



# **Ensuring Gender Sensitivity in the Context of Refugee Status Determination and Resettlement**

**Module 3: Ensuring Gender Sensitivity in the Context of  
Resettlement**

**RESOURCE PACKAGE**

This training package was produced by UNHCR's Bureau for Europe for guidance to refugee status determination as a follow-up to the *Regional Analysis of Gender-Related Persecution in European National Legislation and Practice*, published in May 2004. One of the findings and recommendations of the regional analysis was to improve the knowledge and practical capacities of regional and national stakeholders to assess and analyze gender-related refugee claims and to produce relevant resource materials. The second objective is to promote the implementation of the 2002 UNHCR guidelines on gender-related persecution.<sup>1</sup> Moreover, this package was developed to provide readily-usable, user-friendly materials to encourage UNHCR offices, relevant authorities, legal advisory services and NGOs to mainstreaming gender aspects into all training activities related refugee status determination and asylum system development.

This training package has three books which can be used for either one or two day training events, depending on the time available and level of the trainees. Sessions and exercises from the modules can be incorporated easily into other training agendas and activities. Each of the modules can be used separately. The first and second modules on gender and refugee status determination can be used for UNHCR and other audiences. However, the third module on resettlement and gender is intended primarily for internal UNHCR use.

The first module is focused on substantive, gender-sensitive analysis of gender-related and gender-specific asylum claims. It seeks to increase the knowledge and analytical skills of asylum workers in relation to gender-related asylum claims by providing a framework for understanding and analyzing how gender and persecution are linked. The module also includes a review of international human rights conventions and the links between women's human rights and refugee protection. The issues are explained and demonstrated through visual presentations, handouts (including checklists) and exercises. Detailed facilitator's notes and case study analysis, as well as relevant case law are included.

The second module addresses procedural and evidentiary issues with regard to gender-related claims. The module provides clear guidance for gender-sensitization of the refugee status determination procedures which will meet international standards. Particular emphasis is put on addressing credibility and gender-sensitive interviewing. The module uses case studies and role plays as the primary method of training. Visual presentations and handouts (including checklists) are provided to highlight certain issues and to supplement the participatory learning materials.

The third package aims at ensuring gender-sensitivity in resettlement procedures. It is based on UNHCR's Resettlement Handbook and Resettlement Criteria, as well as Women-at-risk programmes. The module provides visual training materials, handouts (including checklists) and exercises for UNHCR field offices and for staff guidance which can be used in all capacity-building activities aimed at understanding gender, protection and resettlement issues.

This resource package was produced in 2005 by Maria Bexelius, a consultant for UNHCR. James Pope, an intern, and Jana Eidem, a consultant, both from the Europe Bureau edited and proof-read the modules. The work was guided by Kirsti Floor, the Senior Regional Adviser on Refugee Women and Children in the Europe Bureau and relevant departments and units at UNHCR Headquarters.

UNHCR, Bureau for Europe  
Geneva, October 2005

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<sup>1</sup> UNHCR Guidelines on International Protection No.1. Gender-Related Persecution within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HRC/GIP/02/01, 7 May 2002.

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## **MODULE 3**

### **Ensuring Gender-Sensitivity in the Context of Resettlement**

**Target group:**

RSD and resettlement workers, and anyone interested in resettlement as a durable solution.

**Duration:** 4 hours and 20 min.

## **AGENDA**

### **Ensuring Gender-Sensitivity in the Context of Resettlement**

#### **Introduction to the Workshop**

- 9.00-9.10 Welcome  
9.10-9.15 Introduction of the agenda

#### **UNHCR Resettlement Handbook and Resettlement Criteria**

- 9.15-9.30 Introduction to the UNHCR Resettlement Handbook and to resettlement as a tool for refugee protection  
9.30-10.05 Presentation on the resettlement criteria, including Women-at-risk

#### **Gender and Resettlement - Procedural Issues**

- 10.05-10.35 Exercise and presentation on resettlement and procedural issues

#### **Women-at-risk – Country Programmes**

- 10.35-10.55 A glance at country programmes, including Women-at-risk programmes: USA, Canada and Australia

#### **Gender and Resettlement – Analyzing Cases**

- 10.55-11.05 Introduction to a case study exercise on gender and resettlement: Refugee Resettlement Form and a woman trafficked for sexual exploitation  
11.05-11.20 Coffee break including work on the exercise  
11.20-11.30 Continuing work on the exercise in the meeting room  
11.30-12.00 Presentation of the exercise in plenary  
12.00-12.10 Introduction to the second exercise: A woman trafficked for sexual exploitation  
12.10-12.40 Group work to analyze the claim  
12.40-13.10 A group discussion in plenary on the Refugee Status Determination and resettlement in a case of a woman trafficked for sexual exploitation

#### **Closure of the Workshop**

- 13.10-13.20 Conclusions and closure of the workshop

## **INTRODUCTION TO THE WORKSHOP**

09.00-09.10	Welcome and introduction to the workshop on gender and resettlement
09.10-09.15	Introduction of the agenda

### **WELCOME AND INTRODUCTION TO THE WORKSHOP ON GENDER AND RESETTLEMENT**

#### **Purpose - Why are you doing it?**

The purpose of this section is to make participants feel welcome and interested in participating in the workshop on gender and resettlement. If the participants did not participate in the workshops on gender and RSD, including that on procedural issues, you may start this workshop by using the first set of sections from the workshop on gender and RSD in Module 1 as well as the section on gender and sex in the same module.

#### **Time – How much time will it take?**

It will take 10 minutes.

#### **Method - How will you be doing it?**

You will make a short presentation, and you may want to illustrate it by using a PowerPoint presentation, which identify some of the problems women may experience in the country of asylum resulting in a need for resettlement and which also show the workshop objectives. Finish by distributing the handouts, and note that some of the handouts are only for participants who did not attend previous workshops (Module 1 and 2).

**Equipment and type of training material needed:** PowerPoint projector and presentation, handouts.

#### *PowerPoint slides:*

- No. 1 Ensuring gender-sensitivity in the context of resettlement;
- No. 2 Gender-based violence during the refugee cycle;
- No. 3 Workshop objectives;
- No. 4.1 Workshop agenda;
- No. 4.2 Agenda cont'd.

#### *Handouts:*

- No. 1 Gender-based violence during the refugee cycle;
- No. 2 References to UN and other international and regional documents on human rights and the issue of gender-based violence and discrimination;
- No. 3 The International Human Rights Framework: the link with refugee protection and women's rights, (excerpts);
- No. 4 Discrimination against Women and Violence against Women in International Law;
- No. 5 Individuals' human rights and the laws that protect them;
- No. 6 Causes and consequences of sexual and gender-based violence, excerpts from Sexual and gender-based violence against refugees, returnees, internally displaced persons - Guidelines for prevention and response;
- No.7 Workshop Agenda.

## Facilitator's notes

Show PowerPoint-slide no. 1 while mentioning the main objective of this gender training on resettlement, i.e. when stating the need of gender mainstreaming in order to give men and women the same prerequisites to access protection through resettlement to a third country, and that history has shown us that women have encountered special problems also with regard to resettlement. Their experiences and fears have not been highlighted. You may want to use the PowerPoint slide no. 2 which identifies some of the problems women may experience in the country of asylum that could give rise to a need for resettlement to a third country.

To emphasize the workshop objectives, show PowerPoint-slide no. 3 and state that the main objectives are:

- To raise awareness of the UNHCR resettlement criteria, including the Women-at-risk programmes;
- To increase awareness of gender-aspects in the context of analyzing and assessing the need for resettlement as a tool for refugee protection;
- To raise awareness of the procedural issues which may arise in relation to gender-related claims, and to provide some tools to handle these issues;
- To briefly introduce some country programmes;
- To fulfil the overall purpose which is to provide the participants with practical tools to avoid common traps and to ensure that resettlement claims are analyzed and processed in a way which corresponds to international standards.

Finish by distributing handouts no. 1, 2, 3, 4, 5, 6 and 7.

## **UNHCR RESETTLEMENT HANDBOOK AND RESETTLEMENT CRITERIA**

- 09.15.-09.30 Introduction to the UNHCR Resettlement Handbook and to resettlement as a tool for refugee protection.
- 09.30-10.05 Presentation on the UNHCR resettlement criteria, including Women-at-risk programmes.

### **INTRODUCTION TO THE UNHCR RESETTLEMENT HANDBOOK AND TO RESETTLEMENT AS A TOOL FOR REFUGEE PROTECTION**

**Purpose - Why are you doing it?**

The purpose of this section is to give participants a basic introduction to the UNHCR Resettlement Handbook and an overview of resettlement as a durable solution for refugees in need of international protection.

**Time – How much time will it take?**

It will take 15 minutes.

**Method - How will you be doing it?**

You will give a short presentation, which you will illustrate with the assistance of a PowerPoint Presentation.

**Equipment and type of training material needed:**

Handout, PowerPoint projector and presentation

*PowerPoint slides:*

- No. 5 UNHCR Resettlement handbook and resettlement as refugee protection;
- No. 6 For whom is resettlement an option?

*Handout:*

- No. 8 UNHCR Resettlement Handbook, Chapter 1, Resettlement: A vital instrument of international protection and an element of comprehensive solutions.

### **Facilitator's notes**

Introduce the section by showing PowerPoint-slide no. 5. Distribute and introduce the UNHCR Resettlement Handbook, if possible. Otherwise refer to it during the workshop, emphasize that it is available at the UNHCR website [www.unhcr.ch](http://www.unhcr.ch) and distribute the excerpts from the UNHCR Handbook when indicated in this module.

UNHCR Resettlement Handbook is a tool to obtain a better understanding of resettlement as an essential element in a comprehensive strategy of refugee protection and the attainment of durable solutions. It is also a practical tool in the work to ensure standards and quality in all stages of the resettlement process and it explains procedures in detail practical issues such as how to fill in the Resettlement Registration Form (RRF) and process a resettlement case. The resettlement Handbook also provides detailed information on the resettlement criteria of resettlement countries.

You may also show PowerPoint-slide no. 6 and give a brief overview of resettlement as a durable solution and the work of the UNHCR in resettlement. To do this you may wish to highlight the following questions and answers:



▪ **What is resettlement?**

Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees - with permanent residence status. The status provided should ensure protection against *refoulement* and provide a resettled refugee and his/her family or dependants with access to civil, political, economic, social and cultural rights similar to those enjoyed by nationals. It should also carry with it the opportunity to eventually become a naturalized citizen of the resettlement country.

▪ **When is resettlement an appropriate durable solution?**

UNHCR is mandated with protecting refugees and finding durable solutions to their problems. Resettlement should be considered when refugees in need of a durable solution for protection or other specific reasons cannot avail access to protection or relocate and thus are at risk in their country of asylum. The decision to resettle is taken in light of the prospects for other durable solutions and when there is no alternative and lasting way to eliminate the danger to the legal or physical security of the person concerned. In its engagement to protect refugees and promote durable solutions, UNHCR's preferred goal is voluntary repatriation. UNHCR also promotes local integration, whereby governments offer refugees the possibility to settle in the host country with a view to gaining self-sufficiency and enjoying legal protection through asylum. In the longer term, a refugee who benefits from resettlement or local integration may eventually choose to repatriate.

▪ **Are countries legally obliged to resettle refugees?**

No country is legally obliged to accept refugees for resettlement. Only a small number of states do so on a regular basis; allocating budgets, devising programmes and providing annual resettlement targets. It is seen as part of the burden-sharing and commitment to the fundamental principles of international protection of refugees.

▪ **For whom is resettlement an option?**

Resettlement under UNHCR auspices is geared primarily to the special needs of refugees under the Office's mandate whose life, liberty, safety, health or fundamental human rights are at risk in the country where they sought refuge. It is also considered a durable solution for refugees who have compelling reasons to be removed from their country of asylum.

Resettlement may be necessary to ensure the security of refugees who are threatened with *refoulement* to their country of origin or those whose physical safety is seriously threatened in the country where they have sought sanctuary. Resettlement is also used for other refugees at risk, such as survivors of torture and violence, the disabled and other injured or severely traumatised refugees who are in need of specialised treatment unavailable in their country of refuge. It is also appropriate for refugees without local integration prospects, for whom no other solution is available. Furthermore, resettlement

is often the only way to reunite refugee families who, through no fault of their own, find themselves divided by borders or by entire continents.

▪ **What are the current challenges in resettlement?**

Although the overall number of refugees in need of resettlement has decreased in recent years, the profile of resettlement cases has been increasingly characterised by new and diverse nationalities, and also by more complex cases needing specialised attention and treatment, such as victims of torture and Women-at-risk. This has generated a variety of challenges for UNHCR and for resettlement countries, ranging from how to better define the standards for resettlement, to responding to the special needs of resettled refugees, to extending support networks in the host communities. The need for broadly-based resettlement programmes may arise again as part of international endeavours to ensure protection and promote durable solutions.

▪ **Why continue to raise the issue of resettlement as a durable solution?**

Resettlement constitutes a complimentary part of other forms of durable solution and it serves three equally important functions. *First*, it is a tool to provide international protection and meet the special needs of individual refugees whose life, liberty, safety, health or other fundamental rights are at risk in the country where they have sought refuge. *Second*, it is a durable solution for larger numbers or groups of refugees, alongside the other durable solutions of voluntary repatriation and local integration. *Third*, it can be a tangible expression of international solidarity and a responsibility sharing mechanism, allowing states to help share each other's burdens, and reduce problems impacting the country of first asylum.

Resettlement as a durable solution for refugees who are in need of protection has been the focus of several UNHCR Executive Committee (henceforth Excom) conclusions and it was discussed during the UNHCR global consultation process and included in the outcome document Agenda for Protection.

Distribute handout no. 8 Resettlement Handbook, Chapter 1, Resettlement: A vital instrument of international protection and an element of comprehensive solutions.

## **PRESENTATION ON THE UNHCR RESETTLEMENT CRITERIA, INCLUDING WOMEN-AT-RISK**

### **Purpose - Why are you doing it?**

The purpose of this section is to give participants an understanding of the various UNHCR resettlement criteria, and how these could be used from a gender-perspective. It also introduces the specific criteria Women-at-risk.

### **Time – How much time will it take?**

It will take 30 minutes.

### **Method - How will you be doing it?**

You will give a presentation, which you will illustrate with the assistance of a PowerPoint presentation.

### **Equipment and type of training material needed:**

Handouts, PowerPoint projector and presentation

#### *PowerPoint slide:*

- No. 7 UNHCR Resettlement criteria

#### *Handouts:*

- No. 9 UNHCR Resettlement Handbook, Chapter 4 UNHCR Criteria for determining resettlement as the appropriate solution;
- No. 10 Multilateral framework of understanding on resettlement;
- No. 11 UNHCR Agenda for International Protection Goal 5 and 6;
- No. 12 UNHCR Excom Conclusions relating to the issue of resettlement.

### **Facilitator's notes**

You may start by outlining the UNHCR resettlement criteria, while showing PowerPoint slide no. 7:

- Legal and physical protection needs;
- Survivors of violence and torture;
- Medical needs;
- Family reunification;
- Children and adolescents;
- Elderly refugees;
- Refugees without local integration prospects;
- Women-at-risk.

Give a brief presentation of each criterion and ask the participants to think of possible gender aspects under each of them. Present the Women-at-risk criteria last, in order to show the importance and possibilities of considering gender aspects under all the other criteria. Finish by distributing handouts nos. 9, 10 and 11.

### **Legal and physical protection needs**

Resettlement is linked to legal and/or physical protection when a refugee's situation meets one or more of the following conditions:

- Immediate or long-term threat of *refoulement* to the country of origin or expulsion to another country from where the refugee may be *refouled*;
- Threat of arbitrary arrest, detention or imprisonment;

- Threat to physical safety or human rights in the country of asylum analogous to that considered under the refugee definition and rendering asylum untenable.

#### **Possible gender aspects**

It is important to note that women may be under continuous threat of different human rights abuses in the country of refuge, *inter alia*:

- sexual attack, coercion, extortion by persons in authority; sexual abuse of separated children in foster care or single heads of households; domestic violence; sexual assault when in transit facilities, collecting wood, water etc.; sex for survival/forced prostitution; sexual exploitation of persons seeking legal status in the asylum country or access to assistance and resources; trafficking for sexual or other purposes, forced marriage, social ostracism or other punishment for transgressing of gender discriminatory laws or social norms, socio-economic hardship as a single woman.

It is important to note that lesbian, gay, bisexual and transgender (LGBT) persons may be under continuous threats of different forms of human rights abuses, as discriminatory laws and social norms may be prevalent in the country of refuge. They may thus be subjected both to different forms of violence and discrimination by state or non-state actors, without being able to access effective state protection.

#### **Survivors of violence and torture**

Survivors of torture or other forms of deliberate and systematic violence will require coordinated medical care, counselling and other types of special assistance, in particular when they suffer from physical and/or serious psychological problems. Not all torture survivors develop medical conditions which are easily identifiable. In cases of refugees who sustained torture but do not show obvious consequences of it, one should always consider the risk of latent effects. It is important to remember that the families of the survivors may have complex feelings of trauma, guilt and helplessness and may in turn need special care and attention. Furthermore, information on how a particular community reacts to trauma, loss, grief and mental illness will have to be considered.

Where resettlement is determined to be the appropriate durable solution, torture survivors submitted either for protection reasons or compelling medical reasons, should be given priority. Care must be taken that survivors of violence and torture are resettled to locations where adequate services, both medical and psychological, will be available to meet their needs. Good communications with headquarters, field offices in resettlement countries and where appropriate, with officials of resettlement countries, will help ensure that such persons receive appropriate assistance in the country of resettlement. It should, however, be noted that UNHCR cannot guarantee that the refugee will always have access to required counselling and support services.

**Possible gender aspects**

It should be noted that the concept of torture could also include sexual and other forms of gender-based violence by non-state agents and that gender-based violence, either by state or non-state agents, often has severe psychological consequences, e.g. Post Traumatic Stress Disorder (PTSD).

**Medical needs**

To specifically determine that resettlement is the appropriate solution to the medical needs of a refugee, the following conditions must be met:

- The health condition is life-threatening without proper treatment; or there is a risk of irreversible loss of functions; or the health condition presents a significant obstacle to leading a normal life and achieving self-sufficiency; and
- Adequate treatment is not available in the country of asylum, due to lack of medical facilities and expertise; adequate treatment cannot be ensured through temporary medical evacuation; in the case of a disability, the situation in the country of asylum prevents the individual from becoming well adjusted and from functioning at a satisfactory level; and
- There is a favourable prognosis that treatment and/or residence in the country of resettlement would successfully address the health problem and, if possible, given the expected state of health after treatment/relocation, enable the individual to gain partial or total independence; or the particular situation in the country of asylum is the reason for, or significantly worsens, the health condition; and
- It is the expressed wish of the individual, after having been counselled in particular with regard to the social, cultural and psychological adaptation required in a new community.

Among cases meeting the above conditions, priority should be given to the needs of persons whose medical condition is directly related to their persecution, flight or exile.

**Possible gender aspects**

It is important to observe women-specific medical needs, both in general and in relation to possible experiences of different forms of gender-based violence before and during flight as well as in the country of asylum. It is also notable that UNHCR encourage that priority is given to children and to women alone or with children or dependants.

**Family reunification**

The importance of resettlement as a protection tool extends to certain cases where it preserves or restores the basic dignity of a refugee's life, for example, through family reunification. When refugees leave their country of origin, family members are frequently left behind, or dispersed during flight. Such separation leads to hardship and sometimes to tragic consequences. It may also create serious obstacles to a refugee's integration in

a new country. UNHCR offices are told to give priority attention to the reunification of family members mentioned below and, in particular, to unaccompanied minors.

Reunification of the nuclear family: husbands and wife, parents and children, unaccompanied minors or separated children with parents, siblings or customary caregivers.

**Possible gender aspects**

It is important to note, *inter alia*, the specific security and/or socio-economic problems women alone may have, as well as the risk of sexual exploitation of girl and boy minors in the country of asylum. These are problems which should be taken into account in the assessment of resettlement cases and the family reunification criteria. It is also important to note that it is the UNHCR policy to promote the reunification of parents with dependent, unmarried children, regardless of age, who were living with the parents in the country of origin. This may specifically be the case for an unmarried young woman who is above the age of 18.

**Children and adolescents**

It may be difficult for an unaccompanied minor or a separated child to establish refugee status using the same refugee criteria and procedures applied to adults. When a child is unable to articulate a claim, or it is not possible to determine the refugee status of a minor, a decision should be made as to what durable solution would be in the minor's best interests. In the context of resettlement, it should be borne in mind that some countries require that every individual, including children, meets the refugee definition. UNHCR encourages countries to consider the best interests of the child when determining the refugee status of a minor, and to determine refugee status using the broadest possible interpretation.

