



UNHCR Note on DNA Testing to Establish Family Relationships in the Refugee Context

I. Introduction

1. In the recent past, States¹ have been resorting increasingly to DNA testing in order to establish family relationships for the purpose of admission of individuals for family reunification.² The use of such tests also extends to a variety of situations in the refugee context. These include situations where refugees residing in the country imposing the test apply for their relatives, who may or may not be refugees, to be admitted to join them from another country. The test may also be applied in situations where individuals, themselves not refugees, in the country imposing the test apply for their refugee family members elsewhere to be admitted to join them. In other cases, family members of refugees may be required by a resettlement country to undergo testing in order to verify the relationships they have claimed under resettlement programs.

2. Apart from the specific consequences in reference to the reasons for which DNA testing is undertaken, it can have serious implications for the right to privacy and family unity. In light of the increase in its use to verify family links in situations affecting refugees, this note seeks to provide guidance on two basic issues relating to DNA testing in the refugee context, namely, (i) the general issue of how DNA testing is to be conducted so as to safeguard dignity and human rights; and (ii) the safeguarding of applicable principles of family unity where DNA testing is conducted to verify family links. The note, first, provides an explanation of what DNA testing is. Next, it sets out applicable human rights considerations when DNA testing is conducted. Third, it elaborates on applicable standards relating to family unity in the context of DNA testing concerning refugees. Finally, it resumes the guidance which will have become evident in the preceding parts of the paper and elaborates others for a comprehensive statement of how DNA testing should be conducted in keeping with a rights and dignity-based approach, and so as to ensure full respect for the principle of family unity.

¹ Many countries have introduced DNA testing for establishing family relationships, such as Denmark, France, USA amongst others.

² Family reunification in this context means the restoration of family unity among separated family members undertaken by the country imposing the DNA test through admitting members of a family into the country to reunite with other members of the same family based on established family relationships.

II. DNA testing

3. DNA testing is a molecular testing methodology to establish the presence or absence of a particular sequence of deoxyribonucleic acid (DNA), which is the hereditary or genetic material present in nearly every cell in the human body. All cells in a person's body have the same DNA. DNA testing could thus be applied as a scientific method to establish the identity of a person by comparing samples from the same person. It could also be applied to establish relationships among individuals through a comparison of their respective DNA material since all persons with blood relations share a similar sequence of DNA. Cell samples can be drawn from an individual's blood, saliva or, less intrusively, hair samples.

4. The use of DNA to establish family relationships has been available for the past fifteen years. As DNA testing is limited to establishing genetic links, it is performed primarily to confirm parent-child relations, as well as sibling, grandparent-grandchild and uncle and aunt relationships. Given its scientific nature, the results of such tests are usually taken as conclusive over documentary and other forms of proof of the claimed family relationship.

III. DNA testing and the right to privacy

5. DNA testing potentially has serious implications for the right to privacy in two main ways.³ First, given that DNA carries the most intimate of information about a person, which goes to the very heart of the person's hereditary make-up and identity, extracting DNA samples to gather data could lead to a violation of the right to privacy if not carefully circumscribed. Second, there are risks of the personal data obtained from DNA samples being disclosed to unauthorized parties if not properly handled, stored, or disposed of. Inadequate data protection safeguards could thus also result in an intrusion that can constitute a breach of the right to privacy of the individual who has undergone the test.⁴

6. While international human rights law guarantees everyone's rights to privacy, honor and reputation from arbitrary or unlawful interference and attacks, the protection is not absolute.⁵ "Authorized interferences" may however, as explained by the Human Rights Committee, be undertaken only in accordance with legislative and

³ See the Human Rights Committee remarks in "Concluding Observations of the Human Rights Committee: Denmark", CCPR/CO/70/DNK, 31 October 2000, <http://www.unhcr.org/refworld/docid/3ae6b0654.html>: "DNA testing may have important implications for the right of privacy under article 17 of the Covenant. Denmark should ensure that such testing is used only when necessary and appropriate to the determination of the family tie on which a residence permit is based (art. 23)."

⁴ Apart from its capacity to identify a person and confirm relationships, DNA contains biological information, for instance on the possibility of hereditary illnesses. DNA could also be tested from samples taken without the knowledge of a person.

