

ECRE

EUROPEAN COUNCIL
ON REFUGEES AND EXILES

CONSEIL EUROPEEN
SUR LES REFUGIES
ET LES EXILES

POSITION ON REFUGEE FAMILY REUNIFICATION

BY

THE EUROPEAN COUNCIL ON REFUGEES AND EXILES

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**ECRE POSITION ON
REFUGEE FAMILY REUNIFICATION**

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KEY CONCLUSIONS

1. The right to family reunification should not be limited to persons who are recognised as refugees in accordance with the 1951 Convention but be extended to all persons granted complementary protection on the basis of a need for international protection.
2. Convention refugees and people with a complementary protection status should be exempted from meeting any eligibility requirements for family reunification relating to the length of residence, employment status and access to appropriate housing and independent income of the principal applicant
3. The right to family reunification should not be limited to nuclear family members. It should be extended to:
 - a) descendants of legally married partners who are less than 21 years of age or dependent on the principal applicant;
 - b) dependent relatives in the ascending line of legally married partners;
 - c) partners in a durable form of cohabitation who are not legally married or can not legally marry and the children under the age of 21 descending from them;
 - d) children who are de facto members of a household through adoption, fostering or other forms of care arrangements, although not descending from a marriage or a relationship pertaining to that household;
 - e) same-sex partners in a durable form of cohabitation;
 - f) all dependent relatives in the ascending or descending line of cohabitating partners;
 - g) dependent siblings when humanitarian reasons are invoked; and
 - h) relatives on whom the principal applicant is dependent due to health, age, disability or other reasons.
4. Members of the same family should have the right to be together during the asylum procedure. Governments should seek to facilitate the reunification of family members forced to apply for asylum in different European countries. They should also assume responsibility for asylum applications where the applicant has close family ties with a country independently of considerations that another country might have a responsibility for providing protection.
5. The right to family unity of persons under temporary protection should be respected. It should be taken into account in the event of a humanitarian evacuation with the purpose of ensuring that family members are not separated from each other against their will. The terms of temporary protection should not prevent the expeditious reunification of family members in different receiving states and/or in the country of origin. Special priority should be given to vulnerable individuals including separated children, the elderly, people with poor physical or mental health and pregnant women.
6. Each state should legally adopt and implement procedures for the fair and efficient processing of family reunification applications. Family unity should be the central focus of such procedures.

7. Convention refugees and people with a complementary protection status should have immediate access to the right to family reunification upon status determination. An application for family reunification should not lead under any circumstances to re-examination of the principal applicant's refugee or complementary protection status on the basis that the recognition practice regarding the respective country of origin might have changed.
8. Family reunification should take place with the least possible delay and within a period of six months from the time an application is made. Applications from or regarding separated children should be prioritised in view of the potential harm caused by long periods of separation from their parents.
9. The absence of documentary proof of relationships should not affect the credibility of the application for family reunification nor result in the application being considered fraudulent. Refugees and persons with complementary protection should be exempted from requirements to provide documentary evidence if such evidence can only be obtained through contact with the authorities of the country of origin.
10. Family members of Convention refugees and persons granted complementary protection should be given the option of having the same legal status as the principal applicant. They should also have access to the same socio-economic and other rights as the principal applicant.

*European Council on Refugees and Exiles
July 2000*

EXECUTIVE SUMMARY

In this position paper, the European Council on Refugees and Exiles (ECRE) has compiled the views of its member agencies, consisting of over sixty-five refugee-assisting non-governmental agencies throughout Europe, with regard to how family reunification for refugees and people with other forms of protection should be organised.

ECRE starts by noting that the presence of one's family is a very important factor affecting refugees' ability to settle and integrate in the country of durable asylum. Although a number of international and European legal instruments uphold family unity and protection, with the exception of the Convention on the Rights of the Child, no instrument specifically provides for a right to enter and remain in a particular country for the purposes of family reunification. Throughout Europe, national practice varies considerably with regard to the level of family reunification rights granted to refugees and people with other forms of protection, the definition of family unit and the procedures applicants have to go through in order to reunite with family members.

ECRE is of the opinion that the right to family reunification should not be limited to persons who are recognised as refugees under the 1951 Convention. It should also be extended to all persons granted complementary protection on the basis of a need for international protection. This right should not be qualified by requirements relating to the length of residence, employment status and access to appropriate housing.