In the context of a determination as to whether resettlement is the appropriate solution for a separated child, many issues must be considered. If the basic considerations are made, the following categories of children are of priority:

- Minors who can be united with family;
- Minors who are under physical threat;
- Minors who are disabled, traumatized or in need of specialized medical care;
- Minors who are to be adopted.

**Possible gender aspects**

While assessing the need for resettlement of children, it is important to consider the special vulnerabilities heterosexual girl children or lesbian, gay, bisexual or transgender children may face, e.g. the risk of discrimination, forced labour in households or at other places, forced marriage, sexual violence or punishment for transgressing discriminatory laws or social norms.

### **Elderly refugees**

Elderly refugees may be particularly vulnerable when confronted with the causes and effects of becoming a refugee. Some may have been separated from family, friends or community during their flight, or have witnessed the killing of family members. The physical hardship of exile may well take its toll on the elderly, who, if already frail, may not have the strength to ward off disease and illness. The stresses of being forced to flee and then having to adapt in a new environment during the first stages of exile, particularly for those without the support of family, place untold demands on the coping ability of many elderly refugees.

#### **Possible gender aspects**

It is important to consider the special vulnerabilities of elderly women who due to gender roles may have extra difficulties to support themselves, etc.

### **Refugees without local integration prospects**

Resettlement may be considered for refugees who do not have an opportunity to establish themselves in their country of refuge in a manner appropriate to their cultural, social, religious or educational backgrounds. Resettlement may be promoted under such circumstances when it is evident in the individual case that a refugee will not be able to return home in the foreseeable future, and is not able to settle locally. In this regard, the quality of asylum and the social prospects inherent or lacking in it should play a key role in the assessment of resettlement needs. Under the broad concept of seeking resettlement as a durable solution when resettlement for immediate protection reasons is not necessary, UNHCR may consider promoting resettlement for specific individual cases or even groups. However, resettlement of refugees without local integration prospects, as distinguished from the more immediate need of resettlement for reasons of protection, should be promoted by UNHCR only when specific conditions are met.

#### **Possible gender aspects**

It is important to observe that there may arise cases where heterosexual women and girl children as well as lesbian, gay, bisexual and transgender persons may be subjected to such severe discrimination, by law and/or social norms, that a group resettlement should be considered.

### **Women-at-risk**

All UNHCR field offices are instructed to integrate the resources and needs of refugee women into all aspects of UNHCR's programmes in order to ensure equal delivery of protection and assistance activities. Assessment and planning are essential at every stage of a refugee situation from the initial emergency and provision of adequate care and maintenance through the identification of appropriate durable solutions. Early assessment of protection needs is crucial for two major reasons:

- Refugee women may be particularly at risk of attack and abuse as they cross the border into an asylum country. Early identification of such risks can allow the problem to be addressed through the provision of improved security;

- Decisions made early in a refugee emergency should take account of women's needs. Fundamental decisions such as camp layout and food distribution mechanisms can have a significant impact on the protection of refugee women.

The causes of refugee flight frequently result in separation from, or loss of, family members. Women may find themselves without the support of their traditional family protectors or their community. They often have to assume new roles and status in addition to coping with the loss of home, country and loved ones, which may render them particularly at risk.

### **Specific protection problems of refugee women**

Refugee women experience the same protection problems as all refugees; they require adequate safeguards to prevent their *refoulement* or expulsion from their country of refuge. They also require a legal status that accords human rights, including adequate social and economic rights and access to such basics as food, shelter, clothing and health care assistance. Their gender, however, may place them at risk of being subjected to additional protection problems, some of them being lack of gender sensitive RSD, lack of access to individual procedures, lack of access to assistance and/or to integration support, violence from the family and/or the refugee community. Abduction, rape, sexual abuse, harassment and exploitation are other examples of problems faced by refugee women, particularly those who do not have access to traditional family support. UNHCR places a high priority on the protection of refugee women and seeks to provide rapid solutions to the problems they face.

Refugee women should be consulted and involved if their real protection needs are to be addressed through preventive measures. Women who are survivors of sexual violence or physical abuse should be provided with adequate protection, medical and psycho-social care, which is culturally sensitive and appropriate. Their needs may best be provided for in the setting of their country of initial refuge, or within their own community, provided that adequate measures have been taken to ensure the survivors' safety and to prevent further violations.

### **Refugee Women in need of resettlement**

When, despite all possible efforts, it is unlikely that the particular protection problems or related needs of a refugee woman can be adequately addressed in the country of asylum, resettlement should be actively considered. In some instances resettlement may be the preferred and often the only solution. This could be the case when women have been raped and when in their society and in their country of refuge a survivor of rape is ostracized. Such a situation could be aggravated when the refugee woman gives birth to a child conceived through rape. In addition to the possible serious consequences of a rape on her physical and mental health, the refugee woman may suffer lifelong rejection by her own family and community. Resettlement may also be the preferred and only solution when a woman is at risk of being forced into prostitution to support herself, of being trafficked for sexual or other purposes or when a woman fear domestic violence or other forms of abuse family or other non-state actors and do not have the possibility of getting effective and durable protection in the country of refuge. In addition to these, many



other specific problems of refugee women may merit resettlement consideration. The guiding principle for UNHCR is whether resettlement is likely to offer a solution to the problems suffered by a refugee woman. It is important to avoid any automatism when identifying and assessing possible Women-at-risk cases, as this could lead to false claims solely for the purpose of seeking resettlement.

Finally you may ask the participants what problems gender roles may create e.g. with regard to women's possibilities to access resettlement procedures and to get their protection needs recognized. Access related problems may include (but not be limited to):

- Unawareness among women about resettlement as a protection alternative, as women may be confined to the household and have difficulties to access information advertised in public spaces, given by the UNHCR in public meeting areas, or circulating among, primarily male refugees;
- Fear of harassment or discrimination by staff in front of the UNHCR office;
- Untrained UNHCR staff, i.e. lack of knowledge among RSD/resettlement officers of gender aspects of flight and resettlement, the specific problems women and girls may experience including the prevalence of gender discrimination and violence in the country of asylum, and unawareness of the various UNHCR gender guidelines, including UNHCR Gender Guidelines (2002) and UNHCR Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons, Guidelines for Prevention and Response, (2003).

Finish the section by distributing handouts nos. 9, 10, 11, and 12.

## **GENDER AND RESETTLEMENT – PROCEDURAL ISSUES**

10.05-10.35 Exercise and presentation on resettlement and procedural issues

### **EXERCISE AND PRESENTATION ON RESETTLEMENT AND PROCEDURAL ISSUES**

**Purpose - Why are you doing it?**

The purpose of this section is to give participants a summary of procedural aspects to consider in order to ensure a gender-sensitive approach to resettlement as tool for refugee protection and thus as a durable solution.

**Time – How much time will it take?**

It will take 30 minutes.

**Method - How will you be doing it?**

You will initiate an exercise and then give a presentation. As for the exercise, divide the participants into groups of 4-5 persons and give them 10 minutes to list important considerations to make in order to ensure gender sensitivity in resettlement procedures. Write all the suggestions on a flip chart and finish the section by giving a summary presentation on gender sensitivity in resettlement procedures. You may use a PowerPoint Presentation, as appropriate. Distribute the handouts.

**Equipment and type of training material needed:**

Handouts, PowerPoint projector and presentation, flip chart and pen

**PowerPoint slides:**

Nos. 8.1, 8.2, 8.3 and 8.4 Gender and resettlement – procedural issues

**Handouts:**

- No. 13 Gender and resettlement and procedural issues;
- No. 14 Gender-sensitivity and procedural issues in the context of refugee status determination and durable solutions;
- No. 15 Gender-sensitivity and the 1951 Refugee Definition;
- No. 16 Conducting an interview;
- No. 17 Interviewing applicants who have suffered a trauma;
- No. 18 Barriers to communications.

### **Facilitator's notes**

Divide the participants into groups of 4-5 persons. Give 10 minutes for group discussions while asking them to think of relevant considerations to make in order to ensure gender-sensitive resettlement procedures. Write their answers on a flip chart and continue by making a brief presentation, encompassing some or all of the considerations below. A PowerPoint presentation can be used, as appropriate.

- The presence of qualified and gender trained staff, (i.e. border guards, RSD workers, resettlement officers, protection officers, interpreters, adjudicators, counsellors, doctors and psychologist and other law enforcement personnel who meet asylum seekers and refugees) is promoted and, where possible, ensured at all stages of the asylum procedures and the resettlement procedures, in order to facilitate sensitivity to gender needs and issues;

- Refugees are provided with any information they need in a manner and language s/he understand;
- Refugees are informed of their possibility to choose an interpreter and resettlement officer of the same sex;
- Refugee women are automatically provided same sex interpreter and resettlement officer;
- Equal access exists for men and women refugees to information on resettlement;
- Equal access exists for men and women refugees to resettlement procedures, e.g. no barriers exist for women to get access, such as male guardians outside the office, fear of sexual harassment, not enough female interpreters;
- Men and women refugees have equal access to all forms of assistance;
- The resettlement officer is well informed about the human rights situation for women and lesbian, gay, bisexual and transgender refugees in the relevant country of asylum as well as in the country of asylum, e.g. discriminatory laws, policies and practices as well as the prevalence of sexual and other forms of Gender-Based violence in refugee camps or other settings committed by male guards, humanitarian workers or by others within the refugee community or the family (domestic violence etc.);
- The resettlement officer is familiar with the UNHCR Sexual and Gender-based Violence against Refugees, Returnees and Internally-Displaced People: Guidelines for Prevention and Response (2003) and adequate measures are in place to both identify and respond to gender-based violence;
- The resettlement officer has read the documents linked to the refugee's claim and RSD decision and, if possible, talked to the RSD officer before the interview, in order to ensure an interview which take into account the individual's experiences and personality;
- Accelerated resettlement procedures are in place for refugee women-at-risk;
- Separate interviews are ensured -without the presence of family members;
- Refugees are informed that every person, including a woman or a child, may have a valid claim in his/her own right;
- Resettlement officers and interpreters are aware and responsive to cultural or religious sensitivities or other personal factors (gender, age, education);
- An open and reassuring environment is provided;

- Interview room is arranged to encourage discussion, promote confidentiality and lessen possibility of perceived power imbalances;
- The resettlement officer introduces him/herself and the interpreter, and explains roles of each person as well as purpose of interview;
- The resettlement officer explains the resettlement criteria and the refugee definition to the applicant as well as the resettlement process and type of questions which will be asked, including questions relating to gender roles and gender-based violence and discrimination in the family, community and the state as well as opinions on the same;
- The resettlement officer reminds the applicant of his or her rights and obligations, *inter alia* the right to confidentiality, the right to counsel, the right and obligation to give evidence, the obligation to be truthful;
- The resettlement officer reassures the applicant of confidentiality (including with regard to members of own family);
- The resettlement officer explains that he/she is not a trauma counsellor;
- The resettlement officer remains neutral, compassionate and objective during the interview;
- The resettlement officer avoids body language or gestures that may be perceived as intimidating or culturally insensitive or inappropriate;
- The resettlement officer is aware of gender differences in communication, especially regarding non-verbal communication. This is particularly important in the context of cross-cultural communication (e.g. a female may avoid eye contact with the interviewer due to her culture);
- The resettlement officer ensures minimal interruption while the applicant presents her claim;
- The resettlement officer employs the eligibility criteria related to gender-related persecution and asks questions in a manner which encourages women to speak out about their experiences, *inter alia*:
  - is aware and adapts questions to the fact that some women may not associate themselves with politics and they may not label as torture or ill-treatment the forms of gender-based violence they have experienced in the country of origin.
  - asks questions about gender relations in the state, community and family.
  - ensures the employment of a gender-sensitive questionnaire.

- Both open-ended and specific questions are used as appropriate;
- The resettlement officer should be aware that lack of knowledge, or even contradictory answers, on the part of female family members does not mean the entire testimony should be discounted as lacking credibility;
- Second and subsequent interviews may be needed in order to establish trust and to obtain all necessary information;
- The resettlement officer should be responsive to the trauma and emotion of claimants and stop an interview where claimant is becoming emotionally distressed;
- If the resettlement officer suspects that the applicant has been a victim of sexual violence, or if the applicant is unable or unwilling to discuss certain events relating to such an incident, s/he asks discreet and indirect questions. Give the applicant time to tell her story in her own way and in her own words. The applicant is never forced to communicate, but is assured that the interviewer is available to assist her once she is ready to talk about the problem. There is no need to dwell in detail on the sexual abuse;
- Type and level of emotion displayed during the recounting of her experiences should not affect a woman's credibility: cultural differences and trauma play an important and complex role in determining behaviour;
- The resettlement officer recognizes that women refugee claimants who have been subject to sexual violence can exhibit a pattern of symptoms as a consequence of the trauma related to gender-based violence, such as rape or domestic violence. The symptoms exhibited may include a loss of self-confidence and self-esteem, difficulty concentrating, feelings of loss of control, fear, and memory loss or distortion of facts. Women who have suffered sexual and/or domestic violence may be reluctant to speak about such incidents. In some cases, it may be appropriate to consider whether claimants should be allowed to provide their testimony in writing so as to avoid having to recount traumatic events in front of strangers;
- The resettlement officer is aware that it is unnecessary to establish the precise details of the act of rape or sexual assault itself; focus could be placed on surrounding circumstances and events;
- In the case of a husband and wife or other family members being interviewed, the resettlement officer should be careful when trying to clarify contradictory statements. In general, the resettlement officer should be cautious if confronting an applicant concerning statements made by another family member in order to avoid adding to the already tense and difficult situation the family may be experiencing;
- For some cases, it may be appropriate to seek objective psychological or medical evidence;

- Mechanisms for referral to psychosocial counselling and other support services should be made available where necessary;
- Availability of trained psychosocial counsellors before and after interview recommended.

Alternatively, you may suggest that the participants divide themselves into groups of 2 persons and list about 10 procedural issues to consider. After that you may discuss their suggestions in plenary, add some considerations and write them up on a flip chart.

Finish the section by distributing the handouts no. 13, 14, 15, 16, 17 and 18 and encourage participants to study the checklists distributed and to read UNHCR material and relevant literature after the training.

## **WOMEN-AT-RISK – COUNTRY PROGRAMMES**

10.35-10.55 Presentation on country programmes including Women-at-risk: USA, Canada, and Australia.

### **PRESENTATION ON COUNTRY PROGRAMMES (INCLUDING WOMEN-AT-RISK): USA, CANADA AND AUSTRALIA**

**Purpose - Why are you doing it?**

The purpose of this section is to give participants a very brief introduction to the criteria of some of the largest resettlement countries, with specific focus on the Women-at-risk-criteria, as appropriate.

**Time – How long will it take?**

It will take 20 minutes.

**Method - How will you be doing it?**

You will give a presentation, which you may illustrate by using a PowerPoint presentation. Distribute the handouts in the end. Please note that an exercise may replace the presentation, as indicated in the text below.

**Equipment and type of training material needed:**

Handout, PowerPoint projector and presentation

*Handout:*

- No. 19 UNHCR Resettlement Handbook, Chapter 11 (excerpts), selected country programmes: USA, Canada and Australia.

### **Facilitator's notes**

Start by recalling that no country is legally obliged to accept refugees for resettlement to third countries. Only a small number of states do so on a regular basis, allocating budgets, devising programmes and providing annual resettlement quotas. Some countries regularly accept refugees for resettlement, sometimes in relatively large numbers, but do not set annual targets. Recently, states that have not previously accepted refugees for resettlement have established resettlement programmes or expressed an interest in doing so. Countries which have resettlement programmes are, *inter alia*, Benin, Burkina Faso, Canada, Chile, Australia, Denmark, Great Britain, Finland, Iceland, Ireland, the Netherlands, New Zealand, Norway, Sweden, and the United States. It is not always the case that the priorities of UNHCR and those of the resettlement countries coincide. Explain that you will briefly introduce the criteria of USA, Australia and Canada; all of them relatively large resettlement countries which prioritize Women-at-risk as a specific group. However, the limited time available makes it impossible to give detailed comprehensive presentations of the country programmes. Anyone interested in particular countries can access the programmes through the UNHCR Resettlement Handbook, available at the UNHCR website [www.unhcr.ch](http://www.unhcr.ch).

End the section by distributing handout no. 19.

As an alternative, an exercise could replace the presentation. You could divide participants into groups of 4-5 persons, give them the relevant country chapters from the

UNHCR Resettlement Handbook (updated November 2004) and ask them to summarize the chapters and choose a group rapporteur who could make the presentation in plenary. This exercise would probably prolong the section, i.e. it would take about 20-30 minutes.

## **USA<sup>2</sup>**

Applicants for refugee admission into the United States must meet all of the following criteria:

- Meet the definition of a refugee according to US legislation;
- Be among those refugees determined by the president to be of special humanitarian concern to the US;
- Be otherwise admissible under US law and not be firmly resettled in any third country.

The United States divide applicants into categories of different priorities. Three categories of persons could possibly get resettlement to the US.

*Priority one* consist of cases identified by the UNHCR or U.S. Embassy: persons facing compelling security concerns in countries of first asylum; persons in need of legal protection because of the danger of *refoulement*; those in danger due to threats of armed attack in an area where they are located; or persons who have experienced recent persecution because of their political, religious, or human rights activities (prisoners of conscience); Women-at-risk; victims of torture or violence, physically or mentally disabled persons; persons in urgent need of medical treatment not available in the first asylum country; and persons for whom other durable solutions are not feasible and whose status in the place of asylum does not resent a satisfactory long-term solution.

*Priority two* includes specific groups (within certain nationalities) as identified by the Department of State in consultation with NGOs, UNHCR, and other experts as well as some in-country programmes. It should be noted that each group will be selected based on its individual circumstances.

*Priority three* includes nationals of certain pre-selected countries who are spouses, unmarried sons and daughters under 21 years of age, and parents of persons admitted to the United States as refugees or granted asylum, or persons who are lawful permanent residents or U.S. citizens and were initially admitted to the United States as refugees or granted asylum. It is notable that whereas women-at-risk, survivors of violence and torture, children and refugees with medical needs may be processed as priority one cases, elderly are not since age is not a factor in US refugee admissions.

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<sup>2</sup> Excerpt from USA as a country chapter in UNHCR Resettlement handbook (latest update November 2004). Note that the USA chapter is dated June 2004 and ensure that there is no later revision of the chapter (see [www.unhcr.ch](http://www.unhcr.ch)).



### **Canada<sup>3</sup>**

Canada will only accept an applicant who, upon being referred by, for example UNHCR, meets the criteria of the 1951 UN Convention or meets the criteria for one of the two Humanitarian Protected Persons Abroad classes, i.e. the Country of Asylum Class and the Source Country Class. The Country of Asylum Class deals with persons who have fled their countries of origin and who are the victims of war or massive violations of human rights. The Source Country Class deals with persons who remain in their country of citizenship and who are the victims of war or violations of fundamental civil rights or who would meet the Convention definition had they fled their country. The application of the Source Country Class is limited to those countries appearing on a regulated schedule.

A Canadian visa officer makes the decision as to whether an applicant falls into one of the above mentioned three categories. Canada has specific guidelines for assessing gender-based persecution which are taken into account when an eligibility decision is made. In addition to meeting the above criteria, applicants must show potential to become self-sufficient in Canada within a 3 to 5 year timeframe. Factors such as education, presence of a support network (family or sponsor) in Canada, work experience and qualifications, ability to learn to speak English or French and other personal suitability factors such as resourcefulness will be taken into account by visa officers. However, this criteria does not apply to refugees determined by a visa officer to be in urgent need of protection or vulnerable.

Specific categories of persons who may be resettled are for example survivors of violence and torture, children (if not a minor with no immediate family in Canada), refugees with certain medical needs and elderly refugees with close family ties to Canada. Women-at-risk constitute another such category which could be eligible for resettlement.

### **Women-at-risk**

The aim of the Canadian Women-at-risk programme is to provide protection and assistance to refugee women who are in critical situations or in need of special attention. The programme recognizes that women in these circumstances require additional assistance to establish successfully in Canada. Canada defines Women-at-risk as women without the normal protection of a family who find themselves in precarious situations and whose safety is in jeopardy in countries of first asylum. Urgent need of protection and vulnerable cases are given priority. However, Women-at-risk may also be women who are not in immediate danger, but who are living in unstable conditions and for whom resettlement in a third country offers the only solution. To be eligible for this programme, Women-at-risk must be Convention refugees or members of one of the Humanitarian protected Persons Abroad classes. The ability to successfully establish will be assessed by Canadian visa officers on a sliding scale. That is, the greater the need for protection or the more immediate the danger the less weight will be placed on establishment consid-

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<sup>3</sup> Excerpt from Canada as a country chapter in UNHCR Resettlement handbook (latest update November 2004). Note that the Canada chapter is dated June 2004 and ensure that there is no later revision of the chapter (see [www.unhcr.ch](http://www.unhcr.ch)).

erations. In cases of refugees in urgent need of protection or vulnerable, ability to establish criteria will not be applied. In other words, Women-at-risk may be accepted despite having limited settlement prospects. All Women-at-risk cases should be submitted directly to the responsible Canadian visa office, with all the necessary documents attached.