⁵ See Article 12 of the Universal Declaration of Human Rights of 10 December 1948, <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>; Article 17 of the International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966, <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>; Article 15 of the Convention on the Rights of the Child of 20 November 1989, <http://www.unhcr.org/refworld/docid/3ae6b38f0.html>; Article 8 European Convention on Human Rights and Fundamental Freedoms of 4 November 1950, <http://www.unhcr.org/refworld/docid/3ae6b3b04.html>.

other measures which would specify in detail the precise circumstances in which interferences may be permitted and circumscribe the types of interferences”.⁶ Furthermore, any interference must be “a proportionate means to achieve a legitimate aim, which should be in the interest of society, be reasonable, and must comply with the provisions, aims and objectives of the ICCPR”.⁷

7. Article 23 of the ICCPR provides that the “family” is entitled to protection by society and the State.⁸ In implementing this fundamental human right in the refugee context, States have a legitimate interest to ensure that there is proper and accurate identification of persons claiming family relationships among members of refugee families. There is also a legitimate interest to combat fraudulent practices so as to preserve the integrity of family reunification processes and effectively implement Article 23 of the ICCPR. Where DNA testing is conducted as a means to preserve family unity and combat fraud, it could be considered as necessary and proportionate to these purposes and therefore legally justified.

8. Nonetheless, in order to safeguard against any form of arbitrary invasion of privacy, DNA testing must be carefully regulated. The circumstances under which it is to be undertaken in the context of proving family relationships, the methods of obtaining a DNA sample, the data to be extracted, as well as data protection measures should be clearly prescribed.

9. Equally important is regulating the management of the data to be obtained from the DNA samples. The confidentiality of the data must be protected at all times and revealed only to those who are authorized to receive it. The disposal of the data and, where applicable, its storage, must also be strictly regulated based on international standards of data protection.

10. Individuals who are required to undergo a DNA test, as any other person whose consent is required, should be provided the opportunity to decide whether they accept to undergo the test or not. Children who are mature and can form their views should be given a choice as well as guardians of unaccompanied or separated children where the children are to undergo the test. In order to exercise an informed choice, details of the test must be provided to the individuals concerned, including the reasons for it, the methodology, potential outcomes and risks, as well as available data protection safeguards. The implications of refusing to undergo DNA testing should also be clarified.

11. In connection with the above, the authority requiring the test should ensure that pre-test counseling is provided to the individuals concerned. The counseling is necessary to ensure that those individuals are fully aware of the nature of the test and its implications and, among others, the possibility of unexpected results in long recognized family relationships. Not only pre-test, but also post-test counseling will

⁶ See generally: Human Rights Committee, *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, <http://www.unhcr.org/refworld/docid/453883f922.html>.

⁷ *Ibid.*

⁸ See also Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR, <http://www.unhcr.org/refworld/docid/3ae6b36c0.html>), which provides that the family should be accorded the “widest possible protection and assistance.”

be vital to help soften any emotional or psychological trauma in the event of unexpected results and contribute to reducing any potential security or protection risks.

IV. DNA testing to establish family relationships in the refugee context

12. The existence of family relationships is a matter of fact to be established by evidence. Evidence may be in the form of documentary proof or by way of oral evidence. In regard to the situation of refugees, it should be recognized that they are often obliged to flee without personal documents. Moreover, in many instances, the relevant civil status documents are simply not issued to begin with. Hence there may be situations in which relationships can be proved only through oral evidence on the part of the refugees concerned. Thus, interviewing family members should normally be undertaken as the primary means of establishing family relationships. Where documents are available, they should be used as corroborative evidence.⁹ Care should however be taken to prevent that, because of pressure to produce such documents, refugees are driven to take risky actions. These may include, for instance, desperate measures to sneak back home and/or approach the authorities of the country of origin, which could place them at risk of arrest, detention or other inordinate consequences.

13. In line with the above, UNHCR considers that DNA testing to verify family relationships may be resorted to only where serious doubts remain after all other types of proof have been examined, or, where there are strong indications of fraudulent intent and DNA testing is considered as the only reliable recourse to prove or disprove fraud.