ECRE considers that a broad concept of the family unit needs to be adopted to include extended or de facto family members. Such concept should take into account differences in the definition of "family" which in some cultures might include members of a household with whom there might not be a blood relationship. ECRE affirms the importance of expeditious decision making on family reunification applications within a period of six months from the time an application is submitted.

Children are identified as a priority in family reunification procedures in view of the potential harm caused by long periods of separation from parents. The "best interests of the child" should be taken into account when arranging for substitute care if the parents cannot be traced or in the event of a desire for reunion after a long period of parent-child separation.

ECRE proposes that family members of Convention refugees and persons granted complementary protection should be given the option of having the same legal status as the principal applicant. They should also have access to the same socio-economic rights including independent access to the labour market, education, housing, social welfare benefits and travel documents.

ECRE puts forward a range of specific policy recommendations in relation to the definition of the family unit, family unity during the asylum procedure, the family reunification procedure and its length, tracing, priority cases, documentary evidence of family ties, the legal status and rights of family members and the role of NGOs. It hopes that this Position will assist the ongoing process of searching for guiding principles and standards on family reunification among European states.

The Legal Framework

1. The Universal Declaration of Human Rights defines family as "the natural and fundamental group unit of society...entitled to protection by society and the State".¹ A number of other international² and European legal instruments³ similarly uphold family unity and protection. With the exception of the Convention on the Rights of the Child however,⁴ no international or European instrument specifically provides for a right to enter and remain in a particular country for the purposes of family reunification.

2. The 1951 Convention Relating to the Status of Refugees does not contain a specific right to refugee family unity or family reunification.⁵ Recommendation B of the Final Act of the 1951 United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons includes a recommendation to governments "to take the necessary measures for the protection of the refugee's family especially with the 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". The importance of the principle of family reunion is affirmed in a number of UNHCR Executive Committee Conclusions⁶ and in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status.⁷

3. At European level, Article 8 of the European Convention on Human Rights (ECHR), provides that "everyone has the right to respect for his private and family life".⁸ Although there is presently no legal precedent on the application of Article 8 in relation to refugees and very little on Article 8 and persons with humanitarian residence permits,⁹ a number of ECHR Court decisions have set up certain limits to the discretionary exercise of power of public authorities with regard to controls on entry into the territory.

4. Within the context of the European Union, Article 63(3)(a) of the Amsterdam Treaty stipulates that the Member States will undertake measures to address "conditions of entry and residence, and standards on procedures for the issue by

¹ Art. 16,(3), Universal Declaration of Human Rights. Further, Art.12 states that "no one shall be subjected to arbitrary interference with his privacy, family, home..."

² Arts. 17 and 23,(1), International Covenant on Civil and Political Rights, Article 10,(1), of the International Covenant on Economic, Social and Cultural Rights, Arts. 9-10, UN Convention on the Rights of the Child.

³ Art. 8, European Convention for the Protection of Human Rights and Fundamental Freedoms. Also, Art. 16, European Social Charter (the right of the family to social, legal and economic protection).

⁴ Art. 10, (1), states that "applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner".

⁵ According to the Report of the ad hoc Committee on Refugees and Stateless Persons "the fact that the Draft Convention (1951 Convention) is silent on a subject means that in this matter the Committee believed that a special provision was not necessary and that Governments would be free to decide upon it at their discretion in accordance with international law".

⁶ No 9 (XXVIII); No 15 (XXX), (e); No 24 (XXXII); No 22 (XXXII), B, II, (h) (i); No. 84 (XLVIII), (b), (i); and No 85 (XLIX), (u)-(x).

⁷ Chapter VI, para 181-188.

⁸ Art. 8 is applied in cases where refusal to enter in a country might constitute interference with the right to respect for one's family life, if there are obstacles against continuing a normal life elsewhere including the aliens' country of origin (i.e. in Art. 3, ECHR cases).

⁹ *Gül v. Switzerland and Nsona v. the Netherlands*.

Member States of long term visa and residence permits, including those for the purpose of family reunion". The 1998 Action Plan on how best to implement the provisions of the Treaty of Amsterdam establishing an area of freedom, security and justice includes this work within the measures to be taken within five years.

