant to daily life in a country of asylum. Those issues include for many asylum-seekers and/or refugees the possibility of arbitrary detention and an atmosphere of racism and xenophobia among some segments of the national population.

"The Executive Committee deplores that many countries continue routinely to detain asylum-seekers (including minors) on an arbitrary basis, for unduly prolonged periods, and without giving them adequate access to UNHCR and to fair procedures for timely review of their detention status; notes that such detention practices are inconsistent with established human rights standards and urges States to explore more actively all feasible alternatives to detention."

UNHCR Executive Committee N° 85(dd) (1998)

Detention

UNHCR's Executive Committee has expressed concern that large numbers of refugees and asylum-seekers in different areas of the world are currently the subject of detention or similar restrictive measures by reason of their illegal entry

- ❑ ***«No one shall be subjected to arbitrary arrest, detention or exile.»***

Universal Declaration of Human Rights, Art. 9

- ❑ ***«In view of the hardship which it involves, detention should normally be avoided.»***

UNHCR ExCom Conclusion no. 44 (1986)

or presence in a country in search of asylum, pending resolution of their situation. The Committee is of the opinion that, in view of the hardship which it involves, detention should normally be avoided. If necessary, detention may be resorted to for specific purposes including to verify identity and to determine the elements on which the claim to refugee status or asylum is based.

Detaining asylum-seekers is considered lawful and not arbitrary if it complies with national law, the Refugee Convention *and* international law. Detention must be exercised in a non-discriminatory manner and must be subject to judicial or administrative review to ensure that it continues to be necessary, with the possibility of release when there are no grounds for continued detention.

➤ What is detention?

Detention does not just involve jails. Detention is confinement within a narrowly bounded or restricted location, which includes prisons, closed camps, public or privately operated detention facilities, hotel rooms, or airport transit zones, where freedom of movement is substantially curtailed and where the only opportunity to leave this limited area is to leave the territory of the asylum country.

To determine whether an asylum-seeker is in detention, the cumulative impact of the restrictions, as well as the degree and intensity of each of them, should be assessed.

Limitations on where an asylum-seeker may live do not generally constitute detention.

➤ Asylum-seekers should not normally be detained

The *Universal Declaration of Human Rights* recognizes the right to seek and enjoy asylum as a basic human right. In exercising this right, asylum-seekers are often forced to arrive at, or enter, the country of asylum illegally. Unlike ordinary immigrants, many asylum-seekers cannot obtain proper passports or visas. This fact, and recognition of the physical and psychological traumas many asylum-seekers have experienced, should be taken into account when considering any restrictions on their freedom of movement.

➤ Under what circumstances may asylum-seekers be detained?

As an exception to the general rule, asylum-seekers may be detained for the reasons set out below **as long as these are clearly based on national legislation that conforms to international human rights law.**

There should be a legislative presumption against detention. Alternatives should be put in place (see below) and should be explored first unless there is evidence to suggest that they will not be effective for that particular individual. The asylum-seeker should be detained only after considering all possible alternatives. In making the decision to detain, authorities should determine whether detention is reasonable and proportional to the objectives to be achieved. If judged necessary, detention should only be imposed in a non-discriminatory manner for a minimal period of time.

The **four permissible exceptions** to the general rule that detention should be avoided must be prescribed by law. Asylum-seekers should only be detained:

- ❑ *To verify identity.* This refers to cases in which identity may be undetermined or in dispute.
- ❑ *To determine the elements on which the claim for asylum is based.* This means a preliminary interview to obtain essential facts. This does not mean detention for the entire status determination procedure, or for an unlimited period of time.
- ❑ *In cases where asylum-seekers have destroyed their travel or identity documents or have used fraudulent documents in order to mislead the authorities of the country in which they intend to claim asylum:* Authorities must show that the asylum-seeker acted in bad faith and intended to mislead or refused to cooperate with the authorities in the asylum country. Asylum-seekers who arrive without documents because they were not able to obtain any should not be detained solely for that reason.
- ❑ *To protect national security and public order:* This relates to cases where there is evidence to show that the asylum-seeker has criminal antecedents and/or affiliations that are likely to pose a risk to national security or public order. Asylum-seekers who have arrived as part of a trafficking or smuggling scheme would not normally be included in this category and should not be detained solely for that reason. They are usually victims of criminal activities, not perpetrators.

➤ **What circumstances do not warrant detention?**

Asylum-seekers should not be detained when they come directly from a territory where their lives or freedom were threatened, present themselves without delay to the authorities, and show good cause for their illegal entry or presence. Detention for purposes other than those listed above, for example as part of a policy to deter future asylum-seekers or to discourage those who have submitted claims from pursuing them, is contrary to the norms of international law. Detention should not be used as a punitive or disciplinary measure for illegal entry or presence. Detention should not be used for failure to comply with administrative requirements related to residence at reception centers or refugee

camps. Escape from detention should not lead to automatic disqualification from the status determination procedure or return to the home country.

➤ **What if asylum-seekers have entered illegally?**

The Refugee Convention provides that refugees coming directly from a country of persecution shall not be punished because of their illegal entry or presence as long as they are coming directly from the country where they feared persecution, present themselves without delay to the authorities and show good cause. This provision also applies to asylum-seekers, since some of them are, in fact, refugees who have not yet been recognized. Some States and some asylum-seekers are engaged in a kind tit-for-tat show of wills. When States limit opportunities for legal migration, some asylum-seekers, and would-be migrants, resort to trafficking, smuggling or other illegal means of entry. States then feel obliged to tighten border controls even more and the cycle escalates.

The UNHCR Executive Committee has expressed the opinion that in view of the hardship which it involves, detention should normally be avoided. If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order. At the same time, the Executive Committee recognized the importance of fair and expeditious procedures for determining refugee status or granting asylum in protecting refugees and asylum-seekers from unjustified or unduly prolonged detention. It also stressed the importance for national legislation and/or administrative practice to make the necessary distinction between the situation of refugees and asylum-seekers and that of other aliens.

➤ **What are some alternatives to detention?**

The choice of an alternative should be influenced by an individual assessment of the circumstances of the asylum-seeker as well as local conditions. Governments may also wish to assess these alternatives in light of the direct and indirect costs associated with each one.

The following list is not exhaustive. It offers options that might provide authorities with a degree of control over the whereabouts of asylum-seekers while allowing asylum-seekers basic freedom of movement.

□ **Monitoring requirements**

The asylum-seeker could be required to report periodically to immigration or police officials. Release could be on the asylum-seeker's own recognizance, or

Asylum seekers who have entered illegally: What the 1951 Convention has to say

«The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened ... enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

«The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country...»

Convention Relating to the Status of Refugees, Article 31

«Coming directly»

This means the asylum-seeker arrived directly from:

- His/her home country
- From another country where his/her protection, safety and security could not be assured, or
- A transit country where he/she was present for a short period of time without having applied for or received asylum there.

No strict time limit can be applied to the concept of “coming directly” and provision must be made to judge each case on its merits.

«Without delay»

Similarly, there is no limit that can be mechanically applied to the concept of «without delay». This is because asylum-seekers are often coping with the effects of trauma, language problems, lack of information, fear or suspicion of authorities based on their past experiences, lack of basic means of subsistence, and other problems.

«Good cause»

This phrase requires consideration of the circumstances under which the asylum-seeker fled. ■

that of a family member, NGO or community group who would be expected to ensure that the asylum-seeker complies with all requirements and appears at hearings and official appointments.

The asylum-seeker could be required to reside at a specific address or locale and to obtain permission prior to any change in residence.

❑ **Provision of a guarantor, or surety**

Asylum-seekers could be required to provide a guarantor who would be responsible for ensuring that they appear at hearings and official appointments. If they fail to do so, the guarantor would have to pay a fine.

❑ **Release on bail**

For asylum-seekers already in detention, this alternative would allow their release, subject to the provisions of recognizance and surety. Asylum-seekers must be informed of this option and the amount of bail must not be set so high as to be prohibitive.

❑ **Open centers**

Asylum-seekers may be released on condition that they reside at a collective accommodation center where they would be allowed permission to leave and return during specified times.

«The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.»

Convention on the Rights of the Child, Article 37(b)

➤ **Children and detention**

The starting point is that detention of children shall only be used as a measure of last resort and for the shortest appropriate period of time as stipulated in Article 37(b) of the *Convention on the Rights of the Child and UNHCR's Guidelines on Refugee Children*, taking into account the best interests of the child.

❑ **Children separated from their families**

Children who have become separated from their families, also known as unaccompanied minors, should be released if possible into the care of other

family members who already have residence in the country of asylum. If this is not possible, they must receive adequate accommodation and appropriate supervision, ideally in residential homes or foster care placements.

A legal guardian or advisor should be appointed to represent the child's best interests.

❑ **Children with their parents**

All alternatives to detention should be considered. Children and their primary caregivers should not be detained unless this is the only means of maintaining family unity.

❑ **If children are detained**

If the country of asylum has no alternative but to detain children, it should, in conformity with the Convention on the Rights of the Child, be as a measure of last resort and for the shortest possible period of time.

Children must not be held in prison-like conditions. All efforts must be made to have them released and placed in other accommodations. **In the meantime**, special arrangements must be made for providing living quarters that are suitable for children and their families.

❑ **Education and play**

During detention, children have a right to education to provide continuity after their release. Education should take place outside the place of detention.

Provision should also be made for recreation and play, which are essential for physical and mental development, and which will help alleviate stress and trauma.

