

SUMMARY CONCLUSIONS

UNHCR Expert Roundtable on the Right to Family Life and Family Unity in the Context of Family Reunification of Refugees and Other Persons In Need Of International Protection

4 December 2017, Brussels, Belgium

The Office of the United Nations High Commissioner for Refugees, UNHCR, convened an expert roundtable on the right to family life and family unity in the context of family reunification for refugees and other persons in need of international protection¹ on 4 December 2017 in Brussels, Belgium, as part of its project to develop Guidelines on the subject. The roundtable was organized with the support of the Odysseus Academic Network.²

The discussions at the expert roundtable were informed by a discussion paper and two comprehensive research papers.³ These documents and the roundtable build on earlier work on the right to family life and family unity undertaken in the context of UNHCR's Global Consultations on International Protection in 2001.⁴

Thirty experts from fifteen countries participated in the expert roundtable. They came from governments, NGOs, academia, the judiciary and the legal profession, as well as UNHCR. These Summary Conclusions do not necessarily represent the views of individual participants or of UNHCR, but reflect broadly the themes that were discussed at the expert roundtable, and understandings emerging from these discussions, informed by the background documents.

¹ In some jurisdictions, individuals who do not meet the refugee definition under international refugee law but who are nevertheless in need of international protection are granted so-called complementary or subsidiary forms of protection. Such persons are also referred to as 'other persons in need of international protection'. For the purpose of these Summary Conclusion, the term 'refugee' shall also include other persons in need of international protection. See further, UNHCR, Executive Committee, (hereafter "ExCom"), *Conclusion on the Provision of International Protection Including through Complementary Forms of Protection No. 103 (LVI) - 2005*, para. (i), available at: <http://www.refworld.org/docid/43576e292.html> and UNHCR, *Persons in need of international protection*, June 2017, available at: <http://www.refworld.org/docid/596787734.html>.

² The Odysseus Academic Network is an European network of legal academics specialising in immigration, asylum and refugee law. See further: <http://odysseus-network.eu/>.

³ UNHCR, *Discussion paper prepared for the Expert Roundtable on the Right to Family Life and Family Unity in the Context of Family Reunification*, 4 December 2017, available at: <http://www.refworld.org/docid/5a902b084.html>. UNHCR, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied*, January 2018, 2nd edition, available at: <http://www.refworld.org/docid/5a9029f04.html>. UNHCR, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, January 2018, 2nd edition, available at: <http://www.refworld.org/docid/5a902a9b4.html>.

⁴ See UNHCR, *Summary Conclusions: Family Unity*, expert roundtable, Geneva, November 2001, available at: <http://www.refworld.org/docid/470a33bed.html>.

A. *Contextual background - The right to family life and family unity in international and regional law*

1. When refugees are separated from family members as a consequence of their flight, a prolonged separation can have devastating consequences on the well-being of the refugees and their families. The negative consequences impact on the refugees' ability to integrate in their country of asylum, become active contributors to the society, and rebuild their lives. Finding and being reunited with family members is often one of the most pressing concerns for asylum-seekers and refugees. Family reunification in the country of asylum is often the only way to ensure that the right to family life and family unity of refugees is respected.
2. Under international human rights law, the family is recognized as the fundamental group unit of society. The family must be protected by society and the state, which includes marriage of women and men of marriageable age, the establishment of a family, and the possibility for family members to live together.⁵ The only explicit right to family reunification in international human rights law is contained in the Convention on the Rights of the Child (hereafter "CRC").⁶ Article 10 of the CRC extends an express right to apply for family reunification to both children and parents. Although Article 10 does not require that an application for family reunification is approved, it provides that applications must be dealt with in a "positive, humane and expeditious manner" and must be determined in accordance with the obligations contained under Article 9(1), which provides a right for children to maintain relations and direct contact with their parents. Any decision involving family reunification will also engage Article 3, which requires that in all matters affecting the child, his or her best interests must be a primary consideration. This will require seeking and taking into account the child's views according to Article 12 of the CRC. The right to make an application for family reunification is an unqualified right, such that any absolute bar on family reunification will be in breach of the CRC.
3. Numerous provisions in regional human rights law reiterate and develop the right to family life and family unity.⁷ Interpretative guidance on the content of the right to