5. More recently, the Tampere European Council on 15-16 October 1999, acknowledged "the need for approximation of national legislations on the conditions for admission and residence of third country nationals..." and requested "to this end rapid decisions...on the basis of proposals by the Commission".¹⁰ To this effect, the European Commission issued a Proposal for a Council Directive on the right to family reunification in December 1999.¹¹ ECRE has issued a detailed comments' paper on this Proposal.¹²
6. The right to protection of and respect for family life is included in the national legislation of a number of European countries. National practice however, varies considerably with respect to the level of family reunification rights granted to people in need of international protection.¹³ Although in most European countries, the right to family reunification is conferred automatically to people recognised as refugees under the 1951 Convention, people granted complementary or other forms of protection often have to meet a number of preconditions prior to being able to reunite, if at all, with their family. These might include a minimum length of residence in the country of asylum, access to appropriate housing, minimum levels of income and so on.
7. Further, variations between European states exist with regard to the definition of the family unit, the legal status and level of socio-economic rights conferred to family members and the procedures applicants have to go through in order to reunite with family members.

The Right to Family Life

8. The presence of one's family is a very important factor affecting refugees' ability to settle and integrate in the country of durable asylum. According to UNHCR, "the family unit has a better chance of successfully...integrating in a new country rather than individual refugees. In this respect, protection of the family is not only in the best interests of the refugees themselves but is also in the best interests of States".¹⁴
9. The right to family reunification should not be limited to persons who are recognised as refugees in accordance with the 1951 Convention but be extended to

¹⁰ Tampere European Council, 15-16 October 1999, Presidency Conclusions, III, par. 20.

¹¹ European Commission Proposal for a Council Directive on the Right to Family Reunification, Brussels, 1.12.1999, COM(1999) 638 final, 1999/0258.

¹² ECRE Comments on the European Commission Proposal for a Council Directive on the Right to Family Reunification, April 2000.

¹³ For a detailed analysis, see ECRE Survey of Provisions for Refugee Family Reunion in the European Union, November 1999.

¹⁴ UNHCR Note on Family Protection Issues, EC/49/SC/CRP.14, June 1999, point 16.

all persons granted complementary protection on the basis of a need for international protection.¹⁵

10. The right to family reunification of refugees and people with a complementary protection status should not be qualified by requirements relating to the length of residence, employment status and access to appropriate housing and independent income of the principal applicant.

The Family Unit

11. The right to family reunification should not be limited to nuclear family members.¹⁶ It should be extended to:
 - i) descendants of legally married partners who are less than 21 years of age or dependent on the principal applicant;¹⁷
 - j) dependent relatives in the ascending line of legally married partners;¹⁸
 - k) partners in a durable form of cohabitation who are not legally married or can not legally marry¹⁹ and the children under the age of 21 descending from them;²⁰
 - l) children who are de facto members of a household through adoption, fostering or other forms of care arrangements, although not descending from a marriage or a relationship pertaining to that household;
 - m) same-sex partners in a durable form of cohabitation;²¹
 - n) all dependent relatives in the ascending or descending line of cohabitating partners;
 - o) dependent siblings when humanitarian reasons are invoked; and
 - p) relatives on whom the principal applicant is dependent due to health, age, disability or other reasons.

Dependence should be seen in both financial as well as psychological/cultural terms.²²

¹⁵ In its February 1999 Resolution on the harmonisation of forms of protection complementing refugee status in the European Union, the European Parliament recommended that complementary protection should be granted to the following categories: "persons who have fled their country or are unable or unwilling to return because their lives, safety or freedom are threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights and other circumstances which have seriously disturbed public order; and persons who have fled their country, and/or are unwilling to return there, owing to a well-founded fear of being tortured or of being subjected to inhuman or degrading treatment or punishment or violations of other fundamental human rights."

¹⁶ Spouses and descendants under the age of eighteen.

¹⁷ According to EC Community legislation, nationals of Member States of the European Union have the right to be joined by their descendants under the age of 21 years of age or dependent descendants when settling in another Member State, Council Regulation (EEC) No 1612/68 of 15.10.1968, OJ L 257 of 19/10/68, Council Directive 68/360/EEC of 15.10.1968, OJ L 257 of 19.10.68, Council Directive 73/148/EEC of 21.5. 1973, OJ L 172 of 28.6.73.