➤ **Detention of other vulnerable persons**

❑ **Categories of other vulnerable persons**

The following categories of people should be considered as vulnerable:

- Elderly people separated from their families
- Torture or trauma victims
- Mentally or physically disabled people

❑ **Special considerations**

Given the very negative effects of detention on vulnerable people, authorities should avoid detaining them. If such people are detained, it should only be with the prior certification of a qualified medical practitioner that detention would not harm their health and well-being. There must also be professional follow-up and support, with access to services, hospitalization, and medication counselling, as necessary.

What does UNHCR do to help separated children find their families?

For UNHCR's purposes, a separated child is one "who is separated from both parents and for whose care no person can be found who by law or custom has primary responsibility." The number of separated refugee children varies widely with the causes and conditions of exodus. However, as a rule of thumb, scholars have estimated that separated children comprise 2 to 5 percent of a refugee population.

Typically, UNHCR works closely with other agencies to ensure that separated children are identified and registered, and their families traced. In the Rwanda/Burundi crisis area, for example, UNHCR has been working with UNICEF, ICRC, Food for the Hungry and Save the Children (UK), as well as many other NGOs, to do cross-border tracing for these children. A regional, centralized database has been established, to register, track and match separated family members; and local databases support local and country-based programs. In the first year following the Rwandan exodus, more than 21,000 separated children returned to their families throughout the Great Lakes region.

In general, UNHCR is reluctant to promote the adoption of separated children out of the region of their origin, since ultimately it is often possible to trace family members of these children. ■

➤ **Detention of women**

□ **Risks of detention**

Detention of women and adolescent girls, especially those separated from their families, is particularly risky. There have been reports and allegations of women asylum-seekers being assaulted, including sexually, while in detention. In addition, a policy of detaining women increases the likelihood that children will be detained, as well.

□ **Special considerations**

Pregnant women and nursing mothers should not be detained.

If women are detained, they should be separated from male asylum-seekers unless these are close family relatives.

Female staff should be employed to decrease the likelihood of sexual violence against female detainees and to respect their cultural values.

Women should have access to legal and other services without discrimination and should have access to special services as needed, including reproductive health services.

➤ Detention of stateless persons

Stateless persons are those not considered to be nationals of any State under the operation of its law. Stateless persons are sometimes detained indefinitely simply because there is nowhere to send them: because the country in which they used to live will not take them back, because the country where they used to have nationality asserts that they have lost their nationality, or even because they cannot prove their nationality.

Just because a person is stateless and does not have a travel document does not mean he/she can be detained for prolonged periods of time. Authorities should try to identify and confirm the individual's nationality to determine which is the appropriate State for the individual's return or readmission. UNHCR can advise on these cases, if requested.

Working Group on Arbitrary Detention

The work and mandate of the Working Group on Arbitrary Detention comes into play in situations where asylum-seekers or others are alleged to be subjected to **arbitrary detention**. In its report E/CN.4/2000/4, the Working Group adopted a special comment (Deliberation 5) on "*the situation regarding immigrants and asylum-seekers*" that elaborates ten principles governing custody and detention, as follows:

Principle 1:

Any asylum-seeker or immigrant, when held for questioning at the border, or inside national territory in the case of illegal entry, must be informed at least orally, and in a language which he or she understands, of the nature of and grounds for the decision refusing entry at the border, or permission for temporary residence in the territory, that is being contemplated with respect to the person concerned.



Principle 2:

Any asylum-seeker or immigrant must have the possibility, while in custody, of communicating with the outside world, including by telephone, fax or electronic mail, and of contacting a lawyer, a consular representative and relatives.

Principle 3:

Any asylum-seeker or immigrant placed in custody must be brought promptly before a judicial or other authority.

Principle 4:

Any asylum-seeker or immigrant, when placed in custody, must enter his or her signature in a register which is numbered and bound, or affords equivalent guarantees, indicating the person's identity, the grounds for the custody and the competent authority which decided on the measure, as well as the time and date of admission into and release from custody.

Principle 5:

Any asylum-seeker or immigrant, upon admission to a centre for custody, must be informed of the internal regulations and, where appropriate, of the applicable disciplinary rules and any possibility of his or her being held incommunicado, as well as of the guarantees accompanying such a measure.

Principle 6:

The decision must be taken by a duly empowered authority with a sufficient level of responsibility and must be founded on criteria of legality established by the law.

Principle 7:

A maximum period should be set by law and the custody may in no case be unlimited or of excessive length.

Principle 8:

Notification of the custodial measure must be given in writing, in a language understood by the asylum-seeker or immigrant, stating the grounds for the measure; it shall set out the conditions under which the asylum-seeker or immigrant must be able to apply for a remedy to a judicial authority, which shall decide promptly on the lawfulness of the measure and, where appropriate, order the release of the person concerned.

Principle 9:

Custody must be effected in a public establishment specifically intended for this purpose; when, for practical reasons, this is not the case, the asylum-seeker or immigrant must be placed in premises separate from those for persons imprisoned under criminal law.

Principle 10:

The Office of the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC) and, where appropriate, duly authorized non-governmental organizations must be allowed access to the places of custody. ■

Racism and xenophobia

Problems of racism, discrimination, xenophobia and intolerance thwart international efforts to protect refugees. Racism may force people into becoming refugees, complicate efforts to protect them and pose obstacles to finding solutions to their problems.

Refugees and asylum-seekers, particularly when they arrive in large numbers, can have a major impact on a country of asylum and the local population. Some host communities see refugees as a threat to their way of life or culture, or even to their national security and stability. Others may regard all foreigners as competition for limited local resources. The positive contribution that refugees can make to the country of asylum, and their need for the humanitarian support and protection that is lacking in their home countries, are often lost in emotional debates about “unwanted” migrants.

Protecting refugees from racism and xenophobia requires legal, political and social action. When local populations feel threatened, their fears provide fertile ground for the growth of racism, discrimination, xenophobia and intolerance. Those fears are easily fed by irresponsible media or are manipulated for political, rather than humanitarian, purposes. ■

Racism and xenophobia: The role of parliamentarians

Parliamentarians are opinion-makers who can exacerbate fears and tensions or can address them responsibly.

Parliamentarians should encourage local populations to see refugees as people needing and deserving international protection, support and respect.

Respect cannot be legislated. Parliamentarians can, however, take the lead in promoting respect and tolerance for refugees and in ensuring that the national debate on non-citizens, both refugees and others, is based on rational, informed arguments and not just on emotion. ■

Discrimination and refugees

Racism and discrimination can hound refugees through each stage of their displacement experience.

Ethnic and racial tension can cause refugee flows. Discrimination against one ethnic group can be the result, or an integral part, of political strategies to exploit differences between ethnic groups to rally support for one group over another. Despite the fact that most States contain a variety of ethnic groups, the ethnic identity of a single group is too often made into the defining characteristic of a nationality. When this happens, minority groups may be seen as obstacles to nation-building. If a State is unwilling to perform its mediating role effectively, or is party to ethnic conflict, “ethnic cleansing”, or other forms of forced segregation of populations, may result. Indeed, the deliberate expulsion of an ethnic group may be the intended object of the conflict.

During their displacement, refugees may be seen as an unwelcome disruption in the lives of local people among whom they have sought safety. The host community may regard them as competition for limited resources, even a threat to the local culture. Discrimination may follow, in acts of overt violence against the refugees or in more subtle ways, such as offering exploitatively low wages for work.

Even when a solution to the refugee’s plight has been identified - local integration in the host country, resettlement to a third country, or voluntary repatriation to the refugee’s country of origin - discrimination against the refugee or returnee can thwart any hope of resuming a normal life. Increasingly, repatriation is taking place in less than ideal circumstances, sometimes in conditions of continued conflict and general insecurity. A weak State and civil society make the process of peace-building and reconciliation difficult, if not impossible. If large numbers of refugees return home at the same time, local resources and infrastructures may be strained, hampering the progress of economic reconstruction. Large-scale returns can also influence the policies and legitimacy of the State, especially in the context of elections or when returns may change the military or political balance of power from one ethnic group to another. Both of these



consequences can, in turn, result in discrimination against the returning refugees, who may be seen as the “cause” of unwanted economic, military or political outcomes.

Measures can be taken, at all levels of society, to help prevent racism and discrimination against refugees:

- ❑ States should ensure that all sectors of society take concerted action to address persistent racial division and conflict in the society, especially racism directed against those perceived as “foreigners” or “aliens”.
- ❑ The major institutions at all levels of the community - the family, the school, the workplace, houses of worship, the elite - should foster tolerance.
- ❑ National and local-level government should devote more resources and efforts towards eliminating the root causes of racism and xenophobia.
- ❑ States should promote inter-cultural activities, with participation by NGOs and religious organizations.
- ❑ States, NGOs, UN agencies and the media should raise awareness about racism and discrimination and help foster positive social change.
- ❑ Perpetrators of racist and xenophobic violence must be effectively and openly condemned through courts of law, human rights commissions and ombudsmen’s offices.
- ❑ Parliamentarians, as opinion leaders, must be aware of the influence they exert on public opinion and should use their position to promote tolerance and respect for human rights.

The following two UNHCR Executive Committee Conclusions may be especially kept in mind:

- ❑ *The Executive Committee ...reaffirms the importance... of educational and other programs to combat racism, discrimination and xenophobia”. Conclusion No. 85 (g) (1998)*
- ❑ *“The Executive Committee ... appeals to States to combat intolerance, racism and xenophobia and to foster empathy and understanding through public statements, appropriate legislation and social policies, especially with regard to the special situation of refugees and asylum-seekers.” Conclusion No. 77 (h) (1995) ■*

Preserving the dignity of the refugee: How?