⁵ See *inter alia* UN General Assembly, (hereafter "UNGA"), *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), (hereafter "UDHR"), Art 16 (1) and (3), available at: <http://www.refworld.org/docid/3ae6b3712c.html>; UNGA, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, UNTS, vol. 993, p. 3, (hereafter "ICESCR"), Article 10(1), available at: <http://www.refworld.org/docid/3ae6b36c0.html>; UNGA, *International Covenant on Civil and Political Rights*, 16 December 1966, UNTS, vol. 999, p. 171, (hereafter "ICCPR"), Article 23(1), available at: <http://www.refworld.org/docid/3ae6b3aa0.html>. UN Human Rights Committee, *CCPR General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses*, 27 July 1990, available at: <http://www.refworld.org/docid/45139bd74.html>, para. 5.

⁶ *Convention on the Rights of the Child* (20 November 1989) 1577 UNTS 3, (hereafter "CRC"), <http://www.refworld.org/docid/3ae6b38f0.html>, Article 10.

⁷ See *inter alia*: Council of Europe, (hereafter "CoE") *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, (hereafter "ECHR"), Art. 8, available at: <http://www.refworld.org/docid/3ae6b3b04.html>; CoE, *European Social Charter (Revised)*, 3 May 1996, ETS 163, Art. 16, available at: <http://www.refworld.org/docid/3ae6b3678.html>; Organization of American States, *American Convention on Human Rights, "Pact of San Jose"*, Costa Rica, 22 November 1969, Art. 17, available at: <http://www.refworld.org/docid/3ae6b36510.html>; Organization of African Unity, *African Charter on Human and Peoples' Rights, "Banjul Charter"*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)), Art. 18,

family life and family unity has been provided in regional and national jurisprudence, as well as through the work of UN treaty bodies. Regarding the right to family reunification, the 1984 Cartagena Declaration acknowledges that the “reunification of families constitutes a fundamental principle in regard to refugees.”⁸ In the European Union (hereafter “EU”), the 2003 Directive on the Right to Family Reunification explicitly affirms a right to family reunification of third country nationals residing lawfully in the territory of the Member States, including refugees.⁹

4. In international refugee law, the 1951 Convention relating to the Status of Refugees (hereafter “1951 Convention”) does not specifically refer to the family. However, the Final Act of the Conference of Plenipotentiaries, at which the 1951 Convention was adopted, refers to “the unity of the family ... [as] an essential right of the refugee” and recommends that Governments “take the necessary measures for the protection of the refugee’s family, especially with a view to ensuring that the unity of the family is maintained”.¹⁰ As UNHCR has noted, this recommendation has been “observed by the majority of States, whether or not parties to the 1951 Convention or to the 1967 Protocol”.¹¹ The fundamental character of the right to family unity and to family reunification has been reiterated repeatedly in Conclusions adopted by the Member States of UNHCR’s Executive Committee (hereafter “ExCom”).¹² In addition, Article 34 of the 1951 Convention obliging States Parties “as far as possible to facilitate the assimilation and naturalization of refugees” could be relevant for family reunification. Since family reunification is a key element in the eventual integration (assimilation) of refugees, participants discussed whether this provision places a responsibility on States to facilitate such reunification, with a view to securing a comprehensive solution for refugees. In 2016, States reiterated the importance of family unity in the New York Declaration for Refugees and Migrants, including by committing themselves to considering flexible arrangements for family reunification as a complementary pathway for admission of refugees.¹³

available at: <http://www.refworld.org/docid/3ae6b3630.html>; Organization of African Unity, *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49 (1990), Arts. XXIII and XXV available at: <http://www.refworld.org/docid/3ae6b38c18.html>.

⁸ *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, available at: <http://www.refworld.org/docid/3ae6b36ec.html>.

⁹ European Union (hereafter “EU”): Council of the EU, *Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification*, 3 October 2003, OJ L 251/12-251/18; 3.10.2003, 2003/86/EC, (hereafter “Family Reunification Directive”), available at: <http://www.refworld.org/docid/3f8bb4a10.html>.

¹⁰ UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1, available at: <http://www.refworld.org/docid/40a8a7394.html>.