14. Even if the existence of a blood link is not established, this may not necessarily imply an intention to commit fraud. Cultural and social dimensions of ascribing family relationships should be considered. In the refugee context, the nature of ascribing family relationships should be understood based on the refugee's social and cultural background. UNHCR also believes that individuals will be less inclined to misrepresent non-existing blood ties if they are confident that persons whom they have always treated and considered as part of the family and with whom they have developed strong personal bonds, or where there is mutual dependency, will be considered as part of the family for purposes of family reunification.¹⁰

15. It may be noted that there is no universal singular definition of "family". International law recognizes a variety of forms. The Human Rights Committee commented, in relation to Article 23 of the ICCPR,¹¹ that the term "family" must be given a "broad" interpretation so as to "include all those comprising the family as understood in the society of the State party concerned."¹² The UNHCR Executive

⁹ It should be reminded that under no circumstances should refugees be required to contact their country of origin to obtain documentation.

¹⁰ See UNHCR, *Policy and Procedural Guidelines: Addressing Resettlement Fraud Perpetrated by Refugees*, March 2008, available at: <http://www.unhcr.org/refworld/docid/47d7d7372.html>.

¹¹ Article 23(1) ICCPR: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

¹² See: Human Rights Committee, *General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses*, 27 July 1990, <http://www.unhcr.org/refworld/docid/45139bd74.html> paragraph 2: "The Committee notes that the

Committee, in its Conclusion No. 24 (XXXII) on Family Reunification and No. 88 (L) on the Protection of the Refugee's Family, also advocates for States to apply liberal criteria in identifying those constituting the family for purposes of admission, with a view to "promoting a comprehensive reunification of the family".¹³ The definition of "family" is therefore to be understood based on societal practice and recognitions by way of culture, which may dictate how relationships are designated, as well as by way of prolonged emotional dependency and mutual acceptance of the relationships.¹⁴ A liberal recognition of family relationships should be pursued to ensure respect for the principle of family unity.

V. Summary of key guidance on DNA testing to establish family relationships in the refugee context

a) A rights and dignity-based approach to DNA testing in the context of establishing family relationships

16. In light of its intrusive nature and risks of infringing an individual's right to privacy, it is reiterated that every step should be taken to ensure that DNA testing to verify claimed family relationships is conducted only as a last resort. At the same time, where there are strong indications of intent to commit fraud on the part of the individuals claiming the existence of family relationships, and DNA testing is considered the only reliable means to prove or disprove fraud, resort to it would help secure important objectives of securing the integrity of the programmes concerned.

17. Clear criteria should be established by States in regard to the circumstances in which DNA testing is considered as necessary for the purpose of establishing family relations, including in the context of admission for family reunification.

18. A rights and dignity-sensitive approach means that DNA testing to establish family relationships should be strictly regulated to ensure that safeguards guaranteeing non-discrimination and the individuals' right to privacy are provided.

19. Explicit and informed consent is necessary from the persons concerned before the test is administered. In the case of minors who are capable of forming their own views, they should also be able to participate in the decision making process, express their views and give their consent.¹⁵ Parents of minors should give their consent prior

concept of family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept of a standard definition. However, the Committee emphasizes that, when a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in Article 23." In its General Comment No. 16 on Article 17 of the ICCPR concerning the right to freedom from arbitrary or unlawful interference with privacy, family, home or correspondence (see above footnote 6), the Committee comments in paragraph 5: "Regarding the term 'family', the objectives of the Covenant require that for purposes of Article 17 this term be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned."

¹³ See also Executive Committee Conclusions No. 9 (XXVIII), No. 84 (XLVIII) and No. 85 (XLIX). All Conclusions are available in Refworld at <http://www.unhcr.org/refworld/type/EXCONC.html>.

¹⁴ See: UNHCR, *Note on Family Reunification*, 18 July 1983, available at: <http://www.unhcr.org/refworld/docid/3bd3f0fa4.html>.

¹⁵ Article 12, CRC.

to the testing of the child, while, in the case of unaccompanied or separated children, the guardian's consent is required. As appropriate, parents who are separated from their children should be assisted to communicate with each other and make the decision jointly. DNA testing on children should only be done based on "best interests considerations".¹⁶

20. DNA testing should be performed by qualified personnel who should be sensitized to rules of confidentiality.

21. DNA testing to establish family relationships should be preceded by pre-test counseling which should be ensured by the authority requiring the test. Such pre-test counseling should provide all relevant information to the individuals concerned so that an informed choice can be made. The technicalities of the test, the reasons for it as well as implications of refusing to undergo it should be explained. The individuals concerned should also be counseled on the possibility of unexpected results. This would help avert potential protection risks which may arise due to emotional trauma faced when the results are unexpected.¹⁷

22. As part of the pre-test counseling explained in this note, principal applicants or others concerned should be urged to disclose relationships which, although culturally treated the same way as blood relationships, are, to their knowledge, not so. The option available to such family members to join the principals in the context of family reunification or resettlement in their own right should be explained. They should have a clear understanding that where the claimed relationship is disproved through DNA testing, unless there are strong and clear extenuating circumstances, the application is almost certain to fail.¹⁸

23. Pre-test counseling should be performed by qualified personnel and should take place on a confidential basis. The individuals concerned should be given time to consider the option.