Limit detention

- ❑ Detention should be limited by including a presumption against its use. Detention should only be used when necessary, in accordance with the international standards outlined earlier.
- ❑ Include procedural safeguards in legislation
- ❑ Provision should be made for any detained asylum-seeker to benefit from the minimum procedural guarantees set out below. Detention should not become an obstacle to the asylum-seeker pursuing his or her claim.
- ❑ Information
- ❑ Provide prompt and full communication of any order of detention, together with the reasons for the order and the detainee's rights in connection with the order, in a language and in terms he/she understands.

Provide information on the right to legal counsel

- ❑ Where possible, the asylum-seeker should receive free legal assistance.

Review

- ❑ There should be an automatic review of the detention decision before an independent judicial or administrative body.
- ❑ This should be followed by regular reviews of the continuing need for detention, which the asylum-seeker or his/her legal representative has the right to attend.
- ❑ There should be the possibility of challenging the need for detention at the review hearing, either personally or through a representative, and of rebutting any findings made. Such a right should extend to all aspects of the case and not simply to the executive discretion to detain.

Contact with advocates

- ❑ An asylum-seeker should have an opportunity to contact and be contacted by the local UNHCR office, national refugee bodies or other agencies, and an advocate.



- ❑ The asylum-seeker should have the right to communicate with these representatives in private and should be given the means to make such contact.

Set standards for conditions of detention

- ❑ Conditions of detention should be humane, showing respect for the inherent dignity of the person.
- ❑ They should be prescribed by law. Parliamentarians may refer to the applicable norms and principles of international law, including the 1988 *UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment*, the 1955 *UN Standard Minimum Rules for the Treatment of Prisoners*, and the 1990 *UN Rules for the Protection of Juveniles Deprived of their Liberty*.

Observe the following points

- ❑ **Screening:** All asylum-seekers should be screened before detention to identify torture or trauma victims.
- ❑ **Separation:** Men should be separated from women, and children from adults, unless they are relatives.
- ❑ **Separate facilities:** There should be separate detention facilities, not prisons, for asylum-seekers. If this is not possible, asylum-seekers should not have any contact with criminals.
- ❑ **Outside contacts:** Asylum-seekers should be allowed regular contact with and visits from friends, relatives, religious, social and legal counsel, with facilities available for such visits. The visits should be private unless there are compelling reasons to the contrary.
- ❑ **Medical treatment:** Medical treatment and psychological counselling should be provided when needed.
- ❑ **Recreation:** Daily indoor and outdoor physical exercise should be offered.
- ❑ **Education:** Education or vocational training should be made available.
- ❑ **Religion:** Exercise of religion, including any dietary restrictions, must be permitted.
- ❑ **Basic necessities:** Beds, shower facilities, toiletries, etc. must be provided.



- ❑ **Complaints mechanism:** There should be a complaints mechanism/grievance procedure for either direct or confidential complaints. Information on how to submit a complaint, including time limits and appeal procedures, should be displayed and made available in the detainees' languages.

Ensure respect for the legal rights of refugees

- ❑ Refugees are entitled to the rights that are listed in the *Refugee Convention*. One of the most important of these rights is that States shall apply the provisions of the *Refugee Convention* without discrimination.
- ❑ Refugees and asylum-seekers also benefit from international human rights law and, if relevant, international humanitarian law and/or regional human rights law.
- ❑ National legislation should ensure that these rights can be exercised in the country of asylum, including in the context of refugee status determination procedures.
- ❑ As another means of ensuring respect for the rights of refugees, parliamentarians may wish to adopt the broader definition of a refugee as contained in the OAU Convention and the Cartagena Declaration.
- ❑ At a minimum, all people who need international protection but who are found not to fall within the Refugee Convention definition should be given a clear legal status with as full a range of rights as possible.

Protect refugees against racist and xenophobic acts and attitudes

- ❑ Refugees and asylum-seekers should have legal protection against racist and xenophobic acts, and the perpetrators of such crimes should be openly condemned and effectively punished.
- ❑ While the judiciary must handle matters of criminal justice, parliamentarians can put into place a legal framework to ensure that racially motivated attacks are not tolerated and that a culture of impunity is not allowed to develop.

Make sure that refugees are aware of their rights

- ❑ Refugees are often ignorant of their legal rights, a problem that can be exacerbated by language barriers.
- ❑ Access to legal remedies should be simplified and authorities should explore possibilities for alternative measures to ensure that rights are respected. For example, human rights campaigns. →

Set up mechanisms to look into refugee issues

- ❑ Parliamentary committees can be formed to examine the human rights situation of refugees and asylum-seekers.
- ❑ Other national institutions, such as human rights commissions and ombudspersons' offices, can be empowered to help guarantee refugees' rights.

Promote respect for the contributions refugees make to their asylum country

- ❑ In addition to providing the legal structure through which refugees' rights can be respected, parliamentarians can ensure funding for public-awareness campaigns and education about refugees in schools.

Secure adequate training for those having to deal with refugees

- ❑ It is also important to allocate resources to train officials, such as border guards, immigration officers, police, and judges, so they can carry out their duties in a non-discriminatory manner.

Speak out for refugees

- ❑ Perhaps most important, parliamentarians can use their prominence to speak out for refugees.
- ❑ As legislators and as the voice of the people in government, parliamentarians have a special interest in ensuring that human rights and the rule of law are upheld, and that refugees benefit from international protection and solutions to their plight.
- ❑ Parliamentarians should take the lead in ascertaining that laws and procedures are in place so that their country can respond properly to the arrival of asylum-seekers, provide protection to those in need, and facilitate voluntary return, local integration or resettlement to a second asylum country.
- ❑ Parliamentarians from refugees' home countries (if a parliament still functions) can help create the legal and political conditions for their return in safety and with dignity.

Demonstrate leadership on refugee and asylum-seeker issues

- ❑ Parliamentarians have tremendous opportunities to demonstrate leadership on refugee and asylum issues by promoting public awareness of refugees as people who have been threatened, not as people who themselves pose a threat.



- Parliamentarians can promote greater public knowledge of international refugee law and can help their government and their constituents understand their country's interest in devising a generous, stable and consistent system to protect refugees and others in need. Parliamentarians can elucidate the asylum debate by differentiating between migration concerns and refugee protection issues and by denouncing racism and xenophobia.

Promote regional and international initiatives

- Finally, parliamentarians can reach out to their colleagues in other countries to promote regional and international initiatives to respect refugees and protect their rights. ■

Chapter 6

Acceding to International Instruments and Adopting Implementing Legislation

Parliamentarians in countries that have not yet acceded to the Refugee Convention and Protocol may wish to consider supporting accession as an important first step in participating in the international protection regime. The IPU and UNHCR's Executive Committee have repeatedly invited other States to join the 141 States Parties to the Convention and/or Protocol as of September 2001 (see page 11-12).

Given the need for a predictable response to refugee flows, accession to the Refugee Convention and Protocol is important because accession:

- ❑ Constitutes an undertaking to apply minimum humanitarian standards of treatment with respect to refugees
- ❑ Contributes to the improvement of relations between a refugee's home country and the country of asylum by de-politicizing the act of granting asylum
- ❑ Underlines the acceding State's willingness to cooperate with the international community and UNHCR in finding solutions to refugee problems
- ❑ Acknowledges and strengthens the universality of international refugee law

«The Inter-Parliamentary Union urges those countries that have not already done so to accede to the 1951 Convention relating to the Status of Refugees and its Protocol of 1967, and to other universal instruments of international humanitarian and human rights law and calls on all States to fulfill their consequent obligations.»

103rd Inter-Parliamentary Conference, May 2000

«The General Assembly [recognizes] that the grant of asylum by a State to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State.»

Preamble to the United Nations Declaration on Territorial Asylum, para. 4

Accession, a message

➤ Accession demonstrates a commitment to apply minimum humanitarian standards

These standards were elaborated in the *Convention* and have now been endorsed by a majority of States.

➤ Accession can improve relations between countries

Refugees will arrive at a State's borders whether or not that country is a party to the refugee treaties. The presence of refugees from neighboring countries may cause some tensions between States. These tensions can be eased when the country of asylum is seen to be acting in accordance with its obligations under international refugee law, particularly since these treaties reaffirm the peaceful and humanitarian nature of asylum.

➤ Accession demonstrates international cooperation

Accession demonstrates a State's willingness to cooperate with the international community in finding solutions to refugee problems. Accession does not impose upon States a legal obligation to admit refugees on a permanent basis. Rather, it serves to strengthen the tradition of asylum by placing it within the more solid framework of international law.

➤ Accession helps UNHCR mobilize international support

A sudden, large influx of refugees into a developing country often imposes severe economic strains, especially where scarce resources may have to be diverted away from the local population to support the refugees. To alleviate these problems, it is necessary to broaden the base of State support for refugee treaties. By doing so, the responsibilities that governments assume for refugees are more equitably distributed.

Common questions regarding accession

➤ Does accession encourage refugees to come?

Will acceding to the *Refugee Convention* make it more likely that refugees will seek asylum in a certain country?

This concern is not borne out by experience. Refugees tend to stay close to home. Therefore, many «frontline» States, some of which are not parties to refugee instruments, host some of the largest refugee populations in the world. In contrast, western European countries, all of which are parties to the Refugee Convention and Protocol, do not have similar numbers of asylum-seekers. The «attractiveness» of a potential asylum country is a very subjective notion and has little to do with legal obligations. Geopolitical considerations or family links are more likely to determine where a refugee seeks safety.

➤ Can a country avoid hosting refugees by not acceding to the Refugee Convention?

A refugee seeking protection must not be prevented from entering a country. Nor can a refugee be forcibly returned to his/her home country or any other country where he/she could face persecution. This principle of *non-refoulement* is considered a rule of customary international law. It is thus binding on all States without exception and regardless of whether they have acceded to the Refugee Convention or Protocol.