¹¹ UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, 1979, reissued December 2011, HCR/IP/4/ENG/REV.3, available at: <http://www.refworld.org/docid/4f33c8d92.html>, para. 182.

¹² See in particular, ExCom Conclusions on Family Reunion, No. 9 (XXVIII), 1997 and No. 24 (XXXII), 1981; ExCom Conclusion on Refugee Children and Adolescents, No. 84 (XLVIII), 1997; ExCom Conclusion on the Protection of the Refugee’s Family, No. 88 (L), 1999; and ExCom Conclusion on Local Integration, No. 104 (LVI), para (n), on the importance of family reunification in promoting integration. All ExCom Conclusions are compiled in UNHCR, *Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 (Conclusion No. 1 – 114)*, October 2017, HCR/IP/3/Eng/REV. 2017, available at: <http://www.refworld.org/docid/5a2ead6b4.html>.

¹³ See UNGA, *New York Declaration for Refugees and Migrants: Resolution adopted by the General Assembly*, 3 October 2016, A/RES/71/1, available at: <http://www.refworld.org/docid/57ceb74a4.html>, para. 79 and Annex 1, para 14(a).

5. In addition, the overarching principle of non-discrimination requires that similarly-situated individuals should enjoy the same rights and receive similar treatment.¹⁴ Any distinction, exclusion, restriction, preference or other differential treatment that is directly or indirectly based on the prohibited ground of discrimination, and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise of human rights on an equal footing constitutes discrimination, except where such distinctions can be objectively justified.¹⁵ There must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.¹⁶ This includes measures impacting upon individuals' right to family life and family unity, regardless of their immigration or other status.
6. Finally, a number of general legal principles apply to the proper handling and administration of applications for family reunification and underpin the enjoyment of the right to family unity and family reunification for refugees, other beneficiaries of international protection and their family members. These principles are embedded in international and regional human rights law, as well as in many domestic laws. They include the right to an effective remedy, as well as the requirement of good administration and transparency regarding both applicable regulations and the handling of applications.¹⁷
7. Decisions on family reunification should be made using a fair and efficient process. Participants agreed that the jurisprudence of the European Court of Human Rights (hereafter "ECtHR") requires that applications for family reunification of refugee families should be dealt with speedily, attentively and with special care, considering that the possession of refugee status is proof that the person concerned is in a vulnerable position.¹⁸

¹⁴ See for example, Article 2 in each of the UDHR, ICCPR, ICESCR, and UNGA, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, (hereafter "CEDAW") available at: <http://www.refworld.org/docid/3ae6b3970.html>.

¹⁵ Cf. UN Committee on Economic, Social and Cultural Rights (hereafter "CESCR"), General Comment No. 20: Non discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, para. 7, available at: <http://www.refworld.org/docid/4a60961f2.html>.

¹⁶ *Ibid.* para. 13. See also UNHCR, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied*, January 2018, 2nd edition, pp. 7 – 8, available at: <http://www.refworld.org/docid/5a9029f04.html>.

¹⁷ In the European context, see Appendix to *Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration, adopted by the Committee of Ministers on 20 June 2007*, available at: <http://www.refworld.org/docid/5a4cac754.html>; *Resolution (77) 31 on the Protection of the Individual in Relation to Acts of Administrative Authorities*, adopted by the Committee of Ministers on 28 September 1977, available at: <http://www.refworld.org/docid/5a4caf0a4.html>. See also: EU, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, available at: <http://www.refworld.org/docid/3ae6b3b70.html>. The Member States of the EU have an incumbent obligation to respect these rights when administrative measures are taken in the domestic context that fall within the scope of EU law, see EU: Court of Justice of the European Union, *Sophie Mukarubega v. Préfet de police, Préfet de la Seine-Saint-Denis*, 5 November 2014, C-166/13, para. 43 – 45, available at: <http://www.refworld.org/docid/5476e46a4.html>.

¹⁸ See e.g. *Mugenzi c. France*, Requête no 52701/09, CoE: European Court of Human Rights (hereafter "ECtHR"), 10 July 2014, para. 52, available at: <http://www.refworld.org/cases.ECHR.53be81784.html>, and *Tanda-Muzinga c. France*, Requête no 2260/10, CoE: ECtHR, 10 July 2014 (hereafter "Tanda-Muzinga") para 73, available at: <http://www.refworld.org/cases.ECHR.53be80094.html>.