### **Australia<sup>4</sup>**

Refugees could be admitted for resettlement to Australia if they would be subject to persecution in their home country and are in need of resettlement. The majority of applicants who are considered under this category are identified by UNHCR and referred by UNHCR to Australia, but there are also other categories which will not be discussed here. Besides meeting the threshold criteria described above, applicants for resettlement to Australia must satisfy the Department of Immigration and Multicultural Affairs (DIMIA) decision-maker that there are compelling reasons for giving special consideration to granting them a visa. The decision-maker must be satisfied that there is no other suitable durable solution available to the applicant and that permanent settlement in Australia is the appropriate course for the individual and would not be contrary to the interests of Australia. All applicants are required to meet the public interest criteria outlined in section 5 below. Decisions on the size, composition and regional focus of the Humanitarian Programme are made by the Australian Government based on the UNHCR assessment of global resettlement needs, the views of individuals and organizations in Australia conveyed during community consultations, and Australia's capacity to assist.

### **Women-at-risk**

Priority caseloads for the offshore component of the Humanitarian Programme are emergency cases, women-at-risk-cases and cases referred by UNHCR. As for special categories, Australia take special consideration to survivors of violence and torture referred by UNHCR for resettlement as well as to woman who fall under the Women-at-risk programme, which is for female applicants who are subject to persecution or registered as being of concern to UNHCR; are living outside their home country; do not have the protection of a male relative; and are in danger of victimisation, harassment or serious abuse because of their sex. The annual target for the Woman at Risk Programme is 10.5 per cent of Refugee category visas.

It may be worth mentioning that children applying under the Humanitarian Programme for entry to Australia as unaccompanied minors are required to meet the same criteria as other applicants, including the criterion that permanent settlement in Australia is the most appropriate durable solution. Decision-makers must be satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child. There are no special provisions for the resettlement of elderly refugees, or for refugees with medical needs. As for family reunification, family members facing human rights abuses can be considered for family

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<sup>4</sup> Excerpt from Australia as a country chapter in UNHCR Resettlement handbook (latest update November 2004). Note that the Australia chapter is dated June 2004 and ensure that there is no later revision of the chapter (see [www.unhcr.ch](http://www.unhcr.ch)).

reunion under the 'split family' provisions of the Humanitarian Programme. The split family provisions allow the granting of a visa to immediate family members of a permanent humanitarian visa holder if they can demonstrate a *bona fide* family relationship and meet public interest criteria.

## **GENDER AND RESETTLEMENT – ANALYZING CLAIMS**

10.55-11.05	Introduction to the first exercise on gender and resettlement: Practicing filling in the Resettlement Registration Form of a Woman at Risk case
11.05-11.30	Group work on the exercise in the meeting room
11.30-12.00	Presentation of the exercise in plenary and discussion
12.00-12.10	Introduction to the second exercise: A woman trafficked for sexual exploitation
12.10-12.40	Group work on the exercise in the meeting room
12.40-13.10	A group discussion in plenary on the Refugee Status Determination and resettlement in the case of a woman trafficked for sexual exploitation

### **INTRODUCTION TO THE FIRST EXERCISE ON GENDER AND RESETTLEMENT: PRACTICING FILLING IN THE RESETTLEMENT REGISTRATION FORM OF A WOMAN AT RISK CASE**

#### **Purpose - Why are you doing it?**

The purpose of this section is to enhance the participants' understanding of the various resettlement criteria and of how to apply them on gender-related cases, with due incorporation of a gender perspective into the assessment.

#### **Time – How long will it take?**

It will take 10 minutes to introduce the first exercise, which leaves 25 minutes for group work and 30 minutes to review it in plenary.

#### **Method - How will you be doing it?**

A case study exercise will be the primary training method used in this section. Introduce the participants to the exercise and then divide them into groups of 4-5 persons. Distribute the handout of the case study along with the empty RRF that the groups will fill in. Each group should discuss the case and fill in the details and arguments as appropriate, paying special attention to the special needs of the applicant. A group rapporteur should be selected.

#### **Equipment and type of training material needed:**

Handouts, PowerPoint projector and presentation.

#### *PowerPoint slide:*

- No. 10 Case study exercise on gender and resettlement – instructions.

#### *Handout:*

- No. 20 Guidelines on International Protection No.1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees.

#### *Exercises:*

-No. 1 Resettlement Registration Form (RRF);

-No. 2 Case study of a Woman at Risk.

**Facilitator's notes**

Give a brief introduction to the case study exercise while dividing the participants into groups of 4-5 and distributing the handouts. Explain that they shall discuss the case, fill in the RRF as appropriate and choose a group rapporteur who will present the case in plenary.

**COFFEE BREAK INCLUDING WORK ON THE EXERCISE (15 MIN)****CONTINUING WORK ON THE EXERCISE IN THE MEETING ROOM (10 MIN)****REVIEW OF THE EXERCISE IN PLENARY (30 MIN)**

Discuss in plenary how the groups argued and filled in the RRF (see the RRF below for suggestions on how to fill it in). For each section, let one group start the discussion by telling the rest of the participants how it assessed the woman's need for resettlement to a third country.

## **INTRODUCTION TO THE SECOND EXERCISE ON GENDER AND RESETTLEMENT: A WOMAN TRAFFICKED FOR SEXUAL EXPLOITATION**

### **Purpose - Why are you doing it?**

The exercise is meant to facilitate discussion about options and arguments for refugee status determination and resettlement of a female victim of trafficking for sexual exploitation who fears returning to her country of origin.

### **Time – How long will it take?**

It will take 10 minutes to introduce the exercise, and then allow the participants 30 minutes to work in groups analyzing the case. This will be followed by another 30 min. discussion about the case in plenary.

### **Method - How will you be doing it?**

A case study exercise will be the primary training method used in this section. Introduce the participants to the exercise while dividing them into groups of 4-5 persons. Distribute handout no. 21. Each group should discuss the case and assess the important factors in refugee status determination of the case as well as her resettlement needs. A group rapporteur should be selected.

### **Equipment and type of training material needed:**

Handouts, PowerPoint projector and presentation.

### *Exercise:*

*No.3* Case study: A woman trafficked for the purpose of sexual exploitation.

### **Facilitator's notes**

The second exercise constitutes a group discussion on the refugee status determination and resettlement as the durable solution in a case of a woman trafficked for sexual exploitation and who fears further human rights violations in her country of origin.

Give a brief introduction to the case study exercise while dividing the participants into groups of 4-5 and distributing the handouts. Explain that each group should discuss the case and assess the refugee status determination arguments and resettlement needs of the applicant as a durable solution. Choose a group rapporteur who will present the case in plenary.

### **CONTINUING WORK ON THE EXERCISE IN THE MEETING ROOM (30 MIN)**

### **REVIEW OF THE EXERCISE IN PLENARY (30 MIN)**

In plenary, invite one group to start the discussion, explaining their analysis and argumentation for or against resettlement as the durable solution. If time is left after all groups have presented, you may elaborate on the assessment of refugee status in other trafficking cases (e.g. cases where there was no criminal investigation or proceedings). You may also debate different obstacles to resettlement in contexts such as large refugee camps in urban or rural settings.

## 1. Case-related Data

UNHCR case number:  
Embassy file number:

HQ Reference number:

Submission Priority:

Case size:

Resettlement Criteria:

Arrival:		Country of Asylum:		Cross referenced cases:	
Registration:		Refugee Status:			
Address:					

## 2. Individual Bio Data

(If NOT currently living with Principal Applicant, explain under Section 7 - Additional Remarks)

Relationship to PRA

Alias Names:

Sex:                      DOB:                      est.  
Age:

Principal Applicant

Marital Status:

Country of Origin:

Citizenship:

Place and Country of Birth:

Religion:

Name of Father:

Ethnic Origin:

Name of Mother:

Education:

Occupation/Skill:

Languages:

Special Needs:

Alias Names:

Sex:                      DOB:                      est.  
Age:

Marital Status:

Country of Origin:

Citizenship:

Place and Country of Birth:

Religion:

Name of Father:

Ethnic Origin:

Name of Mother:

Education:

Occupation/Skill:

Languages:

Special Needs:

**Alias Names:**

**Sex:           DOB:                   est.   Age:**

**Marital Status:**

**Country of Origin:**

**Citizenship:**

**Place and Country of Birth:**

**Religion:**

**Name of Father:**

**Ethnic Origin:**

**Name of Mother:**

**Education:**

**Occupation/Skill:**

**Languages:**

**Special Needs:**

**Alias Names:**

**Sex:           DOB:                   est.   Age:**

**Marital Status:**

**Country of Origin:**

**Citizenship:**

**Place and Country of Birth:**

**Religion:**

**Name of Father:**

**Ethnic Origin:**

**Name of Mother:**

**Education:**

**Occupation/Skill:**

**Languages:**

**Special Needs:**



### 3. Relatives of principal applicant and spouse not included in this submission

ALL OTHER CLOSE RELATIVES OF PRA AND SPOUSE in the country of origin, the country of refuge or any other country. Include at least all immediate biological and legal relatives, including step and half relationships. In particular, parents, spouses, children and siblings of each person listed in the individual should be mentioned. In addition, distant relatives including friends in resettlement countries should be included who can provide assistance in case of resettlement, if there are no other close relatives in those countries.

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	Sex:    DOB:	Age:
Place and Country of Birth:	Legal Status:	Marital Status:
Relationship to PRA:	Religion:	Ethnicity:
Country of residence:	Address in country of residence:	
Comments:		

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	Sex:    DOB:	Age:
Place and Country of Birth:	Legal Status:	Marital Status:
Relationship to PRA:	Religion:	Ethnicity:
Country of residence:	Address in country of residence:	
Comments:		

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	Sex:    DOB:	Age:
Place and Country of Birth:	Legal Status:	Marital Status:
Relationship to PRA:	Religion:	Ethnicity:
Country of residence:	Address in country of residence:	
Comments:		

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	Sex:    DOB:	Age:
Place and Country of Birth:	Legal Status:	Marital Status:
Relationship to PRA:	Religion:	Ethnicity:
Country of residence:	Address in country of residence:	
Comments:		

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#### 4. REFUGEE CLAIM

(Including: events and reasons leading to the granting of refugee status/reasons for a continued need for international protection. If relevant, an exclusion analysis should be included and indicate activities/events e.g., involvement in armed struggle, previous convictions, military service. The claim(s) of other family member(s) which maybe different from the PRA's should likewise be included that could enhance the resettlement selection requirements. Also, countries and dates of transit in other countries should be included, if applicable, as well as information on detention. - see Resettlement Handbook, Chapter 3 and Handbook on Procedures and Criteria for Determining Refugee Status)

The Applicant fled Country A and entered Country B on January 1st, 2003. On January 5<sup>th</sup> 2004, the Applicant submitted an asylum claim and on April 21<sup>st</sup> 2004, the Government of Country B determined that PRA had established a well-founded fear of persecution and thus granted her refugee status in accordance to article 1 of the 1951 Geneva Convention and its 1967 Protocol. UNHCR's analysis of the case coincided with that of the Government, considering that PRA has a well-founded fear of persecution based on an imputed political opinion due to her refusal to allow her son to be recruited by a guerilla group.

##### Reasons for fleeing Country A

The Applicant lived alone with her two children and ran a fruit stall at the town market. The Applicant was widowed in 2000, when her husband died in a bomb attack on a bus. It is still not clear whether the incident was perpetrated by guerrilla forces present in the area or by a criminal group.

The Applicant took over the fruit stand after her husband's death. Her eldest son assisted her with the stand as the Applicant was too afraid to send him to school because of the strong guerrilla presence in the area and throughout the entire country. Her other child remained at home and a woman looked after him while the Applicant was working at the market.

Around mid-March 2003, the Applicant received a note at her house from the guerrilla front operating in the area. It was just a greeting note with no specific request or question. The Applicant did not give it much importance.

However, a month and a half later, the Applicant received a second note from the same group. This time, the group stated that they wanted to recruit her eldest son, who was about to turn 16, and that he had to present himself at the encampment. The Applicant was terrified and did not know what to do. She knew that she would be in great danger if she reported the letter to the relevant authorities as the guerrillas could easily find out. In June (approximately), the Applicant received a third note from the group. This time, they warned that if the Applicant's son didn't present himself at their camps in the following 24 hours, the family would have to face the consequences.

The Applicant realized that such threats were serious and felt extremely afraid. That same evening, at around 6 to 7pm, she and her children packed a few things and took a taxi to the nearest major city. The first thing that crossed her mind was to come to Country B as her sister had been living here for a few years. As soon as they arrived in the major city, they took a bus and crossed the nearest border.

##### Situation in Country B

The Applicant and her children entered Country B on June 15<sup>th</sup> 2003. They proceeded to join her sister. However, her sister was in a very difficult situation because her husband was an alcoholic. The Applicant therefore only remained with her for a few days and then moved cities, as she had been told that it would be easier for her to find work.

The Applicant had very little savings and only had some jewellery to sell in order to survive. She and her children lived in a hotel for a few days and could only afford one meal a day. A few days after arriving in the new city, the Applicant met a person who worked as a vendor on buses and offered to help the Applicant do the same. The Applicant agreed and began selling sweets and pencils on buses. A few days later, the Applicant moved into a small house free of charge- in exchange, she looked after the home. The Applicant is still living in that house and has been paying USD \$ 20 monthly rent for the past couple of months.

She still works as a vendor on buses and makes around USD \$ 5 to 6 dollars a day. She works every single day, including weekends, from early in the morning until 4 to 5pm in the afternoon.

Because she lacks money, the Applicant has not been able to send her children to school. Her two children remain at home all the time and have nothing to do other than watch TV. A neighbour regularly goes to the house at noon time to prepare their lunch.

According to the social worker who visited them at the house, both children are apparently healthy but look lethargic, unenergetic and very depressed because they are not doing anything in particular and their mother is away all day. The Applicant would like to find another job and send her children to school but is struggling to get by day-by-day.

## **5. NEED FOR RESETTLEMENT**

**(see Resettlement Handbook, Chapter 4)**

Country B is a State Party to the 1951 Geneva Convention. In 199\*, the Government adopted domestic refugee legislation, in the form of an executive decree, which incorporates all the fundamental principles of the 1951 Convention. The refugee status determination procedure is currently implemented.

### **Woman at Risk**

For purposes of resettlement, UNHCR considers as Women-at-risk those women who have protection problems and are single heads of families. They may suffer from a wide range of problems including expulsion, refoulement, and other security threats, sexual harassment, violence, abuse, torture and different forms of exploitation. The trauma of being uprooted, deprived of normal family and community support or cultural ties, the abrupt change in roles and status, in addition to the absence of an adult male head of family, renders some women, under certain circumstances, more vulnerable than others. When, despite all possible efforts, it is unlikely that a particular case's protection problems or the related needs of a refugee woman can be adequately addressed in the country of refuge, resettlement should be actively considered.

UNHCR considers the present case to be a woman-at-risk due to the present conditions in which the Applicant is living, in addition to the general context of life in such a city, where there is a very high foreigner and refugee population. UNHCR believes that the problems that the Applicant and her children are experiencing cannot be addressed adequately in this country, despite the Applicant's many efforts. The Applicant is a single mother and therefore, the only economical and moral support her children have. In order to work, she leaves her children alone almost all day in order to work as a vendor on buses. She makes only 5 to 6 US dollars a day, which is barely sufficient to cover their most basic needs. Because of these financial constraints, she has not been able to send her children to school. The Applicant has been struggling to find another job to improve their current situation but has so far not managed to do so.

According to the social worker who visited the children recently, it seems that they don't have any apparent health problem, but they seem very lethargic and depressed due to the fact that they spend the whole day alone and without the guidance of their mother.

Given the family's precarious economic situation and the particularly delicate situation the children are in, it is highly unlikely that the Applicant will succeed in obtaining adequate self-sufficiency or integration in Country B. Return to Country A is also not an option as the guerilla group is active throughout the entire country. Therefore, UNHCR deems that resettlement is the only viable durable solution in order to prevent further protection problems, victimization, re-traumatization or other possible forms of abuse and exploitation against the Applicant.

## **6. SPECIAL NEEDS ASSESSMENT (see Resettlement Handbook, Chapter 5)**

Given the Applicant's status as a Woman-at-Risk, she may need psycho-social care in the country of resettlement. This specialised care should be culturally sensitive and appropriate in order to ensure her safety and to help the Applicant overcome the trauma of being alone and uprooted from her country of origin.

Furthermore, psycho-social care and an appropriate medical checking should be extended to PRA's children, who look very depressed, fearful, lethargic and without any interests. As mentioned in section 12 they have nothing to do and they remained all day long unattended at home without the guidance of their mother.

**7. ADDITIONAL REMARKS (e.g. particular family relationships, residence of family members in locations different from PRA, changes in marital status including dates and supporting documentation available and any other information for resettlement authorities).**

Shortly before the Applicant's interview with a potential resettlement country's delegation in June this year, the Applicant informed us that she has another son, John, as a result of a short relationship with another man in Country A. According to the Applicant, her son, who was never recognized by his father, was raised by his grandmother (the Applicant's partner's mother) in Country A. In July of this year her partner's mother discovered the whereabouts of the Applicant through her sister and contacted the Applicant saying that she could no longer care for the child and arranged to send her two-year-old boy to Country B to be with its mother. Since then he has been living with the Applicant. The Applicant still doesn't have any documentation for her son. Although advised, she still hasn't registered him in Country B.

**8. DECLARATION**

I/We, the undersigned, authorize UNHCR to share all information and any documents pertaining to me/us and my/our family/dependants in the context of a resettlement submission with officials of Governments other than my/our own. At the same time, UNHCR is authorized to receive any information relating to a resettlement submission on my/our behalf from such Governments. This includes, in particular, my/our agreement that reasons for a decision relating to a resettlement submission are shared with UNHCR. All persons affirm that the information provided to UNHCR for the purpose of this submission is correct and truthful to the best of their knowledge.

\_\_\_\_\_

Place and Date

\_\_\_\_\_  
Signature of Principal Applicant and certification of correctness of all information provided by the applicants

(signed copy to be retained at initiating UNHCR Office)

\_\_\_\_\_

Place and Date

\_\_\_\_\_  
Signature of spouse and certification of correctness of all information provided by the applicants

(signed copy to be retained at initiating UNHCR Office)

\_\_\_\_\_

Place and Date

\_\_\_\_\_  
Signature of UNHCR interviewer

Name:  
Title:

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Place and Date

---

Signature of Interpreter (if applicable)

Name:

Person to be contacted for any possible clarification or further information (if not same as interviewer):

Name:

Title:

**9. ATTACHMENTS** (please specify any attachments; if not sent as an attachment under the same e-mail message: provide reference number and date of dispatch)

- a)
- b)
- c)
- d)
- e)
- f)
- g)

## **CLOSURE OF THE WORKSHOP**

12.00-12.10

Conclusions and closure of the workshop

### **CONCLUSIONS AND CLOSURE OF THE WORKSHOP**

**Purpose - Why are you doing it?**

The purpose of this section is to summarize the workshop.

**Time – How long will it take?**

It will take 10 minutes.

**Method – How will you be doing it?**

You will make a short presentation, summarizing the workshop. Distribute handouts as appropriate.

**Equipment and type of training material needed:**

Handouts.

*Handouts:*

- No. 21 Suggested readings;
- No. 22 UNHCR Code of Conduct;
- No. 23 Secretary General's bulletin: Special measures for protection from sexual exploitation and sexual abuse.

### **Facilitator's notes**

Summarize the workshop by referring back to the agenda and the objectives set forth in the beginning and again emphasize the need to mainstream a gender perspective in order to give all individuals, both men and women, an equal opportunity to get a fair refugee status determination and possibility to be resettled to a third country, and thus to receive effective and durable international protection.