➤ Does accession impose financial obligations?

❑ Are there costs to accession?

Accession, in itself, does not expose a country to any charges or costs. As explained in Chapter 2, UNHCR is funded almost entirely by voluntary contributions. Hosting refugees, especially in situations of mass influx, will place burdens of different sorts on an asylum country. However, States often find themselves hosting refugees whether or not they have acceded to the refugee treaties. Accession makes UNHCR's task of mobilizing international support and funds much easier.

❑ Is a State Party required to give land or jobs to refugees?

Neither the Refugee Convention nor its Protocol nor the OAU Convention requires States Parties to give preferential treatment to refugees regarding the acquisition of property or access to work, although in certain situations, preferential treatment should be accorded to refugees regarding wage-earning

employment. However, States Parties must apply the same criteria to refugees as they do to other categories of foreigners when negotiating the sale of land.

➤ **Does accession mean that refugees stay permanently?**

□ **Is a State Party required to give permanent asylum to refugees?**

There will be situations in which refugees stay permanently and assimilate in their country of asylum. However, protection provided under the Refugee Convention is not automatically permanent. The Refugee Convention makes it clear that refugee status is a transitory condition that will cease once a refugee resumes or establishes meaningful national protection. International protection is no longer justified after there have been fundamental changes in the country of origin and the basis of the fear of persecution has been removed. Voluntary repatriation is normally the preferred solution when conditions in the country of origin permit.

What if the local population has concerns about accession?

Some local concerns are linked to a misreading and/or a misconception of the Refugee Convention and Protocol. Obligations imposed on States are not as constraining as States often perceive them to be.

The Refugee Convention and Protocol do nothing more than provide a legal framework and a foundation upon which a country can build its own refugee policy. Without such a framework and foundation, there is a risk that governments will respond to refugees in a purely discretionary manner.

When refugees do not have a legal status, their access to protection and assistance may be compromised. That can lead to problems with local communities.

It is far better for a State to have a sound refugee policy in place *before* the State must cope with a refugee emergency. Policies hastily designed during an emergency are often detrimental to State interests. ■

Legislation: The next step

Accession to the *Refugee Convention* and *Protocol* is only the first step in establishing a sound legal foundation for refugee protection. National legislation must be adopted or amended to allow the provisions of the *Refugee Convention* and *Protocol* to be implemented effectively. UNHCR works closely with States to help ensure that each State's particular legal tradition and resources will accommodate its international obligations. At a time when many governments are proposing legislation or undertaking administrative measures aimed at placing tighter controls on immigration, special care must be taken to ensure that refugee protection principles are fully incorporated in the legal structure.

«The Inter-Parliamentary Union urges the States concerned to comply strictly and ensure compliance with their obligations under international humanitarian law and international treaties on human rights and refugees.»

102nd Conference of the Inter-Parliamentary, October 1999

While acknowledging the need for States to address the problem of misuse or abuse of refugee status determination procedures, UNHCR's Executive Committee has urged States to ensure that national law and administrative practices, including migration control measures, are compatible with the principles and standards of refugee and human rights law. ■

In a nutshell:

All you need to know and do to accede to international refugee instruments and adopt implementing legislation

Become party to international refugee instruments

- As a first step, you should check whether your State is party to the main international treaties, i.e. the *Refugee Convention* and *Protocol* (see pp. 11-12 or check with local sources or the closest UNHCR office; see Annex 3).
- If your State has not yet acceded to these instruments, consider taking action either in the form of a written or an oral question to the Government or in the form of a private member bill. →

- ❑ It is advisable that, in addition to being familiar with and using the political and parliamentary tools at your disposal, you become familiar with the legal process for becoming a party described below. Model instruments and declarations can be found in Annex 1.

If the Refugee Convention and Protocol have not yet been ratified or acceded to

- ❑ If a request for ratification or accession has been brought before Parliament within a reasonable amount of time, after having received the necessary information, make sure to vote in favor.
- ❑ If the government fails to bring the matter before parliament within a reasonable amount of time, use parliamentary procedure to ask the government to explain why and to encourage the government to begin the process of ratification or accession without delay.
- ❑ If the government has signed the Refugee Convention and Protocol but has delayed the process of ratification:
 - Use parliamentary procedure to ask why the government is taking so long and to encourage it to accelerate the process.
 - Use your right of legislative initiative to submit a bill on the matter.

If the government opposes ratification or accession

- ❑ Seek to find out why, in detail.
- ❑ If necessary, help eliminate doubts and misunderstandings and use your political network to speed up the process.
- ❑ Advocate with your constituents to advance the cause of ratification or accession.

Accession to the Refugee Convention

- ❑ States may accede to the 1951 Refugee Convention at any time by depositing an instrument of accession with the Secretary-General of the United Nations.
- ❑ The instrument of accession must be signed by the Foreign Minister or the Head of State or Government. It is then usually transmitted through the Representative of the acceding country accredited to the United Nations Headquarters in New York.
- ❑ A model instrument of accession to the 1951 Refugee Convention can be found in Annex 1. →

Alternative declarations provided for under the Convention

- ❑ When acceding to the Refugee Convention, States are required to make a declaration whether they choose alternative (a) or (b) of Article 1B(1).
- ❑ Article 1B(1) states: *For the purpose of this Convention, the words «events occurring before 1 January 1951» in Article 1A shall be understood to mean either: (a) «events occurring in Europe before 1 January 1951», or (b) «events occurring in Europe and elsewhere before 1 January 1951», and each contracting State shall make a declaration at the time of signature, ratification or accession specifying which of these meanings it applies for the purpose of its obligations under this Convention.*
- ❑ Nearly all countries that have acceded to the Refugee Convention have accepted the wider alternative (b) which, it is assumed, will also be accepted by future acceding States.
- ❑ Most States that had originally introduced the geographical limitation -- alternative (a) -- have withdrawn it. As at September 2001, only five countries maintain the geographical limitation.

Accession to the refugee Protocol and simultaneous accession

- ❑ To accede to the Refugee Protocol, States follow the same procedure indicated above for the Convention.
- ❑ Accession to the Refugee Protocol implies an understanding to apply its provisions without any geographical limitation.
- ❑ A model instrument for accession to the Protocol can be found in Annex 1.

Geographical application

- ❑ Most States accede simultaneously to both the Refugee Convention and Protocol.
- ❑ Upon simultaneous accession, a formal declaration as to the geographical application under Article 1B(1) of the Refugee Convention is still required: See quote above.

Succession

- ❑ In the case of States created by the partition or disintegration of other States, the treaties to which the predecessor State had acceded do not automatically bind the new States.
- ❑ These new States have the option (a) to succeed to the predecessor State's obligations, (b) to accede as new States (*de novo*), or (c) to



indicate their intention not to be bound by the treaties concluded by the predecessor State.

- ❑ Model instruments of succession, corresponding to the first option, to the Refugee Convention and Protocol can be found in Annex 1.

Reservations, objections or declarations of understanding

- ❑ Make sure that the Refugee Convention and Protocol are not accompanied by any reservations aimed at limiting their scope or by any objections or declarations of understanding.
- ❑ If the Government has sent Parliament a request for ratification accompanied by reservations limiting the scope of the treaty, objections or declarations of understanding, you can:
 - If you have ascertained that such limits are groundless, promote the general interest over sectarian or circumstantial interests;
 - If necessary, mobilize public opinion to encourage the government to reconsider.
- ❑ If the government's reservations limiting the scope of the treaty, its objections or its declarations of understanding are no longer valid, you can:
 - Use parliamentary procedure to enquire into the government's intentions;
 - Take action with a view to having the restrictions lifted.
- ❑ You can also use your right of initiative to propose that those restrictions be lifted.

Specific reservations and limitations allowed under the Convention

To take account of special conditions prevailing at the time of accession or succession, the Refugee Convention and Protocol allow contracting States to define limits, or make reservations, to certain of their provisions. However, in accordance with Article 42, reservations may not be made to several of the fundamental provisions of the Convention. These provisions are:

- Article 1: Definition of the term «refugee»
- Article 3 : Non-discrimination
- Article 4: Freedom of religion
- Article 16(1): Access to courts
- Article 33 : *Non-refoulement*
- Articles 36 to 46 inclusive: Final clauses

- ❑ Upon accession to the Refugee Protocol, reservations may be made with respect to any article(s) of the Refugee Convention, with the same exceptions mentioned above. →

- ❑ Reservations may, in addition, be made to Article IV of the Refugee Protocol, which corresponds to Article 38 of the Refugee Convention (settlement of disputes).
- ❑ No reservations may be made to Article II of the Protocol concerning cooperation with UNHCR.
- ❑ With time, and in response to changed circumstances, some States have decided to withdraw reservations made at the time of accession.

Adopting implementing legislation

- ❑ After the Refugee Convention and Protocol have been ratified and entered into force, make sure that Parliament adopts national legislation that corresponds to the provisions found in the international treaties.
- ❑ If necessary, take advantage of parliamentary procedure to make sure that the government sends draft legislation, or amendments to existing legislation, to Parliament within a reasonable time.
- ❑ In particular, make sure that immigration, nationality, and penal codes are compatible with the norms of international refugee law.