8. There is no internationally agreed definition of the concept of family, and the interpretation of the concept varies among countries and regions.¹⁹ UN treaty bodies and the ExCom have, however, adopted a broad interpretation of the concept of family, and ExCom has called on States to apply liberal criteria in identifying family members who can be admitted, with a view to promote a comprehensive reunification of the refugee family.²⁰ The UNHCR *Handbook and Procedures and Criteria for Determining Refugee Status* defines family as including the refugee's spouse and minor children, at a minimum, and adds that "other dependants, such as aged parents of refugees, are normally considered if they are living in the same household."²¹ In its own operations, UNHCR uses a definition of family that presumes a relationship of social, emotional or economic dependency among close family members, while other family members are included if such dependency can be shown.²² For its part, the Human Rights Committee (hereafter "HRC") has affirmed in its General Comment No. 16 that the objectives of the International Covenant on Civil and Political Rights (hereafter "ICCPR") require that the term family "be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned."²³ In its General Comment No. 19, the HRC confirms that it is not possible to give the concept of family a standard definition as it may differ among regions and States. Further, the HRC explains that when a group of persons are regarded as a family under the legislation and practice of a State, they must be protected as a family under Article 23 of the ICCPR.²⁴

B. The definition of family

9. Agreeing that there is no universal definition of the concept of family, participants at the expert roundtable suggested that rather than limiting the notion of family to a set of pre-determined relations, the definition should be open and adaptable, inclusive and non-prescriptive. Close family members who are assumed to be dependent on each other - normally including spouses/partners and their minor children - would fall within the protected group of 'family'. In addition, other family

¹⁹ As noted by the Constitutional Court of South Africa, "families come in many shapes and sizes" and the definition changes as societies change, see *Dawood and Another v. Minister of Home Affairs and Others; Shalabi and Another v. Minister of Home Affairs and Others; Thomas and Another v. Minister of Home Affairs and Others*, CCT35/99 2000 (8) BCLR 837 (CC), South Africa: Constitutional Court, 2000, para. 31, available at: http://www.refworld.org/cases_ZAF_CC.58501f464.htm.

²⁰ ExCom Conclusion on Family Reunification No. 24 (XXXII), (1981), para. 5, available at: UNHCR, *Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 (Conclusion No. 1 – 114)*, October 2017, HCR/IP/3/Eng/REV. 2017, available at: <http://www.refworld.org/docid/5a2ead6b4.html>.

²¹ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, above fn. 11, para. 185.

²² See UNHCR, *UNHCR RSD Procedural Standards - Processing Claims Based on the Right to Family Unity*, 2016, available at: <http://www.refworld.org/docid/577e17944.html>.

²³ HRC, *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988, available at: <http://www.refworld.org/docid/453883f922.html>, para. 5.

²⁴ HRC, *CCPR General Comment No. 19: Article 23 (The Family) Protection of the family, the right to marriage and equality of the spouses*, above fn. para. 2. See also HRC, *CCPR General Comment No. 28: Article 3 (The equality of rights between men and women)*, 29 March 2000, CCPR/C/21/Rev.1/Add.10, available at: <http://www.refworld.org/docid/45139c9b4.html>, para. 27.

members would be accepted as falling within the family definition if it can be established that there exists a relationship of dependency.

10. The concept of dependency cannot be narrowly construed or limited to include only certain types of dependency. The determining factor would be the quality of the relationship and the quality of the professed dependency on each other. While state practice generally tends to focus on economic or financial dependency, some states adopt a more liberal definition, including also affectional, psychological, social, physical, or cultural ties of dependency. This allows for a definition that can evolve as society develops, and provides for an inclusive and rights-based definition of the concept of family.
11. While participants indicated that the burden of proof as to the credibility of the claim of dependency would rest on the applicant, they underlined that the state is nonetheless required to ensure that the assessment of dependency is undertaken with due regard to the principles of effectiveness and proportionality, with the focus being on granting family reunification to those persons so entitled. The fundamental right to family life should not be nullified by too strict an interpretation of the family definition.
12. In addition, participants thought that the family definition should include dependent family members, regardless of whether the family had been formed prior to or during flight. The reality of the modern refugee experience is protracted. Refugees can live for many years on the move, potentially on a continuous basis, before finding a comprehensive solution to their situation, and they may during that time form family relationships. Participants argued that according to European case law, families formed before the flight, as well as during displacement, have a right to family life and family unity in equal measure.²⁵
13. Finally, some participants argued that an assessment of whether family members are at risk of harm, and the length of the family's separation, should have an impact on states' decisions on applications for family reunification