Distribute handout no. 21, which contains a list of suggested readings. Besides the documents previously mentioned, such as the UNHCR handbook (1992) and the UNHCR gender guidelines (2002) as well as other guidelines, you may advise them to pay specific attention to:

- Sexual and gender-based violence against refugees, returnees, internally displaced persons; Guidelines for prevention and response, UNHCR, May 2003;
- Comparative analysis of gender-related persecution in national asylum legislation and practice in Europe by Heaven Crawley and Trine Lester, UNHCR EPAU/2004/05, (2004);
- Refugees and Gender: Law and Process by Heaven Crawley, Jordan Publications, London (2001);
- Documents relating to the UNHCR's global consultations.

Also stress the need for the participants to read the complete UNHCR Resettlement Handbook, including its annex, which is available online at: [www.unhcr.ch](http://www.unhcr.ch).

Finish by distributing the handouts nos. 22 and 23, the UNHCR Code of Conduct and Secretary General's bulletin: Special measures for protection from sexual exploitation and sexual abuse, ST/SBG/2003/13.





**APPENDIX - TRAINING MATERIALS**

**POWERPOINT SLIDES  
HANDOUTS  
EXERCISES  
BACKGROUND READINGS**

## **TRAINING MATERIALS NEEDED UNDER EACH WORKSHOP SECTION**

### **INTRODUCTION TO THE WORKSHOP**

WELCOME AND INTRODUCTION TO THE WORKSHOP ON GENDER AND RESETTLEMENT

*PowerPoint slides nos. 1, 2 and 3*

*Handouts: no. 1, 2, 3, 4, 5 and 6*

**NB: Only distribute handouts nos. 2, 3, 4, 5 and 6 if participants did not attend workshops 1 and 2.**

INTRODUCTION TO THE AGENDA

*PowerPoint slides nos. 4.1 and 4.2*

*Handout no. 7*

### **UNHCR RESETTLEMENT HANDBOOK AND RESETTLEMENT CRITERIA**

INTRODUCTION TO THE UNHCR RESETTLEMENT HANDBOOK AND TO RESETTLEMENT AS A TOOL FOR REFUGEE PROTECTION

*PowerPoint slides nos. 5 and 6*

*Handout no. 8*

PRESENTATION ON THE UNHCR RESETTLEMENT CRITERIA, INCLUDING WOMEN-AT-RISK

*PowerPoint slide no. 7*

*Handouts nos. 9, 10, 11 and 12*

### **GENDER AND RESETTLEMENT- PROCEDURAL ISSUES**

PRESENTATION AND EXERCISE ON RESETTLEMENT AND PROCEDURAL ISSUES

*PowerPoint slides nos. 8.1, 8.2, 8.3, 8.4. and 8.5*

*Handouts nos. 13, 14, 15, 16, 17 and 18*

**NB: Only distribute handouts nos. 14, 15, 16, 17 and 18 if participants did not attend workshops 1 and 2.**

### **COUNTRY PROGRAMMES, INCLUDING WOMEN-AT-RISK**

PRESENTATION OF COUNTRY PROGRAMMES (INCL. WOMEN-AT-RISK): USA, CANADA, AUSTRALIA

*PowerPoint slide no. 9*

*Handout no. 19*

### **GENDER AND RESETTLEMENT – ANALYZING CLAIMS**

INTRODUCTION TO A CASE STUDY EXERCISE ON GENDER AND RESETTLEMENT – RRF OF A WOMAN AT RISK AND A CASE FOR DISCUSSION OF A WOMAN TRAFFICKED FOR SEXUAL EXPLOITATION

*PowerPoint slide no. 10*

*Handout no. 20*

*Exercises nos. 1, 2 and 3*

**NB: Only distribute handout no. 20 if participants did not attend workshops 1 and 2.**

### **CONCLUSIONS AND CLOSURE OF THE WORKSHOP**

CONCLUSIONS AND CLOSURE OF THE WORKSHOP

*Handouts nos. 21, 22 and 23*

**NB: Only distribute handout no. 21 if participants did not attend workshops 1 and 2.**

## **TRAINING MATERIALS CATEGORIZED BY TYPE OF MATERIAL AND NUMBER**

### **PowerPoint slides:**

- No. 1** Ensuring gender-sensitivity in the context of resettlement;
- No. 2** Gender-based violence during the refugee cycle;
- No. 3** Workshop objectives;
- No. 4.1** Workshop agenda;
- No. 4.2** Agenda cont;
- No. 5** UNHCR Resettlement handbook & resettlement as refugee protection;
- No. 6** For whom is resettlement a durable solution?
- No. 7** UNHCR resettlement criteria;
- No. 8.1** Gender and resettlement – procedural issues;
- No. 8.2** Gender and resettlement – procedural issues cont;
- No. 8.3** Gender and resettlement – procedural issues cont;
- No. 8.4** Gender and resettlement – procedural issues cont;
- No. 8.5** Gender and resettlement – procedural issues cont;
- No.9** Case study exercise on gender and resettlement – instructions.

### **Handouts:**

- No.1** Gender-based violence during the refugee cycle;
  - No.2** References to UN and other international and regional documents on human rights & the issue of gender-based violence and discrimination, paper compiled by Maria Bexelius, Consultant, UNHCR, 2005;
  - No.3** The International Human Rights Framework: the link with refugee protection and women's rights, (Excerpts), by Rosa da Costa, legal consultant, UNHCR, 2002;
  - No.4** Discrimination against Women and Violence against Women in International Law, by Maria Bexelius, Consultant, UNHCR 2005;
  - No.5** Individuals' human rights and the laws that protect them, by Maria Bexelius, Consultant, UNHCR 2005;
  - No. 6** Causes and consequences of sexual and gender-based violence, excerpts from Sexual and gender-based violence against refugees, returnees, internally displaced persons - Guidelines for prevention and response, UNHCR May 2003;
  - No.7** Workshop agenda;
  - No.8** UNHCR Resettlement Handbook, Geneva November 2004 (last updated), Chapter 1 Resettlement: A vital instrument of international protection and an element of comprehensive solutions;
  - No.9** UNHCR Resettlement Handbook, Geneva November 2004 (last updated), Chapter 4 UNHCR Criteria for determining resettlement as the appropriate solution;
  - No.10** Multilateral framework of understanding on resettlement, Convention Plus, High Commissioner's Forum, Forum/2004/6, UNHCR 16 September 2004;
  - No.11** UNHCR Agenda for International Protection Goal 5 and 6;
  - No.12** UNHCR Excom Conclusions relating to the issue of resettlement;
  - No.13** Gender and resettlement & procedural issues – a checklist, by Maria Bexelius, Consultant, UNHCR, 2005;
  - No.14** Gender-sensitivity & procedural issues in the context of refugee status determination and durable solutions – a checklist, by Maria Bexelius, Consultant, UNHCR 2005;
  - No.15** Gender-sensitivity & the 1951 Refugee Definition – a checklist by Maria Bexelius, Consultant, UNHCR 2005;
  - No.16** Conducting an interview, compiled by Maria Bexelius, Consultant, UNHCR, 2005;
  - No.17** Interviewing applicants who have suffered trauma;
  - No.18** Barriers to communication;
  - No.19** UNHCR Resettlement Handbook, Geneva November 2004 (last updated), Chapter 11 (excerpts), selected country programs: USA, Australia, Canada;
  - No.20** Guidelines on International Protection No. 1: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees (May 2002), hereafter UNHCR Gender Guidelines (2002);
  - No.21** Suggested readings;
  - No.22** UNHCR Code of Conduct;
  - No.23** Secretary General's bulletin - Special measures for protection from sexual exploitation and sexual abuse, ST/SBG/2003/13.
- N.B. Only distribute nos. 2, 3, 4, 5, 6, 14, 15, 16, 17, 18, 20 and 21 if the participants have not participated in the previous workshops 1 and 2.**

### **Exercises:**

- No. 1 Resettlement Registration Form (RRF);
- No. 2 Case study: RRF and a case of a woman at risk;
- No. 3 Case study: case of a woman trafficked for sexual exploitation.

## **BACKGROUND READINGS**

### **UNHCR documents on resettlement**

UNHCR Resettlement Handbook (November 2004 edition)  
Available at: [www.unhcr.ch](http://www.unhcr.ch)

### **UNHCR documents of special relevance for gender-sensitive RSD**

Procedural Standards for Refugee Status Determination under UNHCR's Mandate – Available in various languages from the Department of International Protection, UNHCR, Geneva.

Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees HCR/ IP/ 4/ Eng/ REV. 1 Reedited, Geneva, January 1992, UNHCR 1979. Available at: [www.unhcr.ch](http://www.unhcr.ch).

Sexual and gender-based violence against refugees, returnees, internally displaced persons - Guidelines for prevention and response, UNHCR May 2003. Available at: [www.unhcr.ch](http://www.unhcr.ch).

Global Consultations on International Protection/General: Agenda for Protection, UNHCR, June 2002. Available at: [www.unhcr.ch](http://www.unhcr.ch).

Summary Conclusions – Gender-Related Persecution, UNHCR Global Consultations on International Protection, San Remo Expert Roundtable, 6-8 September 2001, nos. 1 and 3. Available at: [www.unhcr.ch](http://www.unhcr.ch).

Global Consultation on International Protection/Third Track: Refugee Women (April 2002). Available at: [www.unhcr.ch](http://www.unhcr.ch).

Global Consultations on International Protection/Third Track: The Search for Protection-Based Solutions; Protection of Refugee Women and Children, Chairman's Summary (22-24 May 2002). Available at: [www.unhcr.ch](http://www.unhcr.ch).

Global Consultations on International Protection/Third Track: Refugee Children (April 2002.) Available at: [www.unhcr.ch](http://www.unhcr.ch).

Articles and summary conclusions from the UNHCR's global consultations, appearing in the book: "Refugee Protection in International Law: UNHCR's global consultations on international protection" / Feller, E. (ed.); Türk, V. (ed.); Nicholson, F. - Cambridge (United Kingdom); New York (NY); Geneva: Cambridge University Press; UNHCR, 2003. Available at: [www.unhcr.ch](http://www.unhcr.ch).

Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees (April 2004) Available at: [www.unhcr.ch](http://www.unhcr.ch).

Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees (September 2003) Available at: [www.unhcr.ch](http://www.unhcr.ch).

Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A (2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees (July 2003) Available at: [www.unhcr.ch](http://www.unhcr.ch).

Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C (5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses) (October 2003) Available at: [www.unhcr.ch](http://www.unhcr.ch).

Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees (May 2002) Available at: [www.unhcr.ch](http://www.unhcr.ch).

Guidelines on International Protection No. 1: Gender-Related Persecution within the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees (May 2002) Available at: [www.unhcr.ch](http://www.unhcr.ch).

Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (February 1997)

Available at: [www.unhcr.ch](http://www.unhcr.ch).

Comparative analysis of gender-related persecution in national asylum legislation and practice in Europe, by Heaven Crawley and Trine Lester, UNHCR EPAU/2004/05, May 2004

Available at: [www.unhcr.ch](http://www.unhcr.ch).

#### **UNHCR training materials of special relevance for gender-sensitive RSD**

UNHCR Gender Training Kit on Refugee Protection and Resource Handbook - Chapter 2: Gender Concepts and Strategies, December 2002.

UNHCR Gender Training Kit on Refugee Protection and Resource Handbook – Chapter 3: Women's Human rights, December 2002.

UNHCR Gender Training Kit on Refugee Protection and Resource Handbook - Chapter 4: Sexual and Gender-Based Violence, December 2002.

UNHCR Gender Training Kit on Refugee Protection and Resource Handbook - Chapter 5: Refugee Status Determination, December 2002.

UNHCR Gender Training Kit on Refugee Protection and Resource Handbook - Chapter 6: Interviewing and Interpreting, December 2002.

#### **Literature/academic research:**

Crawley, Heaven. Refugees and Gender: Law and Process, Jordan Publications, London 2001.

Available at: (to order): [www.jordanpublishing.co.uk/Publications/catDetails.aspx?productID=289](http://www.jordanpublishing.co.uk/Publications/catDetails.aspx?productID=289)

Spijkerboer, Thomas. Gender and Refugee Status, Kluwer Academic Publishers, 2001.

Available at: (to order): [www.powells.com/cgi-bin/biblio?inkey=17-0754620344-0](http://www.powells.com/cgi-bin/biblio?inkey=17-0754620344-0)

#### **Gender Guidelines in various countries**

##### **Australia**

Australian Department for Immigration and Multicultural Affairs (ADIMA) (1996) Guidelines on Gender Issues for Decision-Makers (Refugee and Humanitarian Visa applications),

Available at: [sierra.uchastings.edu/cgrs/law/guidelines/aust.pdf](http://sierra.uchastings.edu/cgrs/law/guidelines/aust.pdf)

Report of the Australian Law Reform Commission, Part IV Section 11: Violence and Women's Refugee Status

[www.austlii.edu.au/au/other/alrc/publications/reports/69/vol1/ALRC69Ch11.html#ALRC69Ch11](http://www.austlii.edu.au/au/other/alrc/publications/reports/69/vol1/ALRC69Ch11.html#ALRC69Ch11)

##### **Canada**

Immigration and Refugee Board of Canada (1996), Women Refugee Claimants Fearing Gender-Related Persecution Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act.

Available at: [www.cisr.gc.ca/en/about/guidelines/index\\_e.htm](http://www.cisr.gc.ca/en/about/guidelines/index_e.htm)

##### **Ireland**

Suggested guidelines by the Irish Council for Civil Liberties Women's Committee, Gender Guidelines for Female Refugees and Asylum Seekers (2000) Available at:

[www.iccl.ie/women/refasyl/guidelines00.html](http://www.iccl.ie/women/refasyl/guidelines00.html)

##### **South Africa**

Suggested guidelines by NGO called the National Consortium on Refugee Affairs, Gender Guidelines for Asylum Determination (1999). Available at: [www.web.net/~ccr/safr.PDF](http://www.web.net/~ccr/safr.PDF)

##### **Sweden**

Swedish Migration Board (2001) Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection. Available at: [www.migrationsverket.se/english.html](http://www.migrationsverket.se/english.html)

Swedish Migration Board (2002) Guidelines for the Investigation and Evaluation of Asylum Cases in which Persecution based on Given Sexual Orientation is cited as Ground.

Available at: [www.migrationsverket.se/english.html](http://www.migrationsverket.se/english.html)

##### **UK**

Home Office (2004) Asylum Policy Instructions (APIs) 'Gender Issues in the Asylum Claim'

Available at: [www.ind.homeoffice.gov.uk/default.asp?PageId=4790](http://www.ind.homeoffice.gov.uk/default.asp?PageId=4790)

Immigration Appellate Authority, Asylum Gender Guidelines, London 2000

Available at: [www.asylumsupport.info/publications/iaa/gender.pdf](http://www.asylumsupport.info/publications/iaa/gender.pdf)

Refugee Women's Legal Group (1998) Gender Guidelines for the Determination of Asylum Claims in the UK London: RWLG. Available at: [www.rwlg.org.uk](http://www.rwlg.org.uk)

**United States (US)**

US Immigration and Nationality Service (1995) Considerations for Asylum Officers Adjudicating Asylum Claims from Women. Available at: [sierra.uchastings.edu/cgrs/law/guidelines/us.pdf](http://sierra.uchastings.edu/cgrs/law/guidelines/us.pdf) US Department of State, Gender Guidelines for Overseas Refugee Processing (2000).

**ALL TRAINING MATERIALS INCLUDED IN CHRONOLOGICAL ORDER**

## INTRODUCTION TO THE WORKSHOP

### All materials needed:

#### ***PowerPoint slides:***

- No. 1** Ensuring gender-sensitivity in the context of resettlement;
- No. 2** Gender-based violence during the refugee cycle;
- No. 3** Workshop objectives;
- No. 4.1** Workshop agenda;
- No. 4.2** Workshop agenda cont.

#### ***Handouts:***

- No. 1** Gender-based violence during the refugee cycle;
- No. 2** References to UN and other international and regional documents on human rights and the issue of gender-based violence and discrimination;
- No. 3** The International Human Rights Framework: the link with refugee protection and women's rights, (excerpts);
- No. 4** Discrimination against Women and Violence against Women in International Law;
- No. 5** Individuals' human rights and the laws that protect them;
- No. 6** Causes and consequences of sexual and gender-based violence, excerpts from Sexual and gender-based violence against refugees, returnees, internally displaced persons - Guidelines for prevention and response;
- No. 7** Workshop Agenda.

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## **Ensuring Gender-Sensitivity in the Context of Resettlement**

PowerPoint-slide no. 1



## Gender-based violence & discrimination during the refugee cycle



- Prior to flight
- During flight
- **In the country of asylum**
- During repatriation
- During reintegration

Sexual attack, coercion, extortion by persons in authority; sexual abuse of separated children in foster care; domestic violence; sexual assault when in transit facilities, collecting wood, water etc.; sex for survival/forced prostitution; sexual exploitation of persons seeking legal status in asylum country or access to assistance and resources, discriminatory laws and social norms on gender roles and punishment for transgression of these laws and norms, resumption of harmful traditional practices.

PowerPoint-slide no. 2

## Objectives of the workshop



- To raise awareness of the UNHCR resettlement criteria, including the women-at-risk criteria;
  - To increase awareness of gender-aspects in the context of analysing and assessing the need for resettlement as a tool for refugee protection;
  - To raise awareness of the procedural issues which may arise in relation to gender-related claims, and to provide some tools to handle these issues;
  - To briefly introduce some country programs;
- ⇒ TO FULFILL THE OVERALL PURPOSE of assisting the participants with tools to avoid common traps and to ensure that resettlement claims are analysed and processed in a way which corresponds to international standards.

PowerPoint-slide no. 3

## Workshop agenda



### **Introduction to the Workshop**

- 9.00-9.10 Welcome  
9.10-9.15 Introduction of the agenda

### **UNHCR Resettlement Handbook & Resettlement Criteria**

- 9.15-9.30 Introduction of the UNHCR Resettlement Handbook and to resettlement as a tool for refugee protection  
9.30-10.05 Presentation on the resettlement criteria, including "Women at risk"

### **Gender and Resettlement - Procedural Issues**

- 10.05-10.35 Exercise and presentation on resettlement and procedural issues

PowerPoint-slide no. 4.1

## Agenda Cont'd.



### **Women at Risk – Country Programmes**

- 10.35-10.55 A glance at country programmes, including "Women at Risk" programmes: USA, Canada, Australia

### **Gender and Resettlement – Analyzing Cases**

- 10.55-11.05 Introduction to a case study exercise on gender and resettlement: Refugee Resettlement Form and a woman trafficked for sexual exploitation  
11.05-11.20 Coffee break including work on the exercise  
11.20-11.30 Continuing work on the exercise in the meeting room  
11.30-12.00 Presentation of the exercise in plenary  
12.00-12.10 Introduction to the second exercise: A woman being trafficked for sexual exploitation  
12.10-12.40 Group work to analyze the claim  
12.40-13.10 A group discussion in plenary on the Refugee Status Determination and resettlement in a case of a woman trafficked for sexual exploitation

### **Closure of the Workshop**

- 13.10-13.20 Conclusions and closure of the workshop

## GENDER-BASED VIOLENCE DURING THE REFUGEE CYCLE

During armed conflict, social structures are disrupted. Women and children face the additional risks of being subjected to sexual and gender-based violence when fleeing the fighting and seeking asylum. Family members are often dispersed during flight, leaving children separated from the rest of their families and women as solely responsible for protecting and maintaining their households. The following chart, adapted from a table developed by S. Purdin and further on by UNHCR<sup>9</sup>, describes the types of violence that can occur during the various phases of the refugee cycle.

PHASE	TYPE OF VIOLENCE
<b><i>Prior to flight</i></b>	Abuse by persons in power; sexual bartering of women; sexual assault, rape, abduction by armed members of parties in conflict, including security forces; mass rape and forced pregnancies; domestic violence, forced marriage, discriminatory laws and social norms on gender roles including punishment for transgression of these laws and norms.
<b><i>During flight</i></b>	Sexual attack by bandits, border guards, pirates; capture for trafficking by smugglers, slave traders.
<b><i>In the country of asylum</i></b>	Sexual attack, coercion, extortion by persons in authority; sexual abuse of separated children in foster care; domestic violence; sexual assault when in transit facilities, collecting wood, water etc.; sex for survival/forced prostitution; sexual exploitation of persons seeking legal status in asylum country or access to assistance and resources, discriminatory laws and social norms on gender roles and punishment for transgression of these laws and norms; resumption of harmful traditional practices.
<b><i>During repatriation</i></b>	Sexual abuse of women and children who have been separated from their families; sexual abuse by persons in power; sexual attacks, rape by bandits, border guards, forced/coerced repatriation.
<b><i>During reintegration</i></b>	Sexual abuse against returnees as a form of retribution; sexual extortion in order to regularise legal status, exclusion from decision-making processes; documentation and right to recover/own property.