As required, call on outside expertise and on the advice of UNHCR

- ❑ As required, call on national and international refugee law experts for their opinions.
- ❑ Legislation implementing the Refugee Convention and Protocol will vary depending on the national legal tradition, domestic circumstances and the extent to which refugees and asylum-seekers are already protected in other areas of national law. UNHCR provides assistance in this area, upon request, on a country-by-country basis. The agency can provide information, advice and guidelines to parliamentarians or members of their staff.
- ❑ The UNHCR field office located in, or responsible for, the State concerned is knowledgeable about local and regional conditions as well as international standards and can serve as the parliamentarians' primary interlocutor, with back-up from UNHCR's Department of International Protection (see Annex 3 for a list of UNHCR field offices). ■

Basic elements of national refugee legislation

As an introduction to the process of drafting national refugee protection legislation, parliamentarians may wish to consider the following elements based on the indicated international law and standards.

Non-discrimination

Art. 3 Refugee Convention; Art. IV OAU Convention; Art. 2 Universal Declaration of Human Rights

- ❑ Preliminary provisions should contain a general guarantee that the legislation will be applied without discrimination as to race, religion, nationality, membership of a particular social group, political opinions, or country of origin to all persons recognized as refugees.
- ❑ The definition of an asylum-seeker should include any individual who expresses a wish for asylum, regardless of whether a formal application has been submitted.

Refugee Criteria

Art. 1 A and B Refugee Convention; Paragraph 6A and B Statute of UNHCR; Art. 1 (1) (2) and (3) OAU Convention

- ❑ For States Parties to the Refugee Convention/Protocol, the refugee criteria must, at least, accord with the treaty definition. For States Parties to the OAU Convention, the expanded definition found in that Convention should be used.
- ❑ UNHCR encourages all States to consider adopting the broader definition as found in the OAU Convention and the Cartagena Declaration.
- ❑ The international community has not yet arrived at a consensus that would bind States in their response to people who meet the expanded definition of refugee. Thus, the responsibilities given to UNHCR by the UN General Assembly over the years have not been matched by obligations assumed by States. This means that the protection of such people is based on State discretion, rather than on international law.



- ❑ Until such time as there is an international consensus, and as one way of supporting its development, parliamentarians may wish to consider including in their national legislation protection for people fleeing from armed conflicts, following the examples of the OAU Convention and the Cartagena Declaration.
- ❑ The clauses that exclude certain categories of refugees from international protection also form part of the refugee criteria. The exclusion clauses are Art. 1 D, E and F of the Refugee Convention, and Art. 1 (5) of the OAU Convention. Since the exclusion clauses in the 1951 Convention are exhaustively enumerated, national legislation should neither vary nor add to those clauses.
- ❑ The clauses that set forth conditions for ending refugee status also form part of the criteria. The cessation clauses are Article 1C of the Refugee Convention and Article 1 (4) of the OAU Convention. Since the cessation clauses are exhaustively enumerated, national legislation should neither vary nor add to them.

Procedures for refugee status determination

- ❑ Status determination is key to protection, yet procedures are not specified in the Refugee Convention.
- ❑ A rich body of experience in applying the refugee definition has been accumulated by many countries as well as by UNHCR. However, this is also an area where national legal structures, resources and needs have a great impact.
- ❑ On the international level, UNHCR's Executive Committee has recommended certain **minimum requirements** for status determination procedures (see Chapter 3).

Non-refoulement and expulsion of refugees

Arts. 32 and 33 Refugee Convention; Art. II (3) OAU Convention; UNHCR's Executive Committee Conclusion No. 6 (XXVIII); UNHCR's Executive Committee Conclusion No. 7 (XXVIII)

- ❑ National law should explicitly protect refugees and asylum-seekers from return, in any manner whatsoever, to the frontiers of territories where their lives or freedom would be threatened because of their race, religion, nationality, membership of a particular social group, or political opinion.



- ❑ This principle of *non-refoulement* is codified in Art. 33 of the Refugee Convention. The same Article also contains an important exception: that the benefit of *non-refoulement* may not be claimed by a refugee if there are reasonable grounds for regarding that individual as a danger to the security of the country in which he/she is living; or, that having been convicted of a particularly serious crime, that individual constitutes a danger to the community.
- ❑ States Parties to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatments*, the *International Covenant on Civil and Political Rights* or to various regional human rights instruments have different and additional obligations concerning the principle of *non-refoulement*. Parliamentarians in these countries may wish to consider **consolidating these protections into one piece of legislation**.
- ❑ The legislation should also provide that a refugee lawfully in the country may be expelled only on grounds of national security or public order, and is entitled to certain procedural safeguards before such expulsion.

Illegal entry and detention

Art. 31 Refugee Convention; UNHCR's Executive Committee Conclusion No. 44 (XXXVII); UNHCR Guidelines on Detention of Asylum-Seekers

- ❑ Refugees and asylum-seekers who enter, or are present in, a country illegally should not be subject to penalties provided they report without delay to the appropriate authorities and show good cause (see Chapter 5).

Identity and travel documents

Arts. 27 and 28 Refugee Convention, with Schedule and Annex; Art. VI OAU Convention; Executive Committee Conclusion No. 35 (XXXV); Executive Committee Conclusion No. 49 (XXXVIII)

- ❑ Legislation should provide for the issuance of identity documents to recognized refugees and travel documents to refugees staying lawfully in the country.
- ❑ The issuance of a travel document does not imply the granting of nationality to a refugee. However, such documents are of particular importance to refugees in facilitating travel to other countries, whether for purposes of study, employment, health or resettlement.
- ❑ Assistance may be sought from the local UNHCR office.



Reception facilities and assistance

- ❑ Subject to resources available in the country, assistance may be provided to asylum applicants who are considered to be in need, pending the final outcome of their asylum application.
- ❑ Assistance, which can be provided by a competent NGO, may include:
 - Basic necessities and social benefits, if applicable
 - Advice on filing and presentation of the refugee claim and on administrative matters
 - Social counseling
 - Legal aid

Other rights and obligations of refugees

(Chapters II, III, IV and V Refugee Convention)

- ❑ The following rights should be granted in accordance with the standards applicable to nationals:
 - Religious practice and religious education: no reservations permitted
 - Public elementary education
 - Public relief, social security and labor laws
 - Access to courts (no reservations permitted)
 - Legal assistance
 - Patent rights
- ❑ The Convention also deals with a variety of matters that have an important effect on a refugee's daily life, such as:
 - Acquisition of movable and immovable property (Article 13)
 - Gainful employment (Articles 17, 18 and 19)
 - Housing (Article 21)
 - Public relief (Article 23)
 - Labor legislation and social security (Article 24)
- ❑ Every refugee has duties to the country of his/her refuge and must comply with the existing laws and regulations as well as with measures taken by the authorities to maintain public order (Article 2).

Role of UNHCR

Art. 35 Refugee Convention; Art. VIII OAU Convention

- ❑ There should be specific provisions for cooperation with UNHCR and facilitation of its supervisory role, including by providing information and statistical data on the condition of refugees in the country, on the implementation of the relevant international refugee treaties, and on any laws, regulations and decrees related to refugees. →

Confidentiality

- ❑ The confidentiality of personal information related to asylum-seekers and refugees must be safeguarded.
- ❑ Disclosure of any such personal information to outside parties should always be subject to the consent of the refugee or asylum-seeker concerned.

Human Rights

- ❑ It is important to ensure that there are no provisions in the legislation that allow any authority to undertake any act concerning refugees or asylum-seekers that may amount to a violation of any of their basic rights and fundamental freedoms under general international human rights law. ■

Chapter 7

Funding

The international obligation not to return refugees to danger is absolute, and applies to all countries regardless of their level of economic development. Meeting the life-saving needs of refugees, setting up fair and efficient asylum procedures, helping refugees return home or integrate in host communities all have a financial cost, met by receiving States, as well as by the international community in a spirit of international solidarity. Needs, however, far outstrip resources. Since parliamentarians play a key role in budgetary appropriations, the effectiveness of their government's refugee and asylum policies, and of the international refugee protection system, depends on their commitment to funding them.

Budgeting for Refugee Protection at the National Level

Much of what is spent on protecting and assisting refugees is difficult to calculate in monetary terms. Governments that host refugees are contributing in a very concrete way to refugee protection, for instance by making land available for refugee camps and settlements and providing the local infrastructure to serve the refugee population. Although it is difficult to quantify this type of contribution, host governments are also donor governments and should be recognized and acknowledged as such. Other governments may offer support in cash or in kind to countries hosting refugees. Sometimes, they offer resettlement spaces. These are all critical to international solidarity and to sharing the responsibility for refugee protection.

“The Inter-Parliamentary Council ... urges all parliaments to ensure that the need for providing adequate financial resources to national institutions and the Office of the United Nations High Commissioner for Refugees is explicitly addressed when parliament examines and adopts the national budget”

Council of the IPU, April 2001

Parliamentarians should urge their government to plan for and fund institutions, procedures, and programs, within the limits of their available resources, to meet the needs of asylum-seekers and refugees. UNHCR advises governments seeking to build their capacity to respond to refugees, and supports such activities directly or assists the government in seeking other sources of funding.

Priorities will vary from place to place, but most countries need to have a system

in place for receiving asylum-seekers and meeting their basic needs. Governments also need an entity charged with responsibility for refugee matters, e.g., a body that conducts refugee status determination. Drawing on its 50 years of experience throughout the world, UNHCR can advise on cost-efficient structures and procedures that are responsive to local conditions.

Contributing to UNHCR

International assistance to refugees is channelled through UNHCR, through NGOs, and bilaterally. UNHCR is one of the few UN agencies that depends almost entirely on voluntary contributions to finance its operations. Less than two per cent of UNHCR's annual budget comes from the United Nations; the rest is contributed by States, individuals and the private sector.

➤ UNHCR's Budget

As the number of persons of concern to UNHCR jumped to a high of 27 million in 1995, its budget rose accordingly, from US\$544 million in 1990 to more than US\$1 billion for most of the 1990s. UNHCR's revised budget for 2001 stands at US\$ 852.9 million.