¹⁸ Council Regulation (EEC) No 1612/68.

¹⁹ Other than for reason of a consanguineous relationship.

²⁰ In interpreting Art. 8, the European Commission on Human Rights has concluded that the protection of the right to family life is concerned with *de facto* family life and is not limited to *de jure* family life, Marckx case, Judgement of the 15 June 1979, Series A No. 31,21.

²¹ Although the European Commission on Human Rights does not extend the concept of family life to homosexual relationships, it has confirmed that respect for such a relationship comes within the ambit of private life in Art. 8, ECHR, DR32/220.

²² UNHCR asserts that "pragmatism and flexibility, in addition to cultural sensitivity, be brought to bear in the process of identifying the members of the refugee family", EXCOM Standing Committee Note on Family Protection Issues, EC/49/SC/CRP.14, June 1999. Further, para. 185 of the UNHCR Handbook states that "the principle of family unity operates in favour of dependents and not against them".

12. Consideration must be given to differences in definition of “family” and "family life" which, in some cultures, might include near relatives and members of a household with whom there might not be a blood relationship.

In the case of separated minors whose natural parents might have deceased or cannot be traced, European governments' policies should be consistent with the best interests of the child and allow for family reunification with relatives who have a substantive role to play in the child's life²³ and/or their previous customary or legal primary care giver.

13. The right to family reunification should at least be extended to the fiancé(e) of a Convention refugee or person granted complementary protection in the case where the relationship predates the flight of the principal applicant from his/her country of origin. In all other cases, access to the territory for the purpose of family formation should be granted in line with national regulations applying to the citizens of the country of asylum.

Family Unity During the Asylum Procedure

14. Members of the same family should have the right to be together during the asylum procedure. Governments should seek to facilitate the reunification of family members forced to apply for asylum in different European countries. They should also assume responsibility for asylum applications where the applicant has close family ties with a country independently of considerations that another country might have a responsibility for providing protection.²⁴
15. ECRE recommends that the Council of Europe adopts an agreement on the transfer of responsibility for asylum seekers in Member States for the purpose of family reunification.

Family Unity and State Responsibility for Examining Asylum Claims²⁵

16. Within the context of Article 63(1)(a) of the Amsterdam Treaty on "criteria and mechanisms for determining which Member State is responsible for considering an application for asylum", States should develop clear and precise criteria for the allocation of responsibility for examining asylum applications with the purpose of safeguarding family unity.
17. Member States should act expeditiously in transferring or accepting responsibility for asylum applications of family members of Convention refugees and people

²³ In *X v. Switzerland*, the European Commission on Human Rights acknowledged that where a grandparent had been principally responsible for bringing up her grandson, she shared with him a family life capable of being protected within Article 8 of the European Convention on Human Rights, Application No. 8924/80 DR24.

²⁴ Article 31 (1) of the 1951 Convention provides some basis for this notion since it requires that refugees come "directly from a territory where their life or freedom was threatened in the sense of Article 1 before a specific provision applies. The concept of "safe third country" is increasingly being used by governments to deny asylum seekers access to the asylum procedure on the grounds that they already enjoyed or could enjoy protection in another country.

²⁵ See also, ECRE Position on the Implementation of the Dublin Convention in the light of lessons learned from the implementation of the Schengen Convention, December 1997, para 24-34.

granted complementary protection. In all cases, the consent of individual asylum seekers must be sought.²⁶

18. Even when there is no requirement to consider an asylum application on the basis of criteria for allocation of responsibility, States should undertake to examine *on family unity grounds*, asylum applications that are submitted by family member(s) of Convention refugees and persons granted a complementary form of protection living in their country. Similarly, they should undertake to examine at the request of another state, asylum applications of family member(s) of Convention refugees and persons with complementary protection in their country. The extended definition of a family member set out in par. 11 should apply here.

Family Unity and Temporary Protection²⁷

19. The right to family unity of persons under temporary protection should be respected.²⁸ It should be taken into account in the event of a humanitarian evacuation with the purpose of ensuring that family members are not separated from each other against their will.²⁹ The terms of temporary protection should not prevent the expeditious reunification of family members in different receiving states and/or in the country of origin. Special priority should be given to vulnerable individuals including separated children, the elderly, people with poor physical or mental health and pregnant women.
20. ECRE urges European states to view sympathetically all requests for exchanges between states which would assist those persons who, due to family ties, wish to move their residence from one receiving country to another.