C. Obstacles in law and practice to the enjoyment of the right to family life and family unity in the context of the family reunification of refugees²⁶

14. The right to family life and family unity is well-anchored in international and regional law, yet refugees and other beneficiaries of international protection frequently face major challenges realizing this right in practice. Discussions at the roundtable focused on a number of these obstacles, resulting from restrictive laws and policies or from the practical challenges family members face when trying to reunite.

²⁵ See *Hode and Abdi v. The United Kingdom*, (Application no. 22341/09), CoE: ECtHR, para 55, 6 November 2012, available at: <http://www.refworld.org/cases,ECHR,509b93792.html>.

²⁶ For a comprehensive description of the obstacles and challenges refugees face in the context of family reunification, please refer to the background documentation for this expert roundtable, see above fn. 3. The description of obstacles in the background documentation drew on information collected from UNHCR field offices around the world.

Documentation requirements

15. At the outset, it was noted that States that require family members seeking reunification to prove their identity, their marriage or partnership, the filiation and adoption of children or other relevant facts by producing documentation need to take account of the fact that these documents may have been destroyed or left behind in the urgency of or during flight. Family members of refugees may themselves be refugees, and seeking replacement documents may require them to contact the authorities of their country of origin. It would normally be wrong to request a refugee to turn to the authorities of their country of origin for the procurement of documents or any other service, as it may exacerbate the risks they face and their fear of persecution. Finally, if the country of origin is a failed State or in the midst of serious conflict, or if the refugee or the family members are stateless, obtaining documentation may be impossible.
16. In this context, participants discussed the relevance of Article 25 of the 1951 Convention, for refugees exercising their right to family unity, in receiving administrative assistance from the country of asylum to obtain relevant documentation required for family reunification when such documentation cannot be obtained from another country, including the refugee's country of origin.
17. Documentary requirements should thus take account of the circumstances that disrupted the refugee's family life and led to recognition of refugee status.²⁷ ExCom has stated that: "When deciding on family reunification applications, the absence of documentary proof of the formal validity of a marriage or of the filiation of children should not *per se* be considered as an impediment".²⁸ The Council of Europe's Committee of Ministers has also underlined that States "should primarily rely on available documents provided by the applicant, by competent humanitarian agencies or in any other way," and that "states may request the applicants to provide evidence of existing family links in other ways".²⁹ States "have a certain margin of appreciation in deciding whether it is appropriate and necessary to verify evidence of the family relationship through interviews or other investigations, including DNA testing".³⁰ Some participants mentioned that other elements which can be taken into account include family pictures, cash transfers, as well as consistency with account of family composition the point at which asylum was sought.
18. Participants argued that bearing in mind the particular and challenging situation in which family members of refugees often find themselves, the evidentiary requirements for verification of their identity and family relationships should not be

²⁷ See eg. *Tanda-Muzinga c. France*, ECtHR, 2014, above fn. 19, para. 73.

²⁸ UNHCR ExCom, Conclusion No. 24, para. 6, above f.n. 12.

²⁹ CoE: Committee of Ministers, *Recommendation N° R (99) 23 of the Committee of Ministers to Member States on Family Reunion for Refugees and Other Persons in Need of International Protection*, 15 December 1999, Rec(99)23, para 4, available at: <http://www.refworld.org/docid/3ae6b39110.html>.

³⁰ EU: European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 3 April 2014, COM/2014/0210 final, p. 9, available at: <http://www.refworld.org/docid/583d7d0b7.html>.

as high as those imposed on other foreign nationals. If the family relationship can be made probable, it should be accepted.