UNHCR's Annual Program Budget provides governments and others with a transparent and comprehensive picture of all of UNHCR's protection and assistance operations while also giving UNHCR flexibility in managing its financial resources when unforeseen needs arise during the year.

➤ Voluntary contributions

Although UNHCR receives contributions from a large number of governments, inter-governmental organizations, NGOs, and individuals, most of its funding is provided by just 15 donors: 14 governments and the European Commission. From 1995 through 2000, these 15 donors provided over 95 per cent of UNHCR's total funds. To reduce the vulnerability inherent in relying on such a narrow donor base, UNHCR is constantly seeking ways to enlarge its circle of donors. Focusing on countries with emerging economies, UNHCR hopes to develop a wider and more geographically representative donor base.

UNHCR also receives financial support from the private sector, including the general public, corporations, foundations and NGOs. In response to fund-raising efforts in a number of countries during 1999, and especially to emergency appeals for operations in Kosovo and East Timor, UNHCR received more than US\$ 15 million from the private sector in 2000. Funds were raised primarily in

Europe (France, Germany, Italy, Spain and the United Kingdom), the United States of America and Japan.

NGOs contribute to UNHCR's annual budget by making public appeals on behalf of UNHCR for a number of operations. Some NGOs are specifically dedicated to raising funds for UNHCR, such as España con ACNUR, USA for UNHCR, UK for UNHCR (Refaid) and Action Refugiés. In recent years, contributions from the private sector and NGOs have increased as a result of a concerted effort to raise public awareness via radio, television, the press and other media outlets.

➤ The need for predictable and flexible funding

It is by no means guaranteed that UNHCR will receive all the funding needed to support its planned activities. In fiscal year 2000, for example, UNCHR suffered a budget shortfall of US\$89 million. When money is short, important programs, such as children's education and self-sufficiency projects, must be curtailed or cut. To add to this uncertainty, the level of media interest and with that, international support varies from situation to situation. UNHCR has found it more difficult to raise funds for longstanding refugee populations, which are often forgotten by the media, than for the refugee emergencies that attract sudden and sweeping media attention.

Major contributors to UNHCR (2000, in \$US million)	
United States of America	245.2
Japan	99.9
The Netherlands	48.0
Sweden	42.0
European Commission	41.0
Norway	41.0
Denmark	37.0
United Kingdom	31.0
Canada	17.0
Germany	15.0
Switzerland	15.0
Australia	11.0
Finland	11.0
Italy	11.0
Total	665.1

Numbers have been rounded off ■

While the quantity of funding is important, so is its quality: its predictability, flexibility and promptness. Too often, UNHCR must begin operations not knowing when it can expect to receive funding, or how much it will receive, or whether the funding will come with restrictions attached. When donors attach specific conditions to the use of their funds (earmarking), they limit UNHCR's independence and weaken its coordinating role.

Early and predictable financial support helps UNHCR plan its operations; flexible funding allows UNHCR to use its financial resources efficiently. UNHCR

encourages donors *not* to earmark their contributions. If contributions must be earmarked, it is preferable that they are broadly earmarked. That allows the High Commissioner to redirect funds when new needs arise or when refugee crises are resolved, thereby providing the quick response that governments, the public and the refugees expect.

➤ Contributions in kind

Contributions in kind, in the form of goods or services such as tents, medicines, tools, trucks, air transportation, logistics and specialized personnel, complement UNHCR's resources, especially in large or complex emergencies. These contributions must be appropriate to the particular operation to which they are directed.

Paying for a refugee emergency

The initial funding for project and operations delivery and administrative support during an emergency is likely to be allocated from UNHCR's Operational Reserve. However, since the organization is funded almost entirely by voluntary contributions, UNHCR relies on the donor community to respond quickly to refugee emergencies.

UNHCR, working with the country of asylum, establishes a donor-relations strategy in the first days of an emergency and maintains it for the duration of the operation. Emergency needs, progress and constraints are clearly communicated to donors, primarily through emergency appeals, which are issued by UNHCR Headquarters after consultation with its field offices and the country of asylum. Regular briefings keep donors up-to-date on the progress of the operation.

“The Conference recommends that international financial bodies accord generous terms to countries which take in substantial numbers of refugees.”

99th Conference of the Inter-Parliamentary Union, April 1998

□ **What can parliamentarians do?**

Parliamentarians can support national budgetary allocations to establish fair and efficient asylum procedures, meet basic reception needs, including health and education, and support activities to find solutions either through voluntary repatriation or local integration.

UNHCR's programs are dependent on voluntary contributions. Parliamentarians in countries that do not yet contribute to UNHCR can encourage their government to do so.

If a country is already a donor, parliamentarians can consider increasing the amount of the contribution to ensure that UNHCR will be able to continue protecting refugees both in ongoing situations and whenever and wherever a new refugee crisis arises.

“The Conference appeals to donor countries to promote reconstruction in conflict regions and the integration of returning refugees by providing generous assistance in order to safeguard the physical, social, legal and material security of former refugees and displaced persons:”

99th Conference of the Inter-Parliamentary Union, April 1998

Annex 1

**Model Instruments
of Accession and Succession**

➤ **Model Instrument of Accession to the Convention
Relating to the Status of Refugees of 1951**

WHEREAS a Convention Relating to the Status of Refugees was adopted by the General Assembly of the United Nations on the 28th day of July, one thousand, nine hundred and fifty-one, and is open for accession pursuant to Article 39 thereof;

AND WHEREAS, it is provided in section 3 of the said Article 39 that accession thereto shall be affected by deposit of an instrument with the Secretary General of the United Nations:

NOW THEREFORE, the undersigned, [Title of Head of State, or Head of Government or of Foreign Minister] hereby notifies the accession of the [State concerned] considers itself bound by alternative (b) of Article 1B (1) thereof, that is to say "events occurring in Europe or elsewhere before 1 January 1951".

GIVEN under my hand in (day, month, year)

[Public Seal
and Signature of custodian
if Appropriate]

[Signature of Head of State
or of Head of Government
or of Foreign Minister]

➤ **Model Instrument of Accession to the Protocol
Relating to the Status of Refugees of 1967**

WHEREAS a Protocol Relating to the Status of Refugees was adopted by the General Assembly of the United Nations on the 16th day of December one thousand, nine hundred and sixty six, and is open for accession pursuant to Article V thereof;

AND WHEREAS, it is provided in Article V that accession thereto shall be affected by deposit of an instrument with the secretary General of the United Nations;

NOW THEREFORE, the [Title of Head of State, or Head of Government or of Foreign Minister] hereby notifies the accession of the [State concerned] to the said Protocol,

GIVEN under my hand in (day, month, year)

[Public Seal
and Signature of custodian
if Appropriate]

[Signature of Head of State
or of Head of Government
or of Foreign Minister]

➤ **Model Instrument of Succession to the Convention
Relating to the Status of Refugees of 1951**

WHEREAS the Convention Relating to the Status of Refugees, done at Geneva on July 28 1951, was ratified by [Former State Party]

AND WHEREAS, the Government of [Successor State] has examined the said Convention;

THE GOVERNMENT of [Successor State] declare that they regard the said Convention as continuing in force for [Successor State] and hereby succeed to the same;

NOW THEREFORE, the undersigned, [Title of Head of State, or Head of Government or of Foreign Minister] hereby notifies the succession of the [Successor State] to the said Convention, and declares that [Successor State] considers itself bound by alternative (b) of Article 1b(1) thereof, that is to say "events occurring in Europe or elsewhere before 1 January 1951".

GIVEN under my hand in (day, month, year)

[Public Seal
and Signature of custodian
if Appropriate]

[Signature of Head of State
or of Head of Government
or of Foreign Minister]

➤ **Model Instrument of Succession to the Protocol
Relating to the Status of Refugees of 1967**

WHEREAS the Protocol Relating to the Status of Refugees, done at New York on January 31 1967, was ratified by [Former State Party]

AND WHEREAS, the Government of [Successor State] has examined the said Protocol;

THE GOVERNMENT of [Successor State] declare that they regard the said Protocol as continuing in force for [Successor State] and hereby succeed to the same;

NOW THEREFORE, the undersigned, [Title of Head of State, or of Head of Government or of Foreign Minister] hereby notifies the succession of the [Successor State] to the Protocol relating to the Status of Refugees, done at New York on 31 January 1967.

GIVEN under my hand in (day, month, year)

[Public Seal
and Signature of custodian
if Appropriate]

[Signature of Head of State
or of Head of Government
or of Foreign Minister]

Annex 2

**Glossary of Key
Protection-related Terms**

Amnesty	A legal guarantee that exempts a person or group of persons from liability for criminal or political offenses. An amnesty can help promote the voluntary repatriation of refugees when it is respected and properly applied.
Assistance	Aid provided to address the physical and material needs of persons of concern. This may include food items, medical supplies, clothing, shelter, seeds and tools, as well as the provision of infrastructure, such as schools and roads. "Humanitarian assistance" refers to assistance provided by humanitarian organizations for humanitarian purposes (i.e., non-political, non-commercial, and non-military purposes). In UNHCR practice, assistance supports and complements the achievement of protection objectives.
Asylum	The grant, by a State, of protection on its territory to persons from another State who are fleeing persecution or serious danger. A person who is granted asylum is a refugee. Asylum encompasses a variety of elements, including <i>non-refoulement</i> , permission to remain on the territory of the asylum country, and humane standards of treatment.
Asylum-seeker	A person whose request or application for asylum has not been finally decided on by a prospective country of refuge.
Cartagena Declaration on Refugees	A Declaration adopted by a colloquium of experts from the Americas in November 1984. The Declaration enlarges the definition of refugee to include "...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". While the Cartagena Declaration is not a treaty, its provisions are respected across Central America and have been incorporated in some national laws.
Cessation clauses	Legal provisions that indicate when refugee status comes to an end. Cessation clauses are found in Article 1(C) of the 1951 Convention, and in Article 1 (4) of the 1969 OAU Convention.
Convention on the Reduction of Statelessness	A Convention that provides for the acquisition of nationality by those who would otherwise be stateless and who have an appropriate link with the State through birth on the territory or through descent from a national. The Convention also provides for the retention of nationality by those who would become stateless if they were to lose the State's nationality. The Convention was adopted in August 1961 and came into force in December 1975. UNHCR has been mandated with specific functions under Article 11 of the 1961 Convention on the Reduction of Statelessness.