The Family Reunification Procedure

21. Each state should legally adopt and implement procedures for the fair and efficient processing of family reunification applications. Family unity should be the central focus of such procedures.
22. Convention refugees and people with a complementary protection status should have immediate access to the right to family reunification upon status determination. An application for family reunification should not lead under any circumstances to re-examination of the principal applicant's refugee or complementary protection status on the basis that the recognition practice regarding the respective country of origin might have changed. In the case of

²⁶ EXCOM Conclusion No. 15 (XXX) on Refugees without an Asylum Country recommends that "the intentions of the asylum seeker as regards the country in which he wishes to request asylum should as far as possible be taken into account".

²⁷ See also ECRE Position on Temporary Protection in the Context of the Need for a Supplementary Refugee Definition, March 1997.

²⁸ EXCOM Conclusion No.22 (XXXII) on Protection of Asylum-Seekers in Situations of Large-Scale Influx, 1981.

²⁹ Council of Europe, Conclusions of the Extraordinary Meeting on Kosovo of the Ad Hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR), April 1999.

Convention refugees, status re-examination should only take place within the parameters set by the 1951 Refugee Convention and UNHCR guidelines.³⁰

23. Requests for family reunification should be examined and decided upon by qualified personnel or a specialised government authority with the necessary knowledge and experience in refugee matters to fully comprehend the facts and circumstances concerning the application for family reunification. Such knowledge should include an understanding of cultural and gender perceptions of "family" relevant to the application.
24. Government authorities should inform refugees and people granted complementary protection of their rights to family reunification and the procedure they have to go through. The principal applicant for family reunification should be kept well briefed throughout the procedure. Information should be made available in the mother tongue of applicants whenever necessary.
25. Family reunification applicants should have access to independent and free legal advice and representation.
26. In the case of separated children, information should be provided in an age-appropriate manner. It should also be communicated to the child's guardian/carer and legal adviser.

The Decision

27. The decision on a family reunification application should be communicated to the applicant in writing in a language s/he understands, and to his/her legal advisor.
28. A negative decision should clearly and fully state the specific reasons for the rejection of the application and the evidence which was relied on. It should also provide information on the principal applicant's right of appeal, any time-limits and the provisions of the appeal procedure.
29. Any decision which affects a child, should be communicated in a way which enables the child to be heard as appropriate to his/her age and development. Any meeting for this purpose should take place in a child-sensitive manner and in the presence of the child's guardian/carer³¹ and legal adviser.

Appeals

30. In the case of a decision not to allow family reunification, the principal applicant should have the right and means to appeal and be heard by a judicial body. In the case of a negative appeals decision, s/he should have access to a final review by an independent body of relevant experts responsible for making recommendations on the basis of humanitarian and/or other considerations.

³⁰ UNHCR Handbook, Chapter III, Cessation Clauses, UNHCR EXCOM Note on the Cessation Clauses, 1997 and Art. 1,C, Convention Relating to the Status of Refugees.

³¹ See also, ECRE Position on Refugee Children, November 1996, pp. 25-27.

31. All applicants should have the right to qualified and independent legal advice in preparation for an appeals hearing and to legal representation before the appellate authorities. Legal advice and representation should be provided by the State free of charge where the financial situation of the principal applicant for family reunification requires.

The Length of the Family Reunification Procedure

32. Family reunification should take place with the least possible delay and within a period of six months from the time an application is made. Applications from or regarding separated children should be prioritised in view of the potential harm caused by long periods of separation from their parents.

Tracing, Contact and Reunion

33. Governments should take all necessary measures to facilitate the expeditious reunification of separated family members and actively encourage the work of humanitarian organisations engaged in this task.³² They should closely co-operate with competent intergovernmental and non-governmental organisations and in particular UNHCR, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and national Red Cross and Red Crescent Societies.
34. In order to facilitate travel, ECRE recommends that governments undertake to promptly issue visas as well as travel documents to refugees and people with complementary protection who have no access to country of origin documentation. Such documents should be issued free of charge.
35. Given that transport fees to the country of asylum represent a heavy financial burden for families, the competent government authority should assume responsibility for providing financial assistance in the form of one-off grants to refugees and people with complementary protection with limited or no financial resources.