## **REFERENCES TO UN AND OTHER INTERNATIONAL AND REGIONAL DOCUMENTS ON HUMAN RIGHTS AND THE ISSUE OF GENDER-BASED VIOLENCE AND DISCRIMINATION<sup>10</sup>**

### **UNITED NATIONS AND REGIONAL DOCUMENTS – An overview<sup>11</sup>**

#### **UN General Assembly – International conventions, declarations, resolutions and other documents**

- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)
- Optional Protocol to the International Covenant on Civil and Political Rights (1966)
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (2002)
- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Prevention and Punishment of the Crime of Genocide (1948)
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1999)
- The Slavery Convention (1926) and Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956)
  
- Declaration of the Rights of the Child (1959)
- Convention on the Rights of the Child (1989).
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000)
  
- Convention relating to the Status of Refugees (1951)
- Protocol relating to the Status of Refugees (1967)
- Convention Relating to the Status of Stateless Persons (1954)
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- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
  
- Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974)
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- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)
- Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)

<sup>10</sup> This paper has been compiled by Maria Bexelius, consultant UNHCR, 2005

<sup>11</sup> Please note that this is not an exhaustive list. More relevant documents may be found at [www.un.org](http://www.un.org)

- Convention on the Elimination of all Forms of Discrimination against Women (1979)
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999).
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- Declaration on the Elimination of Violence Against Women (1994).
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- CAT-Committee against Torture
- CCPR-Human Rights Committee
- CESCR-Committee on Economic, Social and Cultural Rights
- CMW-Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
- CRC-Committee on the Rights of the Child

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- Report of the Secretary-General on Women, Peace and Security', U.N. Doc. S/2002/1154, 16 October 2002
- Security Council Resolution 1325 (2000) on Women, Peace and Security', U.N. Doc. S/RES/1325 (2000), 31 October 2000.

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(you can access all documents here)

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(you can access all reports here)

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- Addendum 1 to the Special Rapporteur's 2003 Report, International, regional and national developments in the area of violence against women 1994-2003, E/CN.4/2003/75/Add.1.
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- Underground Work (Women) Convention, 1935 (No. 45)
- Night Work (Women) (Revised) Convention, 1948 (No. 89),
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- American Convention on Human Rights (1969)
- Convention on the Nationality of Women (1933)
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(All documents can be found at the UNHCR website [www.unhcr.ch](http://www.unhcr.ch))

UNHCR handbook (1992) and guidelines can be found here

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- 'Building Partnerships Through Equality. UNHCR Good Practices on Gender Mainstreaming', 2000.
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- Global Consultations on International Protection/Second Track: Summary Conclusions on Gender-Related Persecution (San Remo Expert Roundtable, 6-8 September 2001) (September 2001)
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- Gender Training Kit on Refugee Protection and Resource Handbook – Chapter 3: Women's Human rights (December 2002)
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- Gender Training Kit on Refugee Protection and Resource Handbook - Chapter 6: Interviewing and Interpreting, (December 2002)
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- Refugee Protection: A Guide to International Refugee Law (December 2001)

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(you can find other WHO documents at [www.who.int](http://www.who.int))

- Guidelines for medico-legal care for victims of sexual violence (2003)
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#### Research on gender-related persecution

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**PLEASE CHECK REGULARLY FOR NEW RELEVANT DOCUMENTS AT [www.un.org](http://www.un.org)**

## THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK: THE LINK WITH REFUGEE PROTECTION AND WOMEN'S RIGHTS

By Rosa da Costa, Legal Consultant, UNHCR, 2002

(Excerpt<sup>12</sup>),

### 5. International human rights and refugee law

Human rights are an integral dimension of refugee law. Indeed, they are of special importance to refugees who have generally become refugees through the disregard of these rights in their country of origin. Human rights violations are also the reason why they sometimes cannot return or successfully reintegrate.

Furthermore, international human rights instruments play a pivotal role in the *protection* of refugees, in the following ways:

#### 5.1. Reinforce existing refugee law and protect against refoulement:

Article 14 of the Universal Declaration of Human Rights recognises the "right to seek and enjoy in other countries asylum from persecution". And while the right to asylum is not specifically mentioned in other human rights instruments, art. 3 of the European Convention on Human Rights (ECHR) and art. 3 of the UN Convention against Torture (CAT), for example, may act as protection mechanisms against *refoulement*. These two provisions are especially relevant in the context of deportations or other forcible returns to a country where the person risks being subject to torture or cruel punishment. Also of note, is that the protection offered by the ECHR and CAT is not restricted by the five grounds contained in the 1951 Refugee Convention.

Furthermore, for those countries that have not yet acceded to the 1951 Convention, international and regional human rights instruments, as well as customary international law (which is universally applicable) can serve to fill this gap and provide some basic protection and other rights to refugees. For example, many scholars hold that the principle of *non-refoulement* forms part of customary international law and is therefore automatically and universally applicable.

Moreover, while many refugee protection standards are contained in sources of soft law such as non-binding ExCom Conclusions, thus making it difficult to argue that states are *legally* obliged to follow them, international human rights instruments which actually contain many of these standards *do* create legal obligations for states which are party to them. Therefore, they can be invoked to support compliance with ExCom Conclusion standards.<sup>13</sup>

#### 5.2 Guide us in the application/ interpretation of the 1951 Convention

International human rights instruments are also important to refugee law in view of the fact that the 1951 Convention itself contains no definition of 'persecution'. As such, it is the standards contained in international human rights instruments which assist and guide us in the application of the 1951 Convention and the interpretation of this concept.

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▪ <sup>12</sup> Excerpts from the article "The International Human Rights Framework – The Link with Refugee Protection and Women's Rights", by Rosa da Costa, which could be found in UNHCR Gender Training Kit on Refugee Protection and Resource Handbook – Chapter 3: Women's Human rights (December 2002)

<sup>13</sup> UNHCR, Human Rights and Refugee Protection, Part 1: General Introduction, RLD 5, Training Module, October 1995, Training with UNHCR, p. 7-8. UNHCR ExCom Conclusions correlate with such diverse rights in international human rights instruments as: the freedom of movement; the right not to be subjected to cruel, inhuman or degrading treatment; the prohibition of discrimination; the right to family unity; and the right to be considered persons before the law.

Of course, not all human rights violations amount to persecution in the sense of the 1951 Convention. And here too, some basic human rights principles and concepts (e.g., the principle of non-discrimination, and non-derogable rights or 'core' rights) can assist us in making this determination.

Likewise, reports on the human rights situation in the refugee's country of origin, an essential tool in assessing refugee claims, are also fundamentally based on the framework provided by international human rights instrument (i.e., the standards and norms by which country practices are described and evaluated).

### **5.3. Provide general standards for the treatment of refugees and asylum seekers**

Besides the threat of *refoulement*, refugees and asylum seekers also face a number of other problems such as prolonged or arbitrary detention, cruel or inhuman treatment and xenophobia. As the 1951 Convention cannot address the entire array of problems that refugees may experience, international human rights law provides the broader framework for the treatment of refugees. For example, basic or 'core' human rights are universal and non-derogable; they are therefore applicable to foreigners, whether they be asylum seekers, recognised refugees or ordinary aliens. These are rights they possess in addition to those specifically afforded them in the 1951 Convention. Indeed, standards contained in international and regional human rights instruments may serve to:

- (i) address gaps in the 1951 Convention;
- (ii) reinforce certain rights contained in that Convention (e.g., the right to family life and family unity, and to social and economic benefits and rights); and
- (iii) strengthen certain rights, since some instruments may provide for higher standards than those stipulated in the 1951 Convention.

### **5.4. Provide benefits of quasi-judicial and judicial implementing bodies**

In contrast to the 1951 Convention, whose 'enforcement' power is limited to UNHCR's mandate and right to supervise the application of the Convention, international and regional human rights instruments are often vested with supervisory mechanisms (which can issue authoritative opinions on the nature of certain rights, require compliance with periodic reporting requirements, and if applicable, decide on individual or state complaints regarding alleged violations) and, in some cases, judicial enforcement mechanisms such as, the European Court of Human Rights which can issue binding legal decisions on states parties to the ECHR.<sup>14</sup>

## **6. Women's Human Rights: its impact on UNHCR and refugee law**

6.1. International human rights law is fundamentally concerned with setting standards regulating the behaviour of states towards persons falling under their jurisdiction. These standards also constitute a binding value system for all UN agencies, including UNHCR<sup>15</sup>, and effectively form the context for the evolution of refugee law.

6.2. Since the adoption of the 1951 Convention, many new international human rights instruments have come to the fore; some of these relating specifically to women. As such, especially over the last decade, UNHCR has taken some steps to adapt its policies and practices to reflect changes and new developments in the international community in this regard.

6.3. For example, their *Guidelines on the Protection of Refugee Women* (1991) specifically provides that:

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<sup>14</sup>. For a more comprehensive discussion of this topic of the link between human rights and refugee law, as well as UNHCR's policy on human rights, please see "UNHCR and Human Rights: a policy paper" available in this chapter (Part I).

<sup>15</sup>. For example, DEVAW specifically states this in art. 5, and further declares that UN agencies should contribute, within their respective fields, to the realisation of the rights and principles in this Declaration by taking the specific actions detailed in that provision.

*"[T]he protection of refugee women requires adherence not only to the 1951 Convention and its 1967 Protocol but also to other relevant international instruments [...] While individual states may not be parties to all of these instruments, they do provide a framework of international human rights standards for carrying out protection and assistance activities related to refugee women. [...] From these various international instruments can be drawn principles of equity that should underlie all policies and programmes established for refugees by UNHCR". (Para. 8)*

6.4. Similarly, UNHCR ExCom Conclusion no. 73 (XLIV) 1993 on *Refugee Protection and Sexual Violence*, condemns persecution through sexual violence in the language of human rights, stating that it "constitutes a gross violation of human rights [and] when committed in the context of armed conflict, [is] a grave breach of humanitarian law..." On the same topic, UNHCR's 1995 guidelines, *Sexual Violence Against Refugees: Guidelines on Prevention and Response*, also stresses the need for training courses on the topic, and to increase legal awareness among refugee women of their legal rights and responsibilities including of the UDHR, CEDAW and DEVAW.<sup>16</sup> Other UNHCR policy papers, such as the UNHCR Guidelines on Gender-Related Persecution<sup>17</sup>, also refer to relevant international human rights instruments, to the principles and standards contained in these, and to the obligations imposed on states. It is largely by drawing on international human rights standards that UNHCR and other actors have been able to articulate the concept of persecution based on gender, and to provide guidelines for refugee status determination in gender cases.

6.5. Of all the human rights instruments, CEDAW and the DEVAW are certainly the most useful in this regard, making important contributions to the understanding of gender-related asylum claims. More specifically, these instruments :

- (i) *"[P]rovide a **framework of international human rights standards for carrying out protection** and assistance activities related to refugee women, [including the interpretation of the 1951 Convention]."* (*UNHCR Guidelines on the Protection of Refugee Women*, para. 8)
- (ii) ***Confirm** the view that many gender-related claims are related to membership in a "**particular social group**" specific to women.* CEDAW and DEVAW articulate the extensiveness and pervasiveness of discrimination and gender-based violence that continues to exist, as well as the various forces that create and maintain them. This confirms and reinforces the validity of using the "particular social group" ground in the 1951 Convention to support certain types of refugee claims based on gender.
- (iii) ***Provide definitions for important terms such as "discrimination" and "gender-based violence"**; definitions which characterise these practices as human rights violations. These definitions may be used to inform and analyse gender-related asylum claims and are helpful for understanding the nature and different forms that gender persecution can take.*<sup>18</sup>
- (iv) ***Reject and deconstruct the public/ private divide**, which has traditionally characterised international law and undermined women's legal and social position. CEDAW, as well as DEVAW, now impose a positive duty on states to intervene in what was traditionally considered the 'private' sphere; the context in which discrimination, violence and oppression of women and girls has often been practised with impunity. As such, issues and practices which were previously viewed as "domestic", have been re-characterized as human rights issues and are now also within the domain of the state. This has implications for gender-related*

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<sup>16</sup>. Furthermore, in its chapter on the 'Legal Aspects of Sexual Violence', it details the international standards relating to sexual violence, the specific provisions in existing international and regional human rights instruments which are relevant to sexual violence, and the treaty monitoring bodies responsible for monitoring compliance with these conventions. See in particular, pp. 22, 23, 24, 56-66]

<sup>17</sup>. The full title of these guidelines is as follows: "Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", These new Guidelines were adopted by UNHCR 7 May 2002.

<sup>18</sup>. This is so even if not all human rights violations or instances of discrimination and gender-based violence amount to persecution.

- (v) asylum claims, which amongst other things, must be assessed in the context of human rights standards and state obligations to extend protection to women in both the public and private spheres.

In particular, DEVAW declares that for its purposes, the term “violence against women” refers to such acts whether they occur in public or in private life (art. 1), or whether they are perpetrated within the family, general community or by the state (art. 2(a),(b), (c)). It further provides that the state should pursue by all appropriate means a policy of eliminating violence against women, including by exercising “due diligence to prevent, investigate and [...] punish acts of violence against women [regardless of whether these] are perpetrated by the state or by private persons...” (art. 4(c))

Similarly, CEDAW also imposes a duty on states parties to condemn and take all appropriate measure to eliminate discrimination against women whether it be by a person, organisation, enterprise or the state (i.e. public authorities and institutions), and whether it be in the form of existing laws, regulations, customs and practices (art. 2(d), (e), (f)). Article 16 further stipulates the state’s obligation to take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.

- (vi) ***Reject the argument of cultural relativity*** as it has been applied to the human rights of women. This approach should also facilitate and guide the refugee status determination process in certain gender-related asylum claims. Especially in view of the fact that traditional customs and practices have often been interpreted as having precedence over and nullifying women’s claims to a well-founded fear of persecution. Such practices include FGM, forced marriages, dress codes, and other restrictions limiting the rights and role of women in both the public and private spheres.

Article 4 in DEVAW stipulates that states “should condemn violence against women and should not invoke any customs, traditions or religious consideration to avoid their obligations with respect to its elimination. Articles 1 and 2 of CEDAW are also noteworthy in this respect. The broad definition of ‘discrimination against women’ provided in art.1, and the comprehensive obligation imposed upon states parties to condemn and (pursue all appropriate means to) eliminate discrimination against women in all its forms, may be seen as a clear rejection of the concept of cultural relativity as applied to women’s rights. Article 5 reinforces this interpretation by requiring that states parties take appropriate measures to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.

- (vi) ***Spell out the specific obligations of the state***, with regard to discrimination, gender-based violence and the human rights of women generally; making it easier to identify the failures of the state *vis-à-vis* the protection of women’s rights in the country of origin. The failure of a state to ratify CEDAW, to incorporate its provisions and rights into domestic law, or to respect the rights and principles set forth in DEVAW, is also an indication of the willingness and the priority accorded by the state to the protection of women’s rights.

## **DISCRIMINATION AGAINST WOMEN AND VIOLENCE AGAINST WOMEN IN INTERNATIONAL LAW - AN OVERVIEW**

By Maria Bexelius Consultant, UNHCR, 2005

Our reality is full of gendered dimensions. The meaning of the word "woman" and "man" vary from time to time, from place to place. Although the word is contextual, so far it largely has had a common characteristic, namely the tendency to attribute certain roles and values to femininity and masculinity which, irrespective of country or region of the world, has led to the on-going exclusion or disproportionate inclusion of women in many different forms of decision-making bodies, such as the family, the clan-, village-, city- and municipality council, the parliament, the government, the company, the general NGO, the educational or other professional institution etc. Men have traditionally been both constituting the norm and the main persons influencing the constant shaping and reshaping of governing social norms, laws and policies concerning gender i.e. concerning both women's and men's "recommendable" thoughts and behaviour in family, society and state. The prevailing norms, laws and policies have largely restricted women's lives in various ways and reaffirmed the constructed public/private divide, which has enforced male dominance and often made invisible women's experiences and activities. These norms, policies and laws on gender have not only contributed to worldwide discrimination against women but also to the fact that discrimination against women has often been perpetuated with impunity.

The link between discrimination against women and sex stereotyped roles has been explicitly recognised by the United Nations (UN) on several occasions, e.g. as expressed in the preamble to the Convention on the Elimination of all forms of Discrimination Against Women (henceforth CEDAW) where it is declared that state parties are "[a]ware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,"<sup>19</sup>.

### **What is Discrimination against Women?**

Discrimination against women has been defined as follows by the United Nations in the CEDAW. It means:

"any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."<sup>20</sup>

### **The Link between Discrimination against Women and Violence against Women**

The UN elaborates further on the definition of discrimination against women by linking it to violence against women. Violence against women is not explicitly mentioned in the CEDAW, but in 1992 the UN Committee monitoring its implementation clearly indicated that violence against women can not be seen as isolated from discrimination against women:

"1. Gender-based violence is a form of discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects a woman disproportionately. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention [CEDAW] regardless of whether those provisions expressly mention violence."<sup>21</sup>

Elaborating on the argument that gender-based violence is a form of discrimination against women, the Special Rapporteur on Violence against Women in 1996 stated that:

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<sup>19</sup> Preamble, Convention on the Elimination of all Forms of Discrimination against Women, General Assembly Resolution A/RES/34/180, 18 December 1979.

<sup>20</sup> CEDAW, Art. 1.

<sup>21</sup> The Committee on the Elimination of all forms of Discrimination against Women, General recommendation No 19, (11<sup>th</sup> session, 1992)

"Proponents of a broader interpretation of international law point out that virtually every society contains forms of brutality and violence directed at women. While assaults are committed throughout all sectors of society, gender-based violence, such as domestic violence, is directed primarily at women with the intention of depriving them of a range of rights and maintaining their subordination as a group. Because of the systematic and pervasive nature of this form of female subordination worldwide, it is argued that gender-based violence is a distinct form of discrimination which should constitute a violation of international human rights law in itself."<sup>22</sup>

### **What is Violence against Women/Gender-Based Violence?**

In 1993, the UN Declaration on the Elimination of Violence against Women (DEVAW) was established and the term "violence against women" was defined as:

"any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."<sup>23</sup>

And the definition was developed into encompassing, but not be limited to:

"(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs."<sup>24</sup>

Several international instruments specifically address sexual and gender-based violence against women and girls. However, it is worth recalling that these documents should be seen as complements to human rights treaties of a more general character as these treaties include several rights and freedoms which may be violated when a woman is subjected to gender-based violence, *inter alia*:

- The right to life, liberty and security of the person.
- The right to the highest attainable standard of physical and mental health.
- The right to freedom from torture or cruel, inhuman, or degrading treatment or punishment.
- The right to freedom of movement, opinion, expression, and association.
- The right to enter into marriage with free and full consent and the entitlement to equal rights to marriage, during marriage and at its dissolution.
- The right to education, social security and personal development.
- The right to cultural, political and public participation, equal access to public services, work and equal pay for equal work.<sup>25</sup>

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<sup>22</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85; E/CN.4/1996/53 para 53, 5 February 1996

<sup>23</sup> DEVAW Art. 1.

<sup>24</sup> *Ibid.*, Art. 2

<sup>25</sup> See for example UNHCR Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons, Guidelines for Prevention and Response, p. 8, May 2003.



## INDIVIDUALS' HUMAN RIGHTS AND THE LAWS THAT PROTECT THEM<sup>26</sup>

### **RELEVANT CONVENTIONS**

*Universal Declaration of Human Rights (UDHR)*

*International Covenant on Civil and Political Rights (ICCPR)*

*International Covenant on Economic, Social and Cultural Rights (ICESCR)*

*International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*

*Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*

*Convention on the Rights of the Child (CRC)*

*Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*

*The UN Convention against Transnational Organised Crime (the Palermo Convention) (2003) and specifically the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Air and Sea*

### **OTHER DOCUMENTS**

*Declaration on the Elimination of Violence Against Women (DEVAW)*

*UN Fourth World Conference on Women, Platform for Action (PFA)*

*Note: Numbers refer to paragraphs in the conventions.*

### THE RIGHT TO<sup>27</sup>:

#### ... freedom, equality and physical integrity

- All human beings have the same human rights and freedoms. These rights are inherent in being a human being. They cannot be taken away. Everybody, no matter who we are or where we live, should be treated with equal dignity.  
**UDHR 1**
- No one should be treated differently, or have his/her rights denied, because of his/her race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.  
**UDHR 2 • ICCPR 2:1 • ICESCR 2:2 • CRC 2 • PFA 232**
- Everyone has the right to live without discrimination of any kind based on sex.  
**ICCPR 3 • ICESCR 3 • CEDAW 1, 2, 3 • PFA 214, 232 • DEVAW 3e**
- Everyone has the right to live without discrimination of any kind based on race.  
**ICERD1, 2, 3 • DEVAW 3e**
- All peoples have the right to self-determination. That means colonised or dominated peoples are free to choose their political status and to pursue their own economic, social and cultural development.  
**ICCPR 1 • ICESCR 1 • PFA 145a**
- Everyone has the right to life, liberty and security of person.  
**UDHR 2 • ICCPR 2:1 • ICESCR 2: 2 • CRC 2 • DEVAW 3a, c**
- No one has the right to enslave anyone else. Slavery is a crime.  
**UDHR 4 • ICCPR 8**
- Women and children have the right to protection from all forms of traffic for the purposes of prostitution or any other forms of exploitation.  
**CEDAW 6 • CRC 35, 36 • PFA 230n • DEVAW 2b**
- Everyone has the right to live without suffering, torture or any form of cruel, inhuman or degrading treatment or punishment.  
**UDHR 5 • ICCPR 7 • CRC 37 • CAT 12 • DEVAW 3h**

#### ... legal equality

- Everyone has the right to be recognised as a person before the law.  
**UDHR 6 • ICCPR 16 • CEDAW 15: 2,3**

<sup>26</sup> This section which is compiled by Maria Bexelius, consultant at UNHCR 2005, is largely reproduced from: *Rights of Women: A Guide to the Most Important United Nations Treaties on Women's Rights*, International Women's Tribune Centre, 1998

<sup>27</sup> Please note that, in reality, breaches of social, cultural or economic rights are often interlinked with breaches of civil and political rights.