19. Participants also argued that given the difficulty facing family members seeking to obtain national passports, states should accept e.g. Convention Travel Documents for refugees, and laissez-passer documents issued by the International Committee of the Red Cross for the purpose of evidencing the family members' identities. It was also argued that States should consider the issuance of aliens' passports or other travel documents for family members to facilitate their travel following the acceptance of their applications for family reunification.

Provision of timely and accessible information

20. In order for refugees to be able to access and enjoy their right to family unity, they need access to prompt, clear and accessible information about the family reunification process and the information necessary to substantiate the application. The example of a German project in Jordan, where family members were provided information about the family reunification process and were assisted in preparing their application for family reunification, was mentioned. The project had led to greater efficiency of the family reunification process, which benefits both the State and the individuals concerned.

Access to legal assistance and to appeal

21. Many family reunification cases are uncomplicated. When the case is less straightforward, however, it would be useful if States could ensure that applicants for family reunification can access legal assistance. This could be done through engaging the support of international organizations, civil society actors, or even private legal advice providers acting *pro bono* to provide legal assistance to applicants for family reunification.
22. Legislation or regulations that deny or fail to provide access to legal aid or support in family reunification cases can present serious obstacles to the effective presentation of claims and negatively impact the efficiency of the family reunification procedure. The situation is compounded by the gap in information provision and the complexity of many states' family reunification procedures.

Moderate fees

23. Access to family reunification may be hampered, or indeed prevented, by high fees for submitting the application, as refugee families may not have the necessary financial resources available. It was argued that the fees charged should not be higher than the cost of producing the documents concerned, and that, if possible, refugee families should be exempt from fees or charged lower fees than those paid by other applicants. In accordance with the principle of proportionality, the level at

which costs are determined should not make, nor have the effect of making, family reunification impossible or excessively difficult.³¹

Reunification with the least possible delay

24. Some states impose time limits mandating that an application for family reunification must be made within a certain period as a condition for benefiting from preferential treatment, such as exemption from income, accommodation or healthcare requirements otherwise imposed on people seeking family reunification.
25. Several participants questioned the objective justification for imposing such time limits. Permitting family reunification within a certain period of time can have disproportionate consequences if contact with family members has been lost during flight, and/or if it takes time to gather the documentation required for the application. Other participants expressed their opinion that such restrictions had been introduced by states to prevent misuse of the system, while yet others argued that there should be flexibility in the system, allowing family reunification if the delay is justified. Examples of state practice permitting the refugee to register the family members who would be regarded as part of the family in a state registry at an early stage, with a view to seeking family reunification when this becomes possible, was cited as good practice.
26. Other States permit applications for family reunification to be made after the refugee has resided legally for a certain period of time in the country. Imposing waiting periods before refugees can apply for family reunification extends the family separation unnecessarily. The ECtHR has found that undue delay, lack of diligence, and failure to provide requisite guarantees of the “flexibility, promptness and effectiveness” may violate the appellant’s right to family life under of Article 8 of the European Convention on Human Rights (hereafter “ECHR”).³² While States have the right to ensure that controls are in place to address legitimate concerns, such as those related to security, efforts to combat early marriage, false marriages and trafficking, the application must be handled efficiently.
27. ExCom has called for the reunification of separated refugee families to be undertaken “with the least possible delay”.³³ Participants questioned whether regulations delaying family reunification in situations when the family concerned is unable to enjoy family life elsewhere are in line with States’ international and regional obligations.

³¹ *Minister van Buitenlandse Zaken v. K, & A*, Case C-153/14, EU: Court of Justice of the European Union, 9 July 2015, para. 64, available at: <http://www.refworld.org/cases,ECJ,58ab01dd4.html>.

³² *Tanda-Muzinga c. France*, paras. 73, 81, and 82, and *Mugenzi c. France*, Requête para. 62, above fn. 19. See also *G.R. v. The Netherlands*, Application no. 22251/07, CoE: ECtHR, 10 January 2012, para. 55, available at: <http://www.refworld.org/cases,ECHR,4f193eac2.html>.

³³ UNHCR ExCom, Conclusion No. 24 *Family Reunification*, above fn. 28, para. 2.