Priority Cases

36. Based upon consideration of the “best interests of the child,³³ separated children in countries of asylum should be granted a status which entitles them to reunification with their parents at the earliest possible opportunity.³⁴ Every effort should be made to determine the parents' whereabouts and situation. States should make suitable interim care arrangements consistent with the provisions of the UN

³² Art. 74 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.

³³ Art. 3, 1, UN Convention on the Rights of the Child. For detailed recommendations, see ECRE's [Position on Refugee Children](#).

³⁴ Art. 10, 1 of the Convention on the Rights of the Child states that “applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with ...in a positive, humane and expeditious manner”. Art. 22.2 refers to appropriate co-operation “in any efforts by the United Nations and other competent...organisations ... to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family”.

Convention on the Rights of the Child.³⁵ Substitute family care should be provided if the parents cannot be traced.³⁶

37. Consideration should be given to the “best interests of the child” in the case of a desire for reunification after a long period of parent-child separation.³⁷ Here, ECRE emphasises the need for an independent agency to investigate a family's situation and ability to care for the child prior to reunification. In no case however, should there be a presumption of family ties having been broken due to long term separation.³⁸
38. Any application for family reunification of people who have experienced torture or trauma should also be prioritised in view of the special support needs of torture and trauma survivors. Applications by pregnant women further need to be dealt expeditiously.

Documentary Evidence of Family Ties

39. The absence of documentary proof of relationships should not affect the credibility of the application for family reunification nor result in the application being considered fraudulent.³⁹ Refugees and persons with complementary protection should be exempted from any requirements to provide documentary evidence if such evidence can only be obtained through contact with the authorities of the country of origin.
40. Authorities should seek to establish plausible family links through the information provided in the family reunification application form and supporting documentation. If this is not feasible, the principal applicant and/or family members should be given a fair interview by the competent authorities with the sole purpose of establishing family links and identifying family members. The family reunification interview should not be used under any circumstances as a means to reassess the validity of the refugee status of the principal applicant.
41. Applicants should be given the benefit of the doubt if they can provide a credible account of the relationship that matches the information provided by family members and the explanation for any lack of documents is reasonable when considering available country information, the circumstances of flight from the country of origin and risks associated with establishing contact with authorities of the country of origin.
42. If faced with inconsistencies in the accounts of different family members, interviewers should allow the applicant to provide an explanation. If

³⁵ Art. 20 & 22 of the UN Convention on the Rights of the Child, 1989.

³⁶ Par. 6, Preamble, of the Convention on the Rights of the Child states that “the child for the full and harmonious development of his or her personality should grow up in a family environment...”.

³⁷ UNHCR, Handbook for Emergencies, 1982: “every effort must be made to keep the child with the same substitute parents until blood parents are found. The child will then need time to reattach to his or her blood parent(s)...Where years have elapsed, it has been found that the child's interest may even be better served by remaining with the substitute family”.

³⁸ Gül vs. Switzerland and Moustaqim v. Belgium, ECHR.

³⁹ EXCOM Conclusion No. 24, par. 6.

inconsistencies remain, it may be necessary to schedule a further interview. Decision makers should understand that contradictory or unclear statements might be due to past experiences of torture or trauma, medical or other reasons associated with loss of memory.

43. If DNA tests are to take place, they should be *solely* used as a last resort for verification of family ties in cases where doubts are so grave that the request for reunification would otherwise be denied, or when the applicants themselves request a test in lieu of an interview. Due consideration needs to be given to the tests' limitations in view of cultural differences in the definition of "family" which in some cases, might include members of a household with whom there might not exist biological links.
44. DNA tests should only be carried out after applicants and their family members have been fully informed of the reasons for the test and have *all* given their full consent. A refusal to take part in a DNA test or a negative DNA result should not be used as the *sole* reason for turning down a family reunification application.
45. The cost of a DNA test should be borne by the relevant authority, if the country of residence of the principal applicant requests it. Test results should only be used for family reunification purposes and be destroyed immediately once a decision has been made.
46. Age tests should *only* be used as a last resort if all other means of establishing eligibility for family reunification have been exhausted. Due consideration needs to be given to their considerable scientific limitations which normally render them inappropriate for use for family reunification purposes.⁴⁰
47. Where an age test is considered necessary, an independent medical assessment by an experienced paediatrician should be made with the consent of the child and parents. Such an age assessment should take into account not only the child's physical appearance and psychological maturity but also cultural and ethnic variations in these factors.⁴¹
48. Government measures to fight and prevent fraud in family reunification claims must be in proportion to the aims pursued. They should not act as barriers to family unity.