Convention on the Rights of the Child (CRC)	A Convention of 1989 that sets comprehensive standards for the protection of the rights of children. Article 2 of the CRC states that the CRC applies to all children without discrimination of any kind. Refugee children are therefore covered by the standards set by the CRC.
Convention relating to the Status of Refugees	A Convention that establishes the most widely applicable framework for the protection of refugees. The Convention was adopted in July 1951 and entered into force in April 1954. Article 1 of the 1951 Convention limits its scope to "events occurring before 1 January 1951". This restriction is removed by the 1967 Protocol relating to the Status of Refugees. To date, there are 137 States who are parties to the 1951 Convention and/or the 1967 Protocol.
Convention relating to the Status of Stateless Persons	A Convention that provides the definition of a stateless person and establishes a framework by which a stateless person who is lawfully resident in a State can have legal status. The Convention was adopted in September 1954 and entered into force in June 1960.
Convention refugees	Persons recognized as refugees by States under the criteria in Article 1 A of the 1951 Convention, and entitled to the enjoyment of a variety of rights under that Convention.
Country of first asylum	A country in which an asylum-seeker has been granted international protection as an asylum-seeker or a refugee.
Customary international law	International laws that derive their authority from the constant and consistent practice of States, rather than from formal expression in a treaty or legal text. In order for State practice to contribute to the formation of customary international law, that practice should be conducted with a sense of legal obligation.
Derivative status	See family unity principle .
Detention	Restriction on freedom of movement, usually through enforced confinement. In UNHCR's view, detention should not normally be used as a measure to control asylum-seekers
Durable solutions	Any means by which the situation of refugees can be satisfactorily and permanently resolved to enable them to live normal lives. UNHCR traditionally pursues the durable solutions of voluntary repatriation, local integration and resettlement.
Duties of refugees	The obligations refugees must meet in the country of asylum. Under Article 2 of the 1951 Convention, refugees must conform to the laws and regulations of any country in which they find themselves. In particular, refugees must refrain from any acts that jeopardize the safety, security or public order of communities or countries of asylum.

Exclusion clauses	Legal provisions that deny the benefits of international protection to persons who would otherwise satisfy the criteria for refugee status. In the 1951 Convention, the exclusion clauses are found in Articles 1D, 1E and 1F. These clauses apply to the following categories: persons who are receiving protection or assistance from UN agencies other than UNHCR; persons who possess the rights and obligations attached to the possession of nationality of their country of residence; and persons in respect of whom there are serious reasons for considering that they have committed a crime against peace, a war crime, a crime against humanity, a serious non-political crime, or acts contrary to the purposes and principles of the United Nations.
Executive Committee of the High Commissioner's Programme (ExCom)	A Committee charged with advising the High Commissioner on the exercise of her functions. ExCom is composed of representatives of 57 States with a demonstrated interest in refugee issues, and XX States with observer status. NGOs have observer status in the Executive Committee
Executive Committee Conclusions on International Protection	Formal texts that embody the results of ExCom's annual deliberations on questions of refugee protection. ExCom conclusions contribute to the elaboration of principles and standards for the protection of refugees and other persons of concern to UNHCR.
Expulsion	Removal of a lawful resident from the territory of a State by government authorities. Under Article 32 of the 1951 Convention, national security and public order are the only permissible grounds for the expulsion of a refugee. The procedures by which a decision for expulsion is reached should be fair and just, and the refugee should be allowed a reasonable time to seek admission into another country.
Family unity principle	A principle that gives effect to the protection of the family as the natural and fundamental group unit of society. Under this principle, refugee status may be granted to the spouse and dependents of a person who meets the refugee criteria. When spouses and dependents acquire refugee status by application of the family unity principle, they are said to enjoy "derivative status".
Family reunification	Any process by which the family unity principle may be implemented. It has a special application in the context of durable solutions, in general, and resettlement, in particular.
Gender-related persecution	Persecution that targets or disproportionately affects a particular gender. Under certain factual circumstances, gender-related persecution may come within the refugee definition.

Group determination of refugee status

A practice by which all persons forming part of a large-scale influx are regarded as refugees on a *prima facie* basis. Group determination ensures that protection and assistance needs are met without prior individual status determination.

Guiding Principles on Internal Displacement

A series of principles that articulate standards for protection, assistance and solutions for internally displaced persons. The Guiding Principles were presented to the Commission on Human Rights by the Representative of the Secretary General for Internally Displaced Persons in April 1998. They reflect and are consistent with human rights law, humanitarian law and refugee law, and provide guidance to States, other authorities, intergovernmental, and non-governmental organizations faced with issues of internal displacement.

Human rights

Agreed international standards that recognize and protect the dignity and integrity of every individual, without any distinction. Human rights form part of customary international law and are stipulated in a variety of national, regional and international legal documents generally referred to as human rights instruments. The most prominent of these are the United Nations Charter, and the UN Bill of Rights (made up of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic and Social Rights).

Human rights law

The body of customary international law, human rights instruments and national law that recognizes and protects human rights. Refugee law and human rights law complement each other.

Humanitarian (status) cases

Persons who are formally permitted, under national law, to reside in a country on humanitarian grounds. These may include persons who do not qualify for refugee status.

Income-generating projects

Projects designed to create income for persons of concern to UNHCR, and thus help them become self-supporting.

Intergovernmental organisation (IGO)

An organization made up of States members. Examples include the United Nations Organization (UN), the Organization of African Unity (OAU), the Organization of American States (OAS), the European Union (EU), and the Commonwealth of Independent States (CIS).

Internal displacement

Involuntary movement of people inside their own country. This movement may be due to a variety of causes, including natural or human-made disasters, armed conflict, or situations of generalized violence.

Internally displaced persons

Those persons forced or obliged to flee from their homes, "...in particular as a result of or in order to avoid the effects of armed conflicts, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border" (according to the *Guiding Principles on Internal Displacement*).

Internal disturbance

A situation characterized by acts of violence and disorder, but that falls short of armed conflict.

Internal flight alternative (or the "relocation principle")

A factual determination that an asylum-seeker could have avoided persecution in his country of origin by relocating to another part of the same country. This term is not favored by UNHCR as it is often used to limit access to status determination procedures or to deny refugee status. UNHCR's position is that the possibility of internal relocation is relevant to status determination only in certain limited cases. Even when it is relevant, its application will depend on a full consideration of all aspects of the refugee claim.

International humanitarian law (or the law of armed conflict)

The body of law, regulations and principles that governs situations of international or non-international armed conflict. The core instruments of international humanitarian law are the four Geneva Conventions of 12 August 1949 and their two Additional Protocols of 8 June 1977. Virtually every State is a party to the Geneva Conventions of 1949.

International protection of refugees

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.

Irregular movement of refugees

The phenomenon of refugees or asylum-seekers moving without formal authorization from countries in which they have already found protection, in order to seek asylum or permanent settlement in another country.

Local integration

A durable solution to the problem of refugees that involves their permanent settlement in a country of first asylum.

Mandate refugees	Persons who are recognized as refugees by UNHCR acting under the authority of its Statute and relevant UN General Assembly resolutions. Mandate status is especially significant in States that are not parties to the 1951 Convention or its 1967 Protocol.
Migrants (economic)	Persons who leave their countries of origin purely for economic reasons not in any way related to the refugee definition, or in order to seek material improvements in their livelihood. Economic migrants do not fall within the criteria for refugee status and are therefore not entitled to benefit from international protection as refugees.
Minors	Persons who are below the legal age of majority and are therefore not legally independent. This term includes adolescents. Under the Convention on the Rights of the Child (CRC), a "child" is a person who is below the age of eighteen, unless the applicable law sets a lower age. The CRC equates "child" with "minor".
National	A person recognized as having the status of a legal bond with a State as provided for under law. Some States use the word "nationality" to refer to this legal bond, while other States use the word "citizenship".
Nationality	The status of being a citizen of a particular nation or country.
Non-governmental organization (NGO)	An organized entity that is functionally independent of, and does not represent, a government or State. This term is normally applied to organizations devoted to humanitarian and human rights causes, many of which implement their refugee-related programs in partnership with UNHCR and other agencies.
Non-refoulement	A core principle of refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. The principle of <i>non-refoulement</i> is a part of customary international law and is therefore binding on all States, whether or not they are parties to the 1951 Convention.
OAU (Organization of African Unity) Convention Governing the Specific Aspects of Refugee Problems in Africa	The regional complement to the 1951 Convention whose refugee definition is broader than that provided in the 1951 Convention. Adopted in 1969, the OAU Convention provides that "the term 'refugee' applies to those fleeing from external aggression, occupation, foreign domination or events seriously disturbing public order in either part or whole of the country of origin".

Partnership in Action (PARinAC)

A framework intended to enhance partnership between NGOs and UNHCR and to improve protection and solutions for refugees and others of concern to UNHCR.

Particular social group (membership of a...)