- Everyone has the right to be treated by the law in the same way as everyone else, and to be protected by the law without discrimination.  
**UDHR 7 • ICCPR 14:1,26 • CEDAW 2c, 15:1 • ICERD 5a • PFA 232 • DEVAW 3d**
- If a person's rights under the law are violated, there is a right to an effective remedy.  
**UDHR 8**
- No one shall be arrested or held without good reason. Everyone has the right to challenge his/her detention in a court of law.  
**UDHR 9 • ICCPR 9 • CRC 37d**
- Anyone who suffer from any kind of racial discrimination, has the right to seek justice.  
**ICERD 6**
- If charged with a crime, the person has the right to be presumed innocent until proven guilty.  
**UDHR11:1 • ICCPR14:2 • CRC 40: 2b**
- If charged with a crime, the person has the right to a fair and public hearing by an independent and impartial tribunal.  
**UDHR 10 • ICCPR 14:1 • CRC 40: 2b**
- A person cannot be found guilty of a crime that was not a crime when the act was committed.  
**UDHR 11:2 • ICCPR 15 • CRC 40:2a**
- If a person is detained, he/she has the right to be treated with dignity.  
**ICCPR 10. CRC 37c**
- In countries that have not abolished the death penalty, it can only be used for the most serious crimes, and those sentenced to death have the right to seek a pardon. Children under 18 and pregnant women shall not receive the death penalty.  
**ICCPR 6:2, 6: 4, 6: 5 • CRC 37a**  
*See further, Second Optional Protocol to the ICCPR Aiming at the Abolition of the Death Penalty, 1989.*
- No one shall be imprisoned for failing to fulfil a contract.  
**ICCPR 11**
- A foreigner unlawfully present in another country shall not be expelled from that country without a fair process, except where compelling reasons of national security exist.  
**ICCPR 13**

**... nationality, freedom of movement and other civil and political rights**

- Everyone has the right to a name and a nationality at birth. Everyone has the right to change his/her nationality, and marriage shall not affect the nationality.  
**UDHR15:1 • ICCPR 24 • CEDAW 9 • ICERD 5d, iii CRC 7**
- No one has the right to intrude in private or family life without good reason, or to attack a person's good name.  
**UDHR 12 • ICCPR 17 • CRC16**
- Everyone has the right to move freely within the borders of his/her country. That person can also leave and return to any country, including his/her own.  
**UDHR 13 • ICCPR 12 • ICERD 5d, i, ii**
- Everyone has the right to seek asylum from persecution in other countries.  
**UDHR 14 • CAT 3 • ICCPR 13 • PFA 147,148**
- Everyone has the right to be treated as a citizen of his/her country. No one can take away the citizenship or prevent him/her from changing his/her country without good reason. Marriage shall not affect the nationality.  
**UDHR 15 • CEDAW 9 • ICERD 5d, iii**
- Everyone has the right to freedom of thought, conscience and religion.  
**UDHR18 • ICCPR18 • ICERD 5d, vii • CRC14**
- Everyone has the right to freely express your opinion without fear of punishment, both within his/her country and to people in other countries.  
**UDHR 19 • ICCPR 19 • ICERD 5d, viii • CRC 12,13,17**

- War propaganda shall be against the law. Any advocacy of national, racial or religious hatred that promotes discrimination, hostility or violence shall be prohibited by the law.  
**CCPR 20**
- Everyone has the right to gather peacefully and associate with others in public or private. No one may force a person to join any group if he/she does not wish to.  
**UDHR 20 • ICCPR 21, 22 • ICERD 5d, ix • CRC 15 • PFA 190c**
- Everyone has the right to take part in the government of your country, to vote and to have equal access to public services.  
**UDHR 21 • ICCPR 25 • CEDAW 7 • ICERD 5c • PFA 190,191,192,195**
- Everyone has the right to represent your government and participate in international organisations.  
**CEDAW 8 • PFA 190,191,193,195**
- Human beings have the right to live in the kind of world where their rights and freedoms are respected.  
**UDHR 28 • PFA 210-216, 221-223, 279c**
- Everyone has the right to be free from all forms of apartheid, racism, colonialism, violence and foreign occupation that prevent him/her from enjoying his/her full rights.  
**ICERD 3 • CEDAW preamble • PFA 214, 216, 224-226, 232**
- Human rights can be limited only by law and then only to protect other people's rights, meet society's sense of right and wrong, maintain order and look after the welfare of democratic society as a whole. We all have a responsibility to the people around us and we can only develop fully as individuals by taking care of each other.  
**UDHR 29**

#### ...economic and social rights

- Everyone is entitled to economic, social and cultural rights that allow them dignity and freedom to develop as individuals.  
**UDHR 22 • CEDAW11: 1e • ICERD 5e • CRC 27 • PFA 220**
- Everyone has the right to an adequate standard of living for him/herself and his/her family, including food, clothing, housing and medical care.  
**ICESCR11 • CEDAW 14h • ICERD 5e, iii • CRC 27:1 • PFA 58**
- Parents have the primary responsibility to ensure that their child has an adequate standard of living and states have a duty to assist those responsible to implement this right.  
**CRC 27: 2, 3**
- Everyone has the right to social security.  
**UDHR 22 • ICESCR 9 • CEDAW 11: 1e, 14c, 13a ICERD 5e, iv • CRC 26 • PFA 580**
- Everyone has the right to social services and security in the event of sickness, old age or other circumstances, including child-care for working parents.  
**UDHR 25 • CEDAW11: 2c • ICERD 5e, iv • CRC18:2, 3 • PFA 58o**
- Rural women have the same rights as other women and men.  
**CEDAW 14 • PFA 58n, 62a**

#### ... employment rights

- Everyone has the right to work and to freely choose his/her job.  
**UDHR 23:1 • ICESCR 6 • CEDAW 11a • ICERD 5e, i**
- Everyone has the right to work in fair and safe conditions and to be paid enough for an adequate standard of living, supplemented by social protections if necessary. Women have the right to the same working conditions as men, especially equal pay for equal work or work of equal value.  
**UDHR 23: 2, 3 • ICESCR 7a, b • CEDAW 11,14:2e ICERD 5e: i • PFA 165a, b • DEVAW 3g**
- Everyone has the right to form or join trade unions.  
**UDHR 23: 4 • ICCPR 22 • ICESCR 8 • ICERD 5e, ii**  
PFA 165r, 178h, i, 190c
- Everyone has the right to rest and leisure. No one has to work unreasonable hours and everyone has the right to holidays with pay.  
**UDHR 24 • ICESCR 7d • CRC 31 • PFA 180a**

- No one can be dismissed from employment because of pregnancy, while on maternity leave or because of his/her marital status.  
**CEDAW 11:2a** • PFA 165c
- Everyone has the right to maternity leave with pay or to adequate social security benefits without loss of former employment, seniority or social allowances.  
**ICESCR 10: 2 • CEDAW 11: 2b** • PFA 165a
- Everyone is entitled to special protection at work during pregnancy.  
**CEDAW11: 2d**
- Children have the right to special protections from economic exploitation including a minimum age for employment.  
**ICESCR10: 3 • CRC 32** • PFA 1661,178m, n

... **housing**

- Everyone has the right to adequate housing.  
**UDHR 25:1 • ICESCR 11:1** • CEDAW 14:2h

... **property and credit**

- Everyone has the right to own goods, land and other property.  
**UDHR 17 • CEDAW 16:1h • ICERD 5d, v**
- Everyone has the right to bank loans, mortgages and other forms of financial credit.  
**CEDAW 13b** • PFA 62,165e, j, 166a, d
- As a rural woman, there is a right to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform.  
**CEDAW 14:2g** . PFA 61b, 62,166c

... **health**

- Everyone has the right to the highest attainable level of physical and mental health and the right to equal access to health services, including family planning.  
**ICESCR 12 • CEDAW 12 • CRC 24**  
PFA 89,106b • DEVAW 3f
- Women have the right to special health services with respect to pregnancy, childbirth and the postnatal period.  
**ICESCR 12: 2a . CEDAW 12:2 . CRC 24: 1d, f**  
PFA 106e

... **education**

- Everyone has the right to an education. Elementary education shall be free and compulsory, secondary education shall be accessible to all, higher education shall be equally accessible to all on the basis of merit.  
**UDHR 26 • ICESCR13 and 14 • CEDAW10 • ICERD 5e, v • CRC 28** • PFA 80, 81, 279a
- Women and girls have the same rights to all forms of education as men and boys.  
**CEDAW 10. CRC 28** • PFA 80, 81, 82, **87a, b**
- Everyone has a continuing right to education and training throughout his/her life.  
**CEDAW 10e, f** • PFA 82, 88
- The content of education must include development of respect for human rights and must promote understanding, tolerance and friendship among all groups and individuals.  
**UDHR 26:2 • ICESCR 13:1 • CRC 29** • PFA 233g, 279c
- Any stereotyped concept of the roles of women and men must be eliminated through education.  
**CEDAW 10c** • PFA 83a, b, c, 236, 243 a, d, e

... **culture**

- Everyone has the right to participate freely in the cultural life of the community and to enjoy the arts and all the benefits of scientific progress.  
**UDHR 27 • ICESCR 15 • CEDAW 13c • ICERD 5e, vi • CRC 31** • PFA 75, 85b, 231a, 239g, d

- Ethnic, religious, linguistic or indigenous minorities have the right to enjoy their own culture, to practice their own religion and to use their own language.  
**ICCPR 27 • CRC 30 • PFA 232a, o, 242d**
- Everyone has the right to go into any place and use any service that is used by the general public, including hotels, restaurants, cafes, theatres and parks, without distinction as to race, colour, or national or ethnic origin.  
ICERD 5e, f

#### **...rights concerning marriage and family**

- Everyone has the right to marry, and both partners have equal rights in their marriage, in their family responsibilities, and at the dissolution of marriage. Both women and men must give their free and full agreement to marriage. The family is entitled to protection by the state.  
**UDHR16 • ICCPR 23 • ICESCR10:1 • CEDAW16: 1a, b, c ICERD 5d, iv • PFA 274e, 277a**
- Women have the same right as their spouses to family planning services.  
**CEDAW 12:1,14:2b, 16: 1e • PFA 94, 95,106e**
- Spouses have the same rights in all matters relating to their children.  
**CEDAW 16: 1d, e, f • CRC18.**
- Spouses have the same rights to choose a family name, a profession and an occupation.  
CEDAW 16: 1g
- Women can acquire, change or retain his/her nationality and the children's nationality regardless of the husband's nationality. Both spouses have the same rights with respect to the nationality of their children.  
**CEDAW 9:1 and 9: 2**

#### **... additional protections for children**

- Every child has the right to special protections without discrimination, including discrimination because of what her/his parents or guardians do or believe.  
**ICCPR 24 • CRC 2:2 • PFA 259, 274f, 276b, d**
- In any situation, the best interests of a child shall be a primary consideration. At the same time, parents' rights and responsibilities must also be taken into account.  
**CRC 3 • PFA 267**
- Children have the right to live with their parent(s) unless separation is in the best interests of the child. In the case of separation from one or both parents, children have the right to maintain personal relations and direct contact with their parents.  
**CRC 9**
- Children and their parents have the right to apply to enter or leave any country for the purpose of reunification. If children reside in a different state than their parent(s), they have the right to maintain personal relationships.  
**CRC 10**
- Countries must prevent and remedy kidnapping or the keeping of children abroad.  
**CRC 11**
- Countries must ensure that children have access to information from a variety of sources and that the mass media distributes information that is socially and culturally beneficial.  
**CRC 17 • PFA 239g, 242d**
- Children are entitled to special protections when they do not have parents or are separated from their family, taking into account each child's cultural background.  
**CRC 20**
- Refugee children are entitled to special protections.  
**CRC 22 • PFA 147b**
- If adoption is permitted in a country, it must be carried out with the best interest of the child as the primary consideration.  
**CRC 21**

- Children with disabilities have rights to special care, education and training to help them enjoy a full and decent life. **CRC 23** • PFA 280c
- Children have the right to protection from the illicit use of narcotic drugs and from participation in the production of such drugs.  
**CRC 33** • PFA 282a
- Children have the right to be protected from sexual exploitation and abuse, including unlawful sexual activity, prostitution and pornography.  
**CRC 34** .• PFA 230m, 283b, d
- Children under 15 have the right not to be recruited into armed forces or to have any direct part in armed conflict.  
**CRC 38:1, 2, 3**
- Child victims of armed conflict, torture or maltreatment have the right to treatment that promotes physical and psychological recovery and social reintegration.  
**CRC 39** • **CAT 12**
  - Children in conflict with the law have the right to treatment that promotes each child's sense of dignity. Children have the right to basic guarantees as well as legal assistance for their defence.  
**CRC 40**

## CAUSES AND CONSEQUENCES OF SEXUAL AND GENDER-BASED VIOLENCE

(UNHCR)

Excerpts from Sexual and gender-based violence against refugees, returnees, internally displaced persons - Guidelines for prevention and response, UNHCR May 2003

The publication is available on the UNHCR website:

[www.unhcr.ch/cgi-bin/texis/vtx/protect/+bwwBmeMUIECnwwwxFqzvx8vw68m6hFqA72ZR0gRfZNtFqrpGdBnqBzFqmRbZAFqA72ZR0gRfZNDzmxwww1FqmRbZ/opendoc.pdf](http://www.unhcr.ch/cgi-bin/texis/vtx/protect/+bwwBmeMUIECnwwwxFqzvx8vw68m6hFqA72ZR0gRfZNtFqrpGdBnqBzFqmRbZAFqA72ZR0gRfZNDzmxwww1FqmRbZ/opendoc.pdf)

## **SEXUAL AND GENDER-BASED VIOLENCE DURING THE REFUGEE CYCLE**

During armed conflict, social structures are disrupted. Women and children face the additional risks of being subjected to sexual and gender-based violence when fleeing the fighting and seeking asylum. Family members are often dispersed during flight, leaving children separated from the rest of their families and women as solely responsible for protecting and maintaining their households. The following chart, adapted from a table developed by S. Purdin, describes the types of violence that can occur during the various phases of the refugee cycle.

### **During conflict, Prior to Flight**

Abuse by persons in power; sexual bartering of women; sexual assault, rape, abduction by armed members of parties in conflict, including security forces; mass rape and forced pregnancies.

### **During Flight**

Sexual attack by bandits, border guards, pirates; capture for trafficking by smugglers, slave traders

### **In the country of Asylum**

Sexual attack, coercion, extortion by persons in authority; sexual abuse of separated children in foster care; domestic violence; sexual assault when in transit facilities, collecting wood, water, etc. sex for survival/ forced prostitution; sexual exploitation of persons seeking legal status in asylum country or access to assistance and resources, resumption of harmful traditional practices.

### **During repatriation**

Sexual abuse of women and children who have been separated from their families; sexual abuse by persons in power; sexual attacks, rape by bandits, border guards, forced/coerced repatriation.

### **During reintegration**

Sexual abuse against returnees as a form of retribution; sexual extortion in order to regularise legal status, exclusion from decision-making processes; denial of or obstructed access to resources, right to individual documentation and right to recover/own property.

## **SEXUAL AND GENDER-BASED VIOLENCE DURING THE LIFE CYCLE**

The following list, developed by L. Heise, describes the forms of violence to which women can be subjected to during the different stages of their lives.

### **PRE-BIRTH**

Sex-selective abortion; battering during pregnancy; coerced pregnancy

### **INFANCY**

Female infanticide; emotional and physical abuse; differential access to food and medical care

### **GIRLHOOD**

Child marriage; genital mutilation; sexual abuse by family members and strangers; differential access to food, medical care and education



## **ADOLESCENCE**

Violence during courtship; economically coerced sex (e.g. for school fees); sexual abuse in the workplace; rape; sexual harassment; arranged marriage; trafficking.

## **REPRODUCTIVE AGE**

Physical, psychological and sexual abuse by intimate male partners and relatives; forced pregnancies by partner; sexual abuse in the workplace; sexual harassment; rape; abuse of widows, including property grabbing and sexual cleansing practices

## **ELDERLY**

Abuse of Widows, including property grabbing; accusations of witchcraft; physical and psychological violence by younger family members; differential access to food and medical care.

## **CAUSES AND CONSEQUENCES OF SEXUAL AND GENDER-BASED VIOLENCE**

To plan appropriate programmes to prevent and respond to sexual and gender-based violence, it is important to analyse the causes and consequences of such violence in each setting. Understanding the causes will help you to develop effective actions to prevent the violence; understanding the consequences allows you to develop appropriate response packages for victims/survivors.

**CAUSES > Prevention activities**  
**CONSEQUENCES > Response activities**

## **CAUSES OF SEXUAL AND GENDER-BASED VIOLENCE**

The root causes of sexual and gender-based violence lie in a society's attitudes towards and practices of gender discrimination, which place women in a subordinate position in relation to men. The lack of social and economic value for women and women's work and accepted gender roles perpetuate and reinforce the assumption that men have decision-making power and control over women. Through acts of sexual and gender-based violence, whether individual or collective, perpetrators seek to maintain privileges, power and control over others.

Gender roles and identities are determined by sex, age, socio-economic conditions, ethnicity nationality and religion. Relationships between male and female, female and female, and male and male individuals are also marked by different levels of authority and power that maintain privileges and subordination among the members of a society. The disregard for or lack of awareness about human rights, gender equity, democracy and non-violent means of resolving problems help perpetuate these inequalities.

## **CONTRIBUTING RISK FACTORS**

While gender inequality and discrimination are the root causes of sexual and gender-based violence, various other factors determine the type and extent of violence in each setting. It is important to understand these factors in order to design effective strategies to prevent and respond to sexual and gender-based violence.

Equal access to and control of material resources and assistance benefits and women's equal participation in decision-making processes should be reflected in all programmes, whether explicitly targeting sexual and gender-based violence or responding to the emergency, recovery or development of the population.

The following chart describes some causes or risk factors that can increase the risks of becoming a victim/survivor or perpetrator of sexual and gender-based violence:

## **CAUSES OR RISK FACTORS FOR SGBV**

### **INDIVIDUAL RISKS**

- Loss of Security
- Dependence
- Physical and mental disabilities
- Lack of alternatives to cope with changes in socio-economic status
- Alcohol, drug use/abuse
- Psychological trauma and stress of conflict, flight, displacement
- Disrupted roles within family and community
- Ignorance/lack of knowledge of individual rights enshrined under national and international law

### **SOCIAL NORMS AND CULTURE**

- Discriminatory cultural and traditional beliefs and practices
- Religious beliefs

### **LEGAL FRAMEWORK AND PRACTICES IN HOST COUNTRY AND/OR COUNTRY OF ORIGIN**

- Discrimination and condone sexual and gender-based violence
- Lack of legal protection for women's and children's rights
- Lack of laws against sexual and gender-based violence
- Lack of trust in the law enforcement authorities
- Application of customary and traditional laws and practices that enforce gender discrimination
- General insensitivity and lack of advocacy campaigns condemning and denouncing sexual and gender-based violence
- Discriminatory practice in justice administration and law enforcement
- Under-reporting of incidents and lack of confidence in the administration of justice
- Lack of willingness to effectively prosecute all cases reported to authorities
- Low number of prosecutions obtained in proportion to the number of cases reported
- Police and courts inaccessible because of remote location of camp
- Absence of female law enforcement officers

- Lack of administrative resources and equipment by local courts and security officials
- Laws or practices in the administration of justice that support gender

#### **WAR AND ARMED CONFLICT**

- Breakdown of social structures
- Exertion of political power and control over other communities
- Ethnic differences
- Socio-economic discrimination

#### **REFUGEE, RETURNEE AND INTERNALLY DISPLACED SITUATIONS**

- Collapse of social and family support structures
- Geographical location and local environment (high crime area)
- Design and social structure of camp (overcrowded, multi-household dwellings, communal shelter)
- Design of services and facilities
- Predominantly male camp leadership; gender-biased decisions
- Unavailability of food, fuel, income generation, leading to movement in isolated areas
- Lack of police protection
- Lack of security patrols
- Lack of individual registration and identity cards
- Hostility of local population (refugees are considered materially privileged)

#### **CONSEQUENCES OF SEXUAL AND GENDER-BASED VIOLENCE**

Victims/survivors of sexual and gender-based violence are at high risk of severe health and psycho-social problems, sometimes death, even in the absence of physical assault. The potential for debilitating long-term effects of emotional and physical trauma should never be underestimated.