Access to embassies and consular representations

28. Many States require applications for family reunification to be submitted at embassies or consular representations, sometimes with a further qualification regarding the specific location where certain nationalities can submit applications. Even when family members are allowed to submit electronic applications, in some countries family members must present themselves at an embassy or consulate for interviews and to receive their visas.
29. Family members of refugees, however, often face significant difficulties in accessing embassies or consulates, and requiring them to do so can lead to protection concerns for the family members. Sometimes family members are required to travel long distances, including to other countries, which entails costs and risks, to reach embassies or consulates. It may be necessary to obtain a passport and/or visa to travel to a third country where the embassy or consular representation is located, which may not be granted, while departure from certain States without permission may be illegal. Persons with specific needs, such as children, older persons or persons with disabilities, may not be able to undertake the journey at all. In some situations, it is impossible for family members to access the required embassy or consulate at all, which in effect denies them access to family reunification.
30. Participants discussed the necessity of considering alternative possibilities for States to collect the required information. Several solutions were mentioned by participants, including the possibility of allowing UNHCR or another partner to assist with the gathering of evidence, e.g. DNA-samples. It was also argued that States are responsible for maintaining an administrative procedure of sufficient capacity and quality.

Differentiation in access to family reunification between refugees and persons granted complementary forms of international protection

31. Some States exclude beneficiaries of complementary forms of protection from the preferential terms which apply to refugees or have suspended their access to family reunification. This severely restricts, or even prevents, their ability to realize their rights to family life and family unity. By contrast, other States provide beneficiaries of complementary forms of protection access to family reunification on the same basis as refugees.
32. Differentiation of treatment is often based on the assumption that, in contrast to refugees, the protection needs of beneficiaries of complementary forms of international protection are temporary. Many participants questioned if the situation of persons who have been granted complementary forms of protection, in particular after fleeing conflict and violence, in fact differ significantly from refugees.³⁴ They

³⁴ People displaced across borders as a result of armed conflict and violence would be refugees according to the 1951 Convention when the conflict is rooted in and/or conducted along lines of race, ethnicity, religion, politics, gender or social group divides, of which the majority of conflicts is, see UNHCR *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed*

argued that like refugees, beneficiaries of complementary protection have been forced to leave their country of origin, have an ongoing protection need, and cannot be expected to return to their country of origin to enjoy family life likely for a considerable period of time. An example mentioned was the conflict in Syria, which has continued for close to seven years, with no immediate resolution in sight. While some countries grant Syrians refugee status, others accord complementary protection status. The divergence in the status granted to Syrians also prompted participants to argue that many persons granted complementary forms of protection after fleeing conflict and violence would have been granted refugee status had the refugee definition been applied correctly by states.

33. Another reason given by states for differential treatment is that it serves the interest of immigration control. Participants argued, however, that this does not take account of the fact that the situation of beneficiaries of complementary protection is fundamentally different from that of migrants in that they are unable to enjoy family life in their country of origin, which has also been confirmed by the ECtHR.³⁵ Ensuring family reunification in the country of asylum is therefore also a question of protection and humanitarian values, of respecting the right to family life and family unity, ensuring the best interests of the child as a primary consideration, and of supporting families' integration into their new societies.
34. In addition, participants referred to two recent research reports that had found that the numbers of family members joining beneficiaries of international protection were actually lower than anticipated. The findings of the reports led many participants to question the necessity of measures restricting family reunification for reasons of immigration control given that the numbers of asylum-seekers arriving has significantly reduced.³⁶
35. Several participants also questioned whether, in the EU context, beneficiaries of subsidiary protection should in fact continue to be excluded from the personal scope of the Family Reunification Directive in view of the efforts by the EU to align the rights of refugees and beneficiaries of subsidiary protection in recent years. It was mentioned that three cases pending before the CJEU may clarify this question.³⁷

conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions, 2 December 2016, HCR/GIP/16/12, para 1, <http://www.refworld.org/docid/583595ff4.html>.

³⁵ See *Tanda-Muzinga c. France*, para 75, above f.n. 19.