24. The authority requiring the test should ensure that disclosure of negative results is undertaken with great sensitivity for the emotional and psychological well-being of persons concerned. Consideration should be given to how the information is to be disclosed, to whom, and in what order of priority. The situation of the individuals should be monitored closely and post-test counseling should be provided to avert potential protection risks. In case of a negative result, it should be possible for a second test to be performed so as to ensure utmost reliability of the results. In cases where DNA testing involving persons of concern has been conducted with UNHCR's knowledge, cooperation or support and the results of the tests are relevant to the propriety or integrity of UNHCR operations, protocols should be established for the provision to UNHCR of those results in the appropriate formal manner.

25. Disclosure of the results of DNA testing should strictly respect rules of confidentiality. In regard to the entity or personnel performing the test, it should

¹⁶ Article 3 of the CRC states that the best interests of the child shall be a primary consideration in all actions affecting children. See also *UNHCR Guidelines on Determining the Best Interests of the Child*, May 2008, available at: <http://www.unhcr.org/refworld/docid/48480c342.html>.

¹⁷ For example, this can occur with children born from rape unbeknownst to the husband.

¹⁸ See above footnote 10.

reveal the outcome of the test only to the authority which has requested it. In regard to disclosure to interested parties, the results should be conveyed by the authority requiring the test only to the persons subjected to the test, or, in case of children, their parents or guardians who have given consent on their behalf. Beyond that, disclosure can only be done with the consent of the subjects of the test, and, in the case of children, their parents or guardians as the case may be.

26. For purposes of data protection, and in the context of verifying family relationships, no data should be collected from the DNA sample except that which is necessary for proving the family relationship. The information should not be used for any other purpose (for instance medical tests or criminal investigations) than the verification of family relationships.

27. All materials associated with the test should normally be destroyed once a decision has been made. If they are to be stored, the subjects of the test should be informed of the reasons, where this will take place, and their consent must be obtained.

b) Family unity of refugees and DNA testing

28. DNA testing can be intrusive and potentially have serious negative consequences. On the other hand, it can be the only alternative to meet important operational objectives. Its use to establish family links in the refugee context should be resorted to carefully and judiciously as set out in this note. Documentary proof, registration records, interviews with the individuals concerned and other forms of verification of the claimed family relationship should normally be relied on first. The benefit of the doubt should be given where the evidence is overall corroborative of presumed relationships and there are no serious doubts.

29. Even if DNA tests disprove any blood links, this should not be conclusive of fraudulent intent, as there may be other reasons why the individual concerned claims a particular relationship.

30. UNHCR promotes a liberal and wide definition of “family” to enable refugees to maintain the unity of their families as they are accustomed to in their country of origin. Regard should be given to social and cultural norms of the society from which the refugees originate, as well as emotional dependency and long term acceptance of the claimed relationships when considering family reunification of refugee families.

31. Where DNA testing is undertaken to establish a parent/child relationship, UNHCR recommends that consideration be given to the administration of the test on only one parent, normally the mother. If the mother/child relationship is established, a proven marriage¹⁹ between the mother and her spouse should suffice to establish the father/child relationship without the necessity of the purported father having to undergo a DNA test.

¹⁹ For the purpose of establishing family relations, this will also relate to couples who are engaged to be married, who have entered into a customary marriage, or who have lived together for a substantial period of time.

c) *Other considerations*

32. DNA testing should not delay the often already lengthy family reunification process. The cost of a DNA test should be borne by the State requiring the test. Costs associated with DNA testing requested by refugees could be waived on humanitarian grounds, or, at least, the relevant government could consider reimbursing the costs.²⁰

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²⁰ Alternatively, one can suggest that costs related to the test will be borne by the relevant authority if the results are positive.