Understanding the potential consequences of sexual and gender-based violence will help actors to develop appropriate strategies to respond to these after effects and prevent further harm.

A sectoral breakdown is used in the following summary of consequences.

#### **HEALTH**

They are serious and potentially life-threatening health outcomes with all types of sexual and gender-based violence.

## **FATAL OUTCOMES**

- Homicide
- Suicide
- Maternal mortality
- Infant mortality
- AIDS-related mortality

## **NON-FATAL OUTCOMES**

### *ACUTE PHYSICAL*

- Injury
- Shock
- Disease
- Infection

### *CHRONIC PHYSICAL*

- Disability
- Somatic complaints
- Chronic infections
- Chronic pain
- Gastrointestinal problems
- Eating disorders
- Sleep disorders
- Alcohol/drug abuse

### *REPRODUCTIVE*

- Miscarriage
- Unwanted pregnancy
- Unsafe abortion
- STD's, including HIV/AIDS
- Menstrual disorders
- Pregnancy complications
- Gynaecological disorders
- Sexual disorders

## **PSYCHO-SOCIAL**

### *EMOTIONAL AND PSYCHOLOGICAL CONSEQUENCES*

- Post traumatic stress
- Depression
- Anxiety, fear
- Anger
- Shame, insecurity, self-hate, self-blame
- Mental illness
- Suicidal thoughts, behaviour

### *SOCIAL CONSEQUENCES*

- Blaming the victim/survivor
- Loss of role/functions in society (e.g. earn income, child care)
- Social stigma
- Social rejection and isolation
- Feminisation of poverty
- Increased gender inequalities

Most societies tend to blame the victim/survivor. This social rejection results in further emotional damage, including shame, self-hate and depression.

As a result of the fear of social stigma, most victims/survivors never report the incident. Indeed, most incidents of sexual and gender-based violence go unreported.

### **LEGAL /JUSTICE**

If national laws do not provide adequate safeguards against sexual and gender-based violence, or if practices in the judicial and law enforcement bodies are discriminatory, this kind of violence can be perpetrated with impunity.

Community attitudes of blaming the victim/survivor are often reflected in the courts. Many sexual and gender-based crimes are dismissed or guilty perpetrators are given light sentences. In some countries, the punishment meted out to perpetrators constitutes another violation of the victims/survivor's rights and freedoms, such as in cases of forced marriage to the perpetrator. The emotional damage to victims/survivors is compounded by the implication that the perpetrator is not at fault.

### **SAFETY/SECURITY**

The victim/survivor is insecure, threatened, afraid, unprotected and at risk of further violence.

When dealing with incidents of trafficking in persons, police and security workers are at risk of retaliation.

If police and security workers are not sensitive to the victim's/survivor's needs for immediate care, dignity and respect, further harm and trauma may result because of delayed assistance or insensitive behaviour.

Handout no. 7

## **AGENDA**

### **Ensuring Gender-Sensitivity in the Context of Resettlement**

#### **Introduction to the Workshop**

- 9.00-9.10 Welcome  
9.10-9.15 Introduction to the agenda

#### **UNHCR Resettlement Handbook and Resettlement Criteria**

- 9.15-9.30 Introduction to the UNHCR Resettlement Handbook and to resettlement as a tool for refugee protection  
9.30-10.05 Presentation on the resettlement criteria, including Women at Risk

#### **Gender and Resettlement - Procedural Issues**

- 10.05-10.35 Exercise and presentation on resettlement and procedural issues

#### **Women-at-risk – Country Programs**

- 10.35-10.55 A glance at country programs, including Women-at-risk programmes: USA, Canada, Australia

#### **Gender and Resettlement – Analyzing Cases**

- 10.55-11.05 Introduction to a case study exercise on gender and resettlement: Refugee Resettlement Form and a woman trafficked for sexual exploitation  
11.05-11.20 Coffee break including work on the exercise  
11.20-11.30 Continuing work on the exercise in the meeting room  
11.30-12.00 Presentation of the exercise in plenary  
12.00-12.10 Introduction to the second exercise: A woman trafficked for sexual exploitation  
12.10-12.40 Group work to analyze the claim  
12.40-13.10 A group discussion in plenary on the Refugee Status Determination and resettlement in a case of a woman trafficked for sexual exploitation

#### **Closure of the Workshop**

- 13.10-13.20 Conclusions and closure of the workshop

## UNHCR RESETTLEMENT HANDBOOK AND RESETTLEMENT CRITERIA

### All materials needed:

#### **PowerPoint slides:**

**No. 5** UNHCR Resettlement handbook and resettlement as refugee protection;

**No. 6** For whom is resettlement an option?

**No. 7** UNHCR Resettlement criteria.

#### **Handouts:**

**No. 8** UNHCR Resettlement handbook, Geneva November 2004, Chapter 1, Resettlement: A vital instrument of international protection and an element of comprehensive solutions;

**No. 9** UNHCR Resettlement Handbook, Geneva November 2004 (last updated), Chapter 4 UNHCR Criteria for determining resettlement as the appropriate solution;

**No. 10** Multilateral framework of understanding on resettlement, Convention Plus;

**No. 11** UNHCR Agenda for International Protection Goal 5 and 6;

**No. 12** UNHCR Excom Conclusions relating to the issue of resettlement.

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## UNHCR Resettlement handbook & resettlement as refugee protection



- A handbook – why?
- When is resettlement an appropriate durable solution?
- Are countries legally obliged to accept refugees for resettlement?
- To whom is resettlement?
- What are the current challenges in resettlement?

PowerPoint-slide no. 5

## To whom is resettlement?



- To those refugees under the Office's mandate whose life, liberty, safety, health or fundamental human rights are at risk in the country where they sought refuge;
- To refugees who (although not in need of immediate protection) have compelling reasons to be removed from their country of asylum

PowerPoint-slide no. 6

## UNHCR resettlement criteria



- Legal and physical protection needs
- Survivors of violence and torture
- Medical needs
- Family reunification
- Children and adolescents
- Elderly refugees
- Refugees without local integration prospects
- Women-at-risk

PowerPoint-slide no. 7



*Handout no. 8*

**UNHCR RESETTLEMENT HANDBOOK, CHAPTER 1, RESETTLEMENT:  
A VITAL INSTRUMENT OF INTERNATIONAL PROTECTION AND AN ELEMENT OF  
COMPREHENSIVE SOLUTIONS**

(November 2004 – last updated)

UNHCR Resettlement handbook, Geneva November 2004, Chapter 1 “Resettlement: A vital instrument of international protection and an element of comprehensive solutions”

The publication is available on the UNHCR website:

[www.unhcr.ch/cgi-bin/tehis/vtx/protect/pendoc.pdf?tbl=PROTECTION&id=3d464b239](http://www.unhcr.ch/cgi-bin/tehis/vtx/protect/pendoc.pdf?tbl=PROTECTION&id=3d464b239)

## RESETTLEMENT: A VITAL INSTRUMENT OF INTERNATIONAL PROTECTION AND AN ELEMENT OF COMPREHENSIVE SOLUTIONS

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Resettlement serves three equally important functions. *First*, it is a tool to provide international protection and meet the special needs of individual refugees whose life, liberty, safety, health or other fundamental rights are at risk in the country where they have sought refuge. *Second*, it is a durable solution for larger numbers or groups of refugees, alongside the other durable solutions of voluntary repatriation and local integration. *Third*, it can be a tangible expression of international solidarity and a responsibility sharing mechanism, allowing States to help share each other's burdens, and reduce problems impacting the country of first asylum.<sup>28</sup>

This chapter defines resettlement in the context of international refugee law and policy, as a mechanism for refugee protection, a durable solution and an element of burden and responsibility-sharing. It outlines the history of resettlement, including references to major resettlement operations under UNHCR auspices. It also explains major conceptual developments from the beginning of the 20<sup>th</sup> Century to contemporary efforts toward redoubling the search for timely and durable solutions for refugees and toward using resettlement strategically for the benefit of as many refugees as possible.

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<sup>28</sup> Quoted from *Strengthening and Expanding Resettlement Today: Challenges and Opportunities*, Global Consultations on International Protection, EC/GC/02/7 of 25 April 2002, (4<sup>th</sup> Meeting).

## 1.1 Introduction

### Definition and concepts

Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees - with permanent residence status. The status provided should ensure protection against *refoulement* and provide a resettled refugee and his/her family or dependants with access to civil, political, economic, social and cultural rights similar to those enjoyed by nationals. It should also carry with it the opportunity to eventually become a naturalized citizen of the resettlement country.

Over the past fifty years, millions of people have been provided with the opportunity to build new lives for themselves, and their families, through resettlement. Resettlement has also over the years produced secondary benefits other than to the resettled refugees themselves. In some case it has sustained first asylum in the face of a continued influx of refugees, in others it has played a role in achieving comprehensive solutions and often been an expression of burden- and responsibility- sharing. Additionally, resettlement has often engendered support for refugees among the publics of resettlement countries, and resettled refugees have also made important contributions to the countries that have received them.<sup>29</sup>

UNHCR's Statute and subsequent resolutions from the United Nations General Assembly and the Economic and Social Council (ECOSOC) mandate the Agency to provide international protection to refugees and other persons of concern to the Office and – as a consequence - to seek permanent – or durable – solutions to their problem.<sup>30</sup> As indicated above, resettlement plays a vital role in achieving both of these objectives, and furthermore constitutes a tangible element of burden and responsibility-sharing, as confirmed most recently in the *Agenda for Protection* and under the *Convention Plus* initiative (see below for more details on both).

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<sup>29</sup> *The Strategic Use of Resettlement (A discussion paper Prepared by the Working Group on Resettlement)*, EC/53/SC/CRP.10/Add.1, 3 June 2003.

<sup>30</sup> The 1950 UNHCR Statute states that UNHCR “shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of *seeking permanent solutions for the problem of refugees* by assisting Governments ... to facilitate the voluntary repatriation of such refugees, *or their assimilation within new national communities.*” (Emphasis added).

Resettlement under UNHCR auspices is geared primarily to the special needs of refugees under the Office's mandate whose life, liberty, safety, health or fundamental human rights are at risk in the country where they sought refuge. It is also considered a durable solution for refugees who, although not in need of immediate protection, have compelling reasons to be removed from their country of refuge. The decision to resettle a refugee is normally made only in the absence of other options such as voluntary repatriation and local integration or where resettlement under a comprehensive approach to durable solutions is seen as the optimal solution for the individual or refugee groups in question. It becomes a priority when there is no other way to guarantee the legal or physical security of the person concerned.

Resettlement may be necessary to ensure the security of refugees who are threatened with *refoulement* to their country of origin or those whose physical safety is seriously threatened in the country where they have sought sanctuary.

Resettlement is also used for other refugees at risk, such as survivors of torture and violence, the disabled and other injured or severely traumatized refugees who are in need of specialized treatment unavailable in their country of refuge. It is also appropriate for refugees without local integration prospects, for whom no other solution is available. Furthermore, resettlement is often the only way to reunite refugee families who, through no fault of their own, find themselves divided by borders or by entire continents.

No country is legally obliged to resettle refugees. Only a small number of States do so on a regular basis, allocating budgets, devising programmes and providing annual resettlement quotas. Some countries regularly accept refugees for resettlement, sometimes in relatively large numbers, but do not set annual targets. Recently, States that have not previously accepted refugees for resettlement have established resettlement programmes or expressed an interest in doing so. Accepting refugees for resettlement is a mark of true generosity on the part of Governments and UNHCR welcomes the opportunities that continue to be offered by States for the resettlement of refugees. In turn, resettled refugees could – with the appropriate integration measures in place - eventually prove to be an asset for the resettlement State, through their contribution to society at large.<sup>31</sup>

In accordance with the goals of the *Agenda for Protection*, UNHCR continues to work towards the enhancement of protection through expanding the number of countries engaged in resettlement.

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<sup>31</sup> Under the *Agenda for Protection*, States are encouraged to ensure that resettlement runs in tandem with more vigorous integration policy, see Goal 5, Objective 5, Action Point 5.

In other contexts, the term resettlement is commonly used to describe the transfer of populations from one area within a country to another. International financial institutions may finance resettlement projects to clear areas to be flooded as a result of dam construction. Populations may be resettled in anticipation of a natural disaster. Sometimes, returning refugees are said to be resettling in their former homes.

Closer to UNHCR's specific use of the term, a number of Governments refer to some of their migration programmes as resettlement. These programmes, however, may include persons who meet neither the definition of a refugee under the UNHCR mandate nor the specific UNHCR resettlement criteria detailed in this Handbook.

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

Refugees may be denied basic human rights in a country of refuge. Their lives and freedom may be threatened in the country of asylum, or they may have vulnerabilities or special needs which render their asylum untenable. The authorities in the country of refuge may be unable or unwilling to provide effective protection or address special needs. In such circumstances, timely relocation through resettlement becomes a principal objective, and an important means of protecting refugees. Consequently, resettlement under UNHCR auspices is geared primarily to the special needs of refugees under the Office's mandate whose life, liberty, safety, health or other fundamental human rights are at risk in the country where they sought refuge. In the course of the *Global Consultation on International Protection* it was reaffirmed by States and UNHCR that the primary purpose of resettlement must always be the provision of individual protection for those who cannot be provided with adequate protection in a first country of asylum.<sup>32</sup>

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

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<sup>32</sup> *The Strategic Use of Resettlement (A Discussion Paper Prepared by the Working Group on Resettlement)*, EC/53/SC/CRP.10/Add.1, 3 June 2003, p. 3, para. 8.

## Resettlement as a durable solution

A fundamental objective of resettlement policy is to provide a durable solution for refugees unable to voluntarily return home or to remain in their country of refuge. In the context of the *Global Consultations on International Protection*, the *Agenda for Protection*, and *Convention Plus*, the High Commissioner has emphasised that there can be no meaningful protection without the prospect of a durable solution.<sup>33</sup> Absence of durable solutions for refugees will eventually become a protection concern, and the search for durable solutions, hence, constitutes an element of providing international protection. This does not preclude the application of resettlement as a durable solution for refugees who do not have *immediate* protection concerns in the country of refuge where there are no prospects for voluntary repatriation or local integration.

A decision to use the resettlement option should be based on what difference – if any – this option would make in addressing the immediate and long term problems and needs of the individual refugee or groups of refugees and to what degree it would in fact serve as a durable solution. The aim of this analysis should be to provide a realistic and comparative prognosis as to the viability and the protection impact of each of the durable solutions in the foreseeable future as well as in the longer term. The potential for other durable solutions should be reviewed simultaneously with assessing resettlement as an option. This is the case as the pursuit of one solution at the expense of the two others may result in considerable delays or misdirected efforts in a durable solution.<sup>34</sup>

In efforts to **redouble the search for durable solutions**, the *Agenda for Protection* envisages that voluntary repatriation, local integration and resettlement be integrated into one **comprehensive approach to durable solutions**, which is to be implemented in close cooperation among countries of origin, host States, UNHCR and its partners, as well as refugees.<sup>35</sup> It calls for the expansion of resettlement opportunities through enhancing the number of resettlement countries; through more strategic use of resettlement for the benefit of as many refugees as possible; through the development of capacity building programmes with new resettlement countries; through encouraging increases in resettlement quotas on part of resettlement countries and by diversifying the intake of refugee groups as well as by introducing more flexible resettlement criteria.

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<sup>33</sup> In the Chairman's Summary of the inaugural meeting of the (Convention Plus) Forum, the High Commissioner specified that "[I]n too many places refugee protection is becoming eroded for want of durable solutions. Let us remember that, for the refugee, the ultimate protection lies in the solution."

<sup>34</sup> Ibid.

<sup>35</sup> *Agenda for Protection*, introduction to Goal 5 "Redoubling the search for durable solutions".

Moreover, States are encouraged to ensure that resettlement runs in tandem with a more vigorous integration policy aimed at enabling refugees having durable residence status to enjoy equality of rights and opportunities in the social, economic and cultural life of the country.<sup>36</sup> This is in accordance with the understanding that resettlement also can provide significant potential for the development of professional and skilled personnel who can contribute to the rebuilding of society if they opt to return at one point in the future.

The Working Group on Resettlement has defined the **strategic use of resettlement** as “the planned use of resettlement in a manner that maximizes the benefits, directly or indirectly, other than those received by the refugee being resettled. Those benefits may accrue to other refugees, the hosting state, other states or the international protection regime in general.”<sup>37</sup>

In using resettlement more effectively as a durable solution, States and UNHCR are further asked to examine how to carry out earlier analysis of data deriving from refugee registration to anticipate the needs for resettlement of individuals or specific groups and to process more rapidly resettlement applications particularly in emergency situations. States and UNHCR are also encouraged to ensure the availability of increased resources for resettlement activities, integrated in a balanced way in each geographic operation.<sup>38</sup>

In protracted refugee situations where protection may be available but a durable solution is not, resettlement may be relevant, in particular if it leads to enhanced conditions of asylum for those refugees remaining. In such cases, group resettlement as described in Chapter 7 may be relevant. In some cases resettlement could also be considered for residual caseloads following major voluntary repatriation movements, where certain groups of refugees are not able to return home. In other cases, resettlement may be relevant for certain groups whom due to their ethnic, religious or other affinities, have no prospects for local integration in the country to which they have fled. Caution is warranted, however, in ensuring that resettlement does not contribute to rid societies of unwanted minority groups. In some situations of mass displacement, resettlement may serve to alleviate some of the strain put on the receiving country.<sup>39</sup> Finally, resettlement may in certain instances be utilized in the context of protecting refugee within broader migration movements.

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<sup>36</sup> *Agenda for Protection*, Goal 5, Objective 5.

<sup>37</sup> See *The Strategic Use of Resettlement (A Discussion Paper Prepared by the Working Group on Resettlement)*, EC/53/SC/CRP.10/Add.1, 3 June 2003, p. 3, para. 6.

<sup>38</sup> *Agenda for Protection*, Goal 5, Objective 6, Action Points 3 and 6.

<sup>39</sup> For a comprehensive list of examples, see *The Strategic Use of Resettlement (A Discussion Paper Prepared by the Working Group on Resettlement)*, EC/53/SC/CRP.10/Add.1, 3 June 2003.

In all these situations, resettlement can be said to form part of burden- and responsibility-sharing frameworks, according to which resettlement is used strategically as part of a comprehensive approach to durable solutions.

Efforts towards this end may be channelled through the resettlement strand under the *Convention Plus* initiative.

### **Resettlement as an element of burden-sharing**

UNHCR has been requested by the General Assembly to provide international protection and seek durable solutions for refugees. However, the principal responsibility for providing international protection for refugees lies with States and is in the interest of the entire international community. This is indicated in the fourth preambular paragraph to the 1951 Convention and consistently reaffirmed in a number of ExCom Conclusions.<sup>40</sup> Most recently, the *Declaration of States Parties* recognized that respect by States for their international protection responsibilities towards refugees is strengthened through international solidarity and that the refugee protection regime is enhanced through committed international cooperation in a spirit of effective responsibility and burden sharing among all States.<sup>41</sup>

While departing from a different primary motivation, resettlement to support burden and responsibility-sharing is in essence similar to resettlement as a durable solution. Where a State undertakes to provide a durable solution through resettlement, it also participates in sharing burdens and responsibilities. Equally, when a State agrees to “burden share” through resettlement, it is expected to provide a durable solution.