The Legal Status of Family Members

⁴⁰ In a number of countries, the accuracy of these tests is not precise enough to give an exact estimate of a person's age. In the context of the Finnish medical tests for example, the range of Mincer method (testing the developmental stage of wisdom teeth) is as much as 3.1 years and when using the Greylich-Pyle bone atlas, the range can be as much as 4 years. Considerable limitations also apply in the use of the "collarbone test" used in some countries.

⁴¹ See also para, 9-10 of the ECRE [Position on Refugee Children](#).

49. Family members of Convention refugees and persons granted complementary protection should be given the option of having the same legal status as the principal applicant.⁴²
50. States should grant a residency permit which confers the same rights to family members as those granted to the principal applicant if formal refugee status is not desirable or compatible with the personal legal status of a Convention refugee's family member(s).⁴³
51. Family members of a person granted complementary protection should have access to the asylum procedure and potentially to refugee status "if they can invoke reasons on their own account, for applying for recognition as refugees under the 1951 Convention".⁴⁴
52. In the event of divorce, separation or death, family members of Convention refugees should be entitled to retain the refugee status with the exception of cases indicated in par. 187 of the UNHCR Handbook.⁴⁵
53. In the event of divorce or separation, family members of persons granted complementary protection should have the right to apply for and obtain an independent residency status within a period of one year from arrival.
54. An independent legal status should be granted automatically to family members of persons with complementary protection in the event of death of the principal applicant as well as to family members who are victims of domestic violence or face special humanitarian circumstances in the asylum country. Family members of principal applicants who face expulsion because of criminal offences should also have access to an independent status if they are not involved in criminal activities and wish to live separated from the principal applicant.
55. Family members who have resided in a country for a maximum period of three years should also be entitled to an independent status.

The Rights of Family Members

56. Family members of Convention refugees or persons granted complementary protection should have access to the same socio-economic and other rights as the principal applicant.⁴⁶

⁴² In the case of Convention refugees, see EXCOM Conclusion No. 24, par. 8. Also, UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, par. 184.

⁴³ UNHCR Handbook, par.184. Reasons for incompatibility are that "the dependent member of a refugee family may be a national of the country of asylum or of another country, and may enjoy that country's protection".

⁴⁴ UNHCR Handbook, par. 185.

⁴⁵ Par. 187 states that "dependents who have been granted refugee status on the basis of family unity will retain such refugee status unless they fall within the terms of a cessation clause; or if they do not have reasons other than those of personal convenience for wishing to retain refugee status; or if they themselves no longer wish to be considered as refugees".

⁴⁶ EXCOM Conclusion No. 24, par. 8. See also the Tampere European Council Conclusions stating that "a more vigorous integration policy should aim at granting (third country nationals) rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life...".

57. The reunited family members should have independent access to the labour market, education, housing, social welfare benefits and travel documents.
58. They should also have full access to integration services or specific integration facilities upon arrival.⁴⁷

The Role of NGOs

59. NGOs should play a key role in promoting a flexible and humane interpretation by European governments of their legal obligations with respect to refugee family reunification.
60. They should act as an information and referral point for free legal advice and through the Red Cross movement, provide support with tracing and establishing and/or maintaining contact among family members. In the case of lack of government financial support to cover travel costs for the purpose of family reunion, UNHCR and ICRC, through National Red Cross and Red Crescent Societies as well as NGOs should explore the possibility of raising independent funds and establishing a travel fund for refugee family reunification.
61. ECRE recommends that non-governmental organisations, including refugee and migrant associations, set up new, or make use of existing advisory or mediation services to support recently reunited families. Such services should include counselling, mediation and conflict handling linked to long separation or problems of cultural adaptation. Special support and professional help should be made available to torture and trauma survivors and their family members.

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⁴⁷ See also ECRE [Position on the Integration of Refugees in Europe](#), September 1999.