³⁶ H. Brücker, *Familiennachzug: 150.000 bis 180.000 Ehepartner und Kinder von Geflüchteten mit Schutzstatus leben im Ausland*, Institut für Arbeitsmarkt- und Berufsforschung (IAB), 19 Oktober 2017, available in German at: <https://www.iab-forum.de/familiennachzug-150-000-bis-180-000-ehepartner-und-kinder-von-gefluechteten-mit-schutzstatus-leben-im-ausland/?pdf=5323>; Netherlands: Central Bureau for Statistics, *From reception to integration: Cohort study of recent asylum migrants*, 22 June 2017, pp. 14-15, available in Dutch at: <https://www.cbs.nl/nl-nl/publicatie/2017/25/van-opvang-naar-integratie-cohortstudie-asielmigranten>; Statistics Norway, "Family Immigration Among Refugees: How Many Refugees' Families Come to Norway?", 19 January 2017, available in English at: <https://www.ssb.no/en/befolkning/artikler-og-publikasjoner/how-many-refugees-families-come-to-norway>.

³⁷ *Staatssecretaris van Veiligheid en Justitie, K. and B.; other parties: H.Y., Staatssecretaris van Veiligheid en Justitie*, (Case C-380/17); *A, S v Staatssecretaris van Veiligheid en Justitie* (Case C-550/16); *C, A v Staatssecretaris van Veiligheid en Justitie*, (Case C-257/17), available at: <http://curia.europa.eu>. See also *Opinion of Advocate General Bot: A.S. v. Staatssecretaris van Veiligheid en Justitie*, C-550/16, European

36. Considering the state's obligation not to discriminate against similarly-situated persons, the majority of participants agreed that treating refugees and beneficiaries of complementary protection differently as regards their entitlements to family reunification under similar conditions may not be justifiable.

D. Children and Family Reunification

37. Ensuring that children are reunited with their parents and other family members enables States to ensure they fulfil their responsibilities under the CRC. Relevant responsibilities referred to during the roundtable include States Parties' obligations to: respect and ensure the rights of the CRC "to each child within their jurisdiction without discrimination of any kind", (Article 2); "take the best interests of the child as a primary consideration" in all actions concerning children, (Article 3); "respect the right of the child to preserve his or her identity, including [his or her] family relations" (Article 8); to "ensure that a child shall not be separated from his or her parents against their will", except when necessary, and respect the right of the child "to maintain personal relations and direct contact with both parents on regular basis" (Article 9); to deal with applications for family reunification "in a positive, humane and expeditious manner" (Article 10); to protect against arbitrary or unlawful interference with the "privacy, family, home or correspondence" of the child; to take appropriate measures to protect and assist children who are refugees or asylum-seekers, including family tracing, "in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties" (Article 22).
38. Discussing the right to apply for family reunification in Art 10(1) of the CRC, participants expressed that the article may give rise to a presumption in favour of approval of the application, and that a State wishing to reject an application will bear the burden of demonstrating that the refusal is justified, having regard to the other provisions in the CRC, including Articles 3, 9, and 16.
39. It was further argued that states' obligations to ensure the child's best interests and the obligations under Article 10(1) of the CRC requiring States to deal with applications by a child or his or her parents for the purpose of family reunification "in a positive, humane and expeditious manner" would be incompatible with provisions restricting the right to family reunification for child beneficiaries of complementary protection.
40. As regards unaccompanied child beneficiaries of international protection, issues discussed included the need for independent guardianship systems for them, so as to ensure the child's best interests are a primary consideration. Particular concern was expressed regarding the few States that deny unaccompanied children the right to reunite with any family members. Also of concern were the risks to which family members may be exposed and the difficult decisions involved,

Union: Court of Justice of the European Union, 16 November 2017, available at: <http://www.refworld.org/cases,ECJ,5a0dad064.html>

when states permit only the parents and not minor siblings to reunite with unaccompanied child beneficiaries of international protection, as the effect of such policies is to separate rather than reunite families. It was pointed out that the right to family unity is a right that attaches to each member of the family, with the result that states should consider not only the position of family members in the country of asylum but also that of the other family members, especially where there are children who may be at risk of being left behind.

41. UNHCR was advised by the participants to elaborate further in future guidance on the applicability of the CRC in the context of family reunification in cases concerning refugee children.