One of five possible grounds on which persecution may be established under the 1951 Convention. A particular social group would have distinct characteristics that set the group apart. Persons belonging to the group would share defining characteristics that may be innate or acquired (for example, interests, values, behavior, or backgrounds). The defining characteristics would be such that relinquishing them would entail violating the basic human rights of the individuals concerned.

Persecution

Generally refers to any severe violation of human rights. In the refugee context, "persecution" refers to any act by which fundamental rights are severely violated for reasons of race, religion, nationality, political opinion or membership of a particular social group.

Persons of concern to UNHCR

A generic term used to describe all persons whose protection and assistance needs are of interest to UNHCR. These include refugees under the 1951 Convention, persons who have been forced to leave their countries as a result of conflict or events seriously disturbing public order, returnees, stateless persons, and, in some situations, internally displaced persons. UNHCR's authority to act on behalf of persons of concern other than refugees is based on General Assembly resolutions.

Prima facie determination of refugee status Reception center

See **group determination of refugee status**.

A location with facilities for receiving, processing and attending to the immediate needs of refugees as they arrive in a country of asylum.

Refoulement

The removal of a person to a territory where she/he would be at risk of being persecuted, or of being moved to another territory where she/he would face persecution. *Refoulement* constitutes a violation of the principle of *non-refoulement*, and is therefore a breach of refugee law and of customary international law.

Refugee centers

Locations where refugees reside or may gather to receive information, counselling, material assistance or other services.

Refugee law

The body of customary international law and various international, regional, and national instruments that establish standards for refugee protection. The cornerstone of refugee law is the 1951 Convention on the Status of Refugees.

Refugee status determination procedures	Legal and administrative procedures undertaken by UNHCR and/or States to determine whether an individual should be recognized as a refugee in accordance with national and international law.
Refugees <i>sur place</i>	Persons who were not refugees when they left their countries of origin, but who become refugees at a later date, owing to intervening events. Refugees <i>sur place</i> may owe their fear of persecution to a change in the country of origin, such as through a <i>coup d'Etat</i> , or to <i>bona fide</i> political activities undertaken in the country of refuge.
Regional refugee instruments	International legal documents relating to refugees that are adopted by States or intergovernmental organizations within a geographical region or sub-region. Such instruments normally complement the 1951 Convention and reflect the peculiar character of refugee issues within the particular geographical area. Notable examples of regional instruments are the OAU Convention of 1969 and the Cartagena Declaration of 1984.
Reintegration	The process by which refugees resume a normal life in their country of origin. Ideally, reintegration should follow from the durable solution of voluntary repatriation.
Rejection at the border	In the refugee context, the refusal to allow an asylum-seeker entry into a prospective country of asylum. Rejection at the border may result in a violation of the principle of <i>non-refoulement</i> .
Resettlement	The transfer of refugees from the country in which they have sought refuge to another State that has agreed to admit them. The refugees will usually be granted asylum or some other form of long-term resident rights and, in many cases, will have the opportunity to become naturalized citizens. For this reason, resettlement is a durable solution as well as a tool for the protection of refugees.
Resettlement country	A country that offers opportunities for the permanent settlement of refugees. This would be a country other than the country of origin or the country in which refugee status was first recognized.
Resettlement selection criteria	Criteria by which UNHCR and resettlement countries select candidates for resettlement. Resettlement under the auspices of UNHCR is strictly limited to mandate refugees who have a continued need for international protection and who meet the criteria of the UNHCR Resettlement Handbook. Individual countries use a wide range of resettlement criteria.

Safe areas/safety zones	Areas, zones, or locations established to protect civilians during a time of conflict. The terms and conditions of establishing safety zones are governed by the law of armed conflict.
Safe third country	A country in which an asylum-seeker could have found protection as a refugee, and in which he/she has been physically present prior to arriving in the country in which she/he is applying for asylum.
Self-help organizations and projects	Organizations and projects initiated, created and managed by refugees and other persons of concern for their own benefit.
Social group	See particular social group .
Standards of treatment	Standards derived from the 1951 Refugee Convention and other international instruments that set the parameters for the treatment of refugees. The 1951 Convention provides for various standards of treatment, depending on the particular rights in question. These are: treatment not less favorable than that generally accorded to aliens in similar circumstances; the most favorable treatment accorded to nationals of a foreign country in the same circumstances; the same treatment as is granted to nationals; and treatment as favorable as possible.
Stateless person	A person who is not considered a national by any State under the operation of its law.
Statelessness	The condition of not being considered as a national by any State under the operation of its law.
Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR Statute)	The document that established UNHCR's mandate, functions and structure and provides the criteria by which persons may come within the competence of UNHCR. Such persons may be recognized as "mandate refugees" by UNHCR acting under the authority of its Statute.
Statutory refugees	Persons considered refugees under the provisions of the international instruments that were in force before the 1951 Refugee Convention.
Temporary protection	An arrangement or device developed by States to offer protection of a temporary nature to persons arriving <i>en masse</i> from situations of conflict or generalized violence, without prior individual status determination. Temporary protection was applied in some Western European States for the protection of persons fleeing the conflict in the former Yugoslavia in the early 1990s.

Tracing	In the refugee context, efforts to ascertain the whereabouts of family members or close associates of persons of concern to UNHCR. Tracing may be conducted for the purposes of family reunification, in the context of durable solutions, or simply to facilitate contacts between family members. The International Committee of the Red Cross (ICRC) runs a Central Tracing Agency that has special competence in this area.
Treaty	A formal agreement, principally between States, that creates binding legal obligations between its parties. Treaties are one source of international law.
Unaccompanied minors	Persons below the legal age of majority who are not in the company of parents, guardians or primary care-givers.
UNHCR mandate	The role and functions of UNHCR as set forth in the UNHCR Statute and as elaborated in resolutions of the United Nations General Assembly. UNHCR's mandate under its Statute is to pursue protection, assistance and solutions for refugees. UNHCR has an additional mandate concerning issues of statelessness, as it is given a designated role under Article 11 of the 1961 Convention on the Reduction of Statelessness. The Office has also been requested by the General Assembly to promote the 1954 and 1961 statelessness Conventions, and to help prevent statelessness by providing to States technical and advisory services on nationality legislation and practice.
Voluntary repatriation	Return to the country of origin based on the refugees' free and informed decision. Voluntary repatriation may be <i>organized</i> , (i.e., when it takes place under the auspices of the concerned governments and UNHCR), or <i>spontaneous</i> (i.e., the refugees return by their own means with UNHCR and governments having little or no direct involvement in the process of return).
Well-founded fear of persecution	A key phrase in the 1951 Convention's definition of a refugee. This phrase contains a subjective element (fear of persecution) as well as an objective element (the fear must have an objectively justifiable basis). According to the 1951 Convention, persecution must be linked to any one of the five specified grounds: race, religion, nationality, membership of a particular social group, and political opinion.
Women-at-risk	Female refugees with special protection needs, including those who require resettlement in accordance with the UNHCR Resettlement Handbook. ■

Annex 3

**UNHCR Offices
Around the World**

AFGHANISTAN

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For Further Information

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A Few Words About...

➤ UNHCR

UNHCR, the United Nations refugee organization, is mandated by the United Nations to lead and coordinate international action for the world-wide protection of refugees and the resolution of refugee problems.

UNHCR's primary purpose is to safeguard the rights and well-being of refugees. UNHCR strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, and to return home voluntarily. By assisting refugees to return to their own country or to settle in another country, UNHCR also seeks lasting solutions to their plight.

UNHCR's efforts are mandated by the organization's Statute and guided by the 1951 *United Nations Convention relating to the Status of Refugees* and its 1967 Protocol.

UNHCR's Executive Committee and the UN General Assembly have also authorized the organization's involvement with other groups. These include people who are stateless or whose nationality is disputed and, in certain circumstances, internally displaced persons.

The organization seeks to reduce situations of forced displacement by encouraging states and other institutions to create conditions that are conducive to the protection of human rights and the peaceful resolution of disputes. In pursuit of the same objective, UNHCR seeks to consolidate the reintegration of returning

➤ The Inter-Parliamentary Union

Created in 1889, the Inter-Parliamentary Union is the international organization that brings together the representatives of Parliaments of sovereign States.

In September 2001, the Parliaments of 142 countries were represented.

The Inter-Parliamentary Union works for peace and co-operation among peoples with a view to strengthening representative institutions.

To that end, it:

- ◆ Fosters contacts, co-ordination and the exchange of experience among Parliaments and parliamentarians of all countries;
- ◆ considers questions of international interest and expresses its views on such issues with the aim of bringing about by Parliaments and their members;
- ◆ contributes to the defence and promotion of human rights, which are universal in scope and respect for which is an essential factor of parliamentary democracy and development;
- ◆ contributes to better knowledge of the working of representative institutions and to the strengthening and development of their means of action.

The Inter-Parliamentary Union shares the objectives of the United Nations, supports its efforts and works in close co-operation with it.

refugees in their country of origin, thereby averting the recurrence of refugee-producing situations.

UNHCR offers protection and assistance to refugees and others in an impartial manner, on the basis of their need and irrespective of their race, religion, political opinion or gender. In all of its activities, UNHCR pays particular attention to the needs of children and seeks to promote the equal rights of women and girls.

In its efforts to protect refugees and to promote solutions to their problems, UNHCR works in partnership with governments, regional organizations, international and non-governmental organizations.

UNHCR is committed to the principle of participation by consulting refugees on decisions that affect their lives. ■

It also co-operates with the regional inter-parliamentary organizations as well as with international, intergovernmental and non-governmental organizations which are motivated by the same ideals. ■



<http://www.ipu.org>

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