As mentioned above, resettlement has over the years produced secondary benefits other than to the resettled refugees themselves. In some instances, resettlement has contributed to sustaining of first asylum in the face of a continued influx of refugees; in others it has played a role in achieving comprehensive solutions and often has been an expression of burden- and responsibility-sharing. The *Agenda for Protection* encourages the Working Group on Resettlement to examine further the potential use of resettlement as a burden sharing tool, including the issue of criteria to be applied in mass displacement situation, especially where the prospects of other durable solutions is remote or absent.<sup>42</sup>

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<sup>40</sup> For example: Executive Committee Conclusions No. 52 (XXXIX)- 1988; No. 62 (XLI) -1990; No. 68 (XLIII) – 1992; No. 80 (XLVII) – 1996; No. 85 (XLIX) – 1998; No. 87 (L) – 1999.

<sup>41</sup> Preamble, point 8, *Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol* adopted unanimously at the Ministerial Meeting of States Parties on 12-13 December 2001 under Track One of the *Global Consultations*.

<sup>42</sup> *Agenda for Protection*, Goal 3, Objective 6, Action point 2.



While strategic use of resettlement as a burden and responsibility-sharing tool can be promoted by a single State, coordination with other resettlement countries and UNHCR is likely to maximize derivative benefits. Such coordination may involve negotiation of mutually agreeable arrangements between the international community and the State of first asylum, possibly requiring a multi-year commitment by the international community to sustain the burden-sharing, as well as possible assistance to further local integration or enhance life for refugees in first asylum countries.<sup>43</sup> Multilateral agreements of this kind form one element of *Convention Plus*.

### **The evolution of resettlement**

Although the concept of resettlement was not clearly articulated until the mid-1960s, it has been undertaken in one form or another from the outset of the system of international protection for refugees. Between the two World Wars, resettlement was used as the principal or partial solution for a number of refugee situations. During the early 1920's, for example, some 45,000 White Russians who had fled to China after the Russian Revolution were subsequently resettled elsewhere. In the 1930's, a succession of international refugee organizations were charged with resettling Jews and others who were fleeing Nazi persecution.

Resettlement evolved in the context of the Cold War. The historical effort to help displaced people in the aftermath of World War II matched the desire of Governments to facilitate the movement of certain people for foreign and domestic policy reasons.

When the United Nations replaced the League of Nations in 1945, it established (in 1946) a new body, the International Refugee Organization (IRO). The IRO's mandate was to protect existing refugee groups and one new category - the 21 million or so refugees scattered throughout Europe in the aftermath of World War II. Initially, the IRO's main objective was repatriation, but the political build-up to the Cold War tilted the balance instead towards resettlement of those who had "valid objections" to returning home. Such "valid objections" included "persecution, or fear of persecution, because of race, religion, nationality or political opinions". Over a period of five years, from 1947 to 1951, the IRO resettled well over a million people (four-fifths of them outside Europe), while repatriating a mere 73,000.

The IRO was replaced by the Office of the United Nations High Commissioner for Refugees (UNHCR) in 1950. By that time, international protection was firmly enshrined as the new organization's principal *raison d'être*.

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<sup>43</sup> *The Strategic Use of Resettlement (A Discussion Paper Prepared by the Working Group on Resettlement)*, EC/53/SC/CRP.10/Add.1, 3 June 2003, section IV, p. 4 ff.

The Statute of UNHCR, adopted by a General Assembly resolution in December 1950, outlines the responsibilities of the Office. The most important of these responsibilities are to provide international protection and to seek permanent solutions for the problem of refugees.

Similar to the IRO, UNHCR, during its early years, made extensive use of resettlement as a means of clearing the European refugee camps after World War II. Over the next three decades, voluntary repatriation, local integration and resettlement enjoyed equal status as durable solutions, depending on the circumstances. The Soviet invasion of Hungary in 1956 resulted in 200,000 refugees fleeing to Yugoslavia and Austria, many of whom were later resettled in other countries.

In 1972, President Idi Amin of Uganda expelled most of the country's Asian minority, many of whom were citizens and/or had lived there for decades and had no other country to go to. With the help of UNHCR, the International Organization for Migration (IOM), the International Committee of the Red Cross (ICRC), and the United Nations Development Programme (UNDP), some 40,000 Ugandan Asians were resettled in a matter of a few months in a total of 25 countries.

Following a coup d'état in Chile in September 1973, another resettlement programme was launched. Refugees from neighbouring countries were faced with a new hostile regime in their country of asylum (Chile) and, fearing *refoulement*, sought sanctuary in churches and embassies. The High Commissioner addressed an appeal to the Chilean Government that refugees in that country be adequately protected and on no account expelled to their country of origin. The High Commissioner simultaneously requested assistance from resettlement countries. By March 1974, nearly 5,000 people had been resettled to a total of 19 countries. Resettlement, mainly to other countries in the region, continued to play a prominent role in Latin America throughout the 1970s and in Central America in the 1980s.

The largest and most dramatic example of resettlement in modern times occurred in South East Asia. A massive exodus from Vietnam followed the collapse of the Saigon regime in 1975. The many that crossed the perilous seas of South East Asia became known as "boat people". By 1979, a major protection crisis had developed as certain asylum countries refused to accept more refugees, prevented boats from landing and in some cases towing them out to the high seas. At the same time, over 200,000 refugees were languishing in camps in the region. Confronted with this political and humanitarian crisis, the international community decided at the first conference on refugees from Indo-China, held in 1979, that Vietnamese boat people arriving in first asylum countries in South East Asia would be allowed to land in the region but would then be resettled in other countries. In the years that followed, nearly 700,000 Vietnamese were resettled.

In 1986, the situation changed dramatically as a result of a sudden and massive increase in clandestine departures from Vietnam. The number of boat people in camps leapt from 31,694 at the beginning of 1986 to 65,349 by early 1989. Since there had not been a significant deterioration in the human rights situation in Vietnam, it was clear that the exodus, while retaining a refugee dimension, was increasingly driven by economic factors. A second International Conference on Indo-Chinese Refugees was convened in June 1989. It adopted a Comprehensive Plan of Action (CPA) in an attempt to address the issue in a global and systematic way.

The CPA did away with blanket resettlement for all boat people and introduced an approach that included the following elements:

- All Vietnamese boat people would be permitted to land in first asylum countries and would be screened for refugee status.
- All boat people who qualified as refugees would be resettled in a third country. Those who did not qualify would have to return to Vietnam under a guarantee, monitored by UNHCR, that they would not be prosecuted for illegal departure.
- A programme would be set up by UNHCR to provide reintegration assistance to the returnees.
- The Orderly Departure Programme (ODP)<sup>44</sup> would be expanded, its criteria liberalized and its procedures simplified to allow easier legal emigration for eligible groups such as family reunification cases and former re-education camp internees.
- A “mass information campaign” would be launched in Vietnam to inform the population of the provisions of the CPA, in order to discourage those who would not qualify as refugees from embarking on a life-threatening journey in the mistaken belief that they would automatically be resettled in the West.

The implementation of the mass information campaign and the beginning of voluntary repatriation to Vietnam brought about a substantial drop in the number of boat people.

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<sup>44</sup> Mainly in an effort to open up the possibility of legal emigration from Viet Nam and so reduce the number of clandestine departures, which had resulted in considerable loss of life at sea, UNHCR helped set up an Orderly Departure Programme, known as the ODP, which provided a safer, officially-sanctioned channel for emigration.

In retrospect, the decision in 1979 to adopt blanket resettlement, while averting the immediate threat of massive loss of life, led to an additional problem as the number of migrants pursuing economic and social opportunities outside of their country of origin or habitual residence outnumbered the number of refugees. Meanwhile, elsewhere in the world, people who were in desperate need of resettlement suffered from lack of available places. By the late 1980s, resettlement – designed as an important solution and protection tool for individual refugees meeting certain specific criteria – had achieved its objective of safeguarding the concept of first asylum by ensuring that refuge continued to be granted in neighbouring countries. But it had also become the chief “pull-factor” in a mass-migration movement where a number of people left their homeland primarily for economic and social reasons rather than for reasons of feared persecution, armed conflict, generalised violence, foreign aggression or other circumstances having seriously disturbed public order.<sup>45</sup>

In the late 1980s, the major focus of resettlement activity shifted to the Middle East where the Iran/Iraq war and repressive regimes led to significant protection and resettlement needs.

The overthrow of the Shah and the creation of the Islamic Republic of Iran by Ayatollah Khomeini in 1979 unleashed serious religious persecution of Iranian Bahais. In 1979, Bahai centres, cemeteries and holy places were confiscated and the House of the Bab, the most important Bahai location in Iran, was destroyed. In 1980, 10,000 Bahais were banned from government and teaching jobs, and stripped of pension benefits. Bahai children were excluded from universities, and then from schools. Homes, farms and businesses belonging to Bahai were looted, vandalized, and seized. Consequently, during the 1980s, many Iranian Bahais sought asylum in neighbouring countries, such as Turkey and Pakistan, and were later resettled, mainly to the US.

At the beginning of March 1991 – as a result of the first Gulf War - approximately 2 million Iraqis arrived at the borders of Turkey and Iran within a period of scarcely three weeks. Over 450,000 mainly Kurdish people fled to the Turkish frontier. Turkey refused to grant the Kurds asylum, and US-led coalition forces therefore established a ‘safe haven’ for them inside Northern Iraq. Eventually most of these Kurds voluntarily repatriated once the situation had become sustainable. However, some Iraqis already present in Turkey were at risk of *refoulement* and there was no other durable solution available but to submit them for resettlement in a third country.

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<sup>45</sup> This is the broader sense of the term “refugee” as outlined in the 1994 UNHCR Note on International Protection (UN Doc. A/AC.96/830) paras.8, 10-11 and 31-2. It reflects the requests by the General Assembly and endorsement by the international community that UNHCR’s competence be extended generally to all refugees from armed conflict or other ‘man-made disasters’ who do not otherwise come within the terms of the 1951 Convention and its 1967 Protocol.

In 1992, following the first Gulf War in 1991, UNHCR sought to resettle some 30,000 Iraqis from Saudi Arabia after efforts to explore possibilities for voluntary repatriation and local integration had failed. Between April 1992 and June 1997, approximately 21,800 Iraqis had been accepted for resettlement.

Another major challenge arose in 1992 with the need for resettlement of inmates from places of detention in Bosnia and Herzegovina. An emergency operation started on 1 October 1992 under an agreement with the International Committee of the Red Cross (ICRC) who transferred detainees to a UNHCR centre at Karlovac in Croatia. By early July 1993, 22 countries had offered temporary protection or resettlement to the ex-detainees and their families and over 11,000 people had left for third countries. By June 1997, UNHCR had been directly involved in the resettlement of some 47,000 refugees from former Yugoslavia.

In 1999, resettlement was used to support the UNHCR relief operation and “humanitarian evacuation program” (HEP) that took place in FYR Macedonia as a result of the Kosovo crisis. By the end of the emergency, almost 96,000 refugees had benefited from the humanitarian evacuation program in 28 host countries. Some of the host countries utilized their annual resettlement quotas to support this burden-sharing initiative. The Kosovar refugees that were received as part of the HEP but under regular resettlement quotas were allowed to remain in the receiving country permanently.

The civil war in Sudan, which has ravaged its southern provinces for the last 20 years, left scores of refugee children and adolescents without family protection. After experiencing years of deprivation, loss of family, war violence, and life in refugee camps, a large portion of the Sudanese refugee youth in Kenya, or the “Lost Boys”, as they have been called, was resettled in the US in two groups starting in late 2000. One group arrived in the US prior to their 18<sup>th</sup> birthday and was resettled through the Unaccompanied Minors Program. A total of 3500 Sudanese “Lost Boys” were resettled in the US, with approximately 15 % being unaccompanied minors and 85% over the age of 18. Some girls were also included in the group.

Further, UNHCR was involved for over a decade in promoting a durable solution for the over 15,000 Somali Bantu refugee population in Kenya. For several years, UNHCR sought to find a local solution for them; however these efforts were ultimately unsuccessful. It was thus decided to consider resettlement for the population and, in December 1999, the US designated the Somali Bantu as a group of special concern eligible for resettlement consideration. Arrivals began in the spring of 2003 and continue to date. The Somali Bantu represent one of the largest single groups to be resettled from Africa.

History has shown that when the needs are compelling, and the political will exists, resettlement can be arranged quickly and efficiently. With resettlement used strategically and as part of a comprehensive approach to durable solutions the aim is that this option be opened to greater numbers of refugees and that those refugees who are not resettled would nonetheless benefit from the operation, for example through enhanced protection in asylum.

### **Current policy developments and challenges<sup>46</sup>**

As indicated above, policy and practice in relation to resettlement have undergone significant changes in recent years. The popularity of resettlement as a solution waned over the decades following the aforementioned large-scale and systematic processing of Indo-Chinese refugees for resettlement in the late 1970s and 1980s. During the 1990s, resettlement became increasingly used as response mechanism for the protection of individual cases, based on rigorous and individualized processing. In more recent years, the function of resettlement as a durable solution has been regaining prominence, alongside its individual protection dimension. Resettlement today is thus a global programme, benefiting refugees of diverse nationalities and geographical location, with growing emphasis on the identification of caseloads according to group or category.

There has also been a marked increase both in the number of countries engaged in resettlement and in the extent of UNHCR field office involvement. Currently most UNHCR offices in all regions are involved, albeit to varying degrees, in resettlement activities. International fora have also given increasing consideration to resettlement as vital tool within the refugee protection regime. In the past few years, calls to expand the use of resettlement featured prominently both within the conclusions adopted by the Executive Committee and those of other international fora on International Protection.

These important changes in how resettlement is viewed mirror those in the international protection environment. Globalization, the proliferation of conflict-driven displacement, protracted refugee situations with no prospect of timely and safe solutions, and increasing pressures created by international, mixed migratory flows, have all compelled UNHCR to approach the solution of resettlement in a new light.

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<sup>46</sup> See generally *Strengthening and Expanding Resettlement today: Dilemmas, Challenges and Opportunities*, Global Consultations on International Protection, 4<sup>th</sup> mtg., U.N. Doc. EC/GC/02/7, in *Refugee Survey Quarterly*, Vol. 22, No. 2/3 2003, pp. 249-256

## Agenda for Protection and Convention Plus

While voluntary repatriation may be the preferred outcome for most refugees, donor States and countries of asylum, other solutions, including resettlement, cannot be neglected. Indeed, as confirmed by the *Agenda for Protection* there is a growing recognition of the need for a more comprehensive approach to refugee problems that involves helping different groups of refugees to find appropriate solutions to their plight, according to their individual circumstances, aspirations and the opportunities available. Resettlement is an essential element in a comprehensive strategy of refugee protection, and the strategic use of resettlement forms one part of such a comprehensive approach.

Although the overall number of refugees in need of resettlement has decreased in recent years, the profile of resettlement cases has been increasingly characterized by new and diverse nationalities, and also by more complex cases originating from national armed conflicts and needing specialized attention and treatment, such as victims of torture and Women-at-risk. This has generated a variety of challenges for UNHCR and for resettlement countries, ranging from how to better define the standards for resettlement, to responding to the special needs of resettled refugees, to extending support networks in the host communities. The need for broadly-based resettlement programmes may arise again as part of international endeavours to ensure protection and promote durable solutions as well as responsibility sharing.

Certainly, the role of resettlement has gained new impetus with the adoption of the *Agenda for Protection*<sup>47</sup> and the *Convention Plus* initiative, elements of which have been explained above.

In the context of the *Agenda for Protection*, it is sought to expand resettlement opportunities and use resettlement more efficiently both as a protection tool, a durable solution and as a tool of burden sharing. Improvements on the part of UNHCR include better management of its resettlement activities; a more comprehensive approach to the use of resettlement as a durable solution; enhanced partnership in resettlement processing; planning for the use of resettlement in a more strategic manner to maximize the benefits offered by this solution to individuals other than those who are resettled; the inclusion of a proactive planning tool for resettlement in Country Operations Plan (COP) under which all offices are responsible for examining possible resettlement needs within their operation; and the introduction of a Group Methodology.

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<sup>47</sup> The *Agenda for Protection* (A/AC.96/965/Add.1) is the jointly owned product of UNHCR's *Global Consultations on International Protection*, launched in late 2000 to engage States and other partners in a broad-ranging dialogue on how best to revitalize the existing international refugee protection regime while ensuring its flexibility to address new problems. The *Agenda* was endorsed by the UNHCR Executive Committee (ExCom Conclusion No. 92 (LIII) – 2002) and welcomed by the United Nations General Assembly (A/RES/57/187) in 2002. Information on *Convention Plus* is available and regularly updated on [www.unhcr.ch](http://www.unhcr.ch).

The *Convention Plus* initiative provides a framework for the adoption of multi-lateral special agreements to ensure improved burden sharing. One priority issues for such agreements is the strategic use of resettlement as a tool of protection, a durable solution and tangible form of burden-sharing. A *Framework of Understandings* is being prepared by the core group on resettlement under the Convention Plus Forum. This framework will guide deliberations on the adoption of special agreements. Actions under the Framework are delineated for the designated party or parties within the areas of

- Leadership and coordination
- Registration and documentation
- Selection Criteria
- Family Unity
- Transparency in multilateral resettlement operations
- Integrity of the Process
- Effective Programme delivery
- Integration support
- Sustained and enhanced commitment to multilateral resettlement operations

### **Integration of resettled refugees**

As in the case of the million and more Indo-Chinese who have been resettled in Australia, Canada, France and the United States of America, third country resettlement often entails taking refugees from their country of first refuge, transporting them thousands of kilometres across the world, and helping them to adapt to societies where the culture, climate, language and social structure are unfamiliar. In spite of all efforts, refugees may face problems adapting to such different circumstances. Nevertheless, it is the experience of many Governments and non-governmental organizations that the overwhelming number of refugees successfully overcomes such challenges in order to establish themselves in their new country and community. Many resettled refugees, particularly younger family members, have made an astonishing success of their new lives.

Notwithstanding such success stories, rising xenophobia in many countries traditionally welcoming refugees and/or immigrants has carried with it greater difficulty for refugees, resettled or not, to achieve a durable and sustainable solution to their plight through integration in their new communities. For example, xenophobia may result in employers not wishing to hire refugees, thereby impeding integration through work opportunities. The *Agenda for Protection* calls upon states to put in place policies to ensure that resettlement runs in tandem with a vigorous integration policy. Language training, education, vocational training, employment, support for family reunification – these and many other activities are the building blocks of integration.



And while resettlement is a way of protecting refugees and a tangible sign of responsibility-sharing by states, there is no doubt that refugees also make important contributions to their new societies.<sup>48</sup> Such messages may assist in countering hostile sentiments held in some segments of society towards refugees, including those who arrived under resettlement programmes.

### Costs related to resettlement

A point of criticism sometimes advanced against resettlement concerns the expense of this solution. As mentioned above, it involves arranging international transport, providing income support, helping to integrate refugees in the resettlement country and, in some cases, paying for costly follow-up medical treatment and counselling. It is also labour-intensive and requires highly trained staff. While these concerns are recognized, it should also be acknowledged that continued assistance to refugees who cannot find a durable solution, often over long years is also costly both in terms of human and financial terms. In addition, it should be mentioned that increased efforts to promote burden and responsibility-sharing in the field of resettlement form an integral part of the *Agenda for Protection* and is the very rationale for the deliberations undertaken in connection with *Convention Plus*. More specifically, the adoption and application of the *UNHCR Methodology for the Resettlement of Groups* in this regard, may result in a less labour intensive exercise compared to individual processing, thus maximising resources. Chapter 7 of this Handbook deals in detail with group resettlement under UNHCR's auspices.

### The new Resettlement environment<sup>49</sup>

Resettlement activities are inevitably influenced by a number of important factors. External realities and competing pressures in the resettlement environment have to be accommodated in any solutions strategies of which resettlement is an important part. Among them are the following:

Protracted refugee situations and burdens on asylum countries. Today, there are clearly more refugees in need of resettlement than there are places or resources available. A lack of resolution of the root causes of flight and insufficient resources in host countries have resulted in refugees being unable for long periods to either repatriate safely or integrate locally. These severe strains on the protection regime in countries of first asylum lead to extraordinary pressure on the resettlement process.

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<sup>48</sup> *Refugee Resettlement. An International Handbook to Guide Reception and Integration*, UNHCR and the Victorian Foundation for the Survivors of Torture, 2002, Foreword by the High Commissioner.

<sup>49</sup> See *Strengthening and Expanding Resettlement today: Dilemmas, Challenges and Opportunities*, Global Consultations on International Protection, 4<sup>th</sup> mtg., U.N. Doc. EC/GC/02/7, in *Refugee Survey Quarterly*, Vol. 22, No. 2/3 2003, pp. 249-256, paragraph 11 (a-f).

Countries hosting large numbers of refugees for a long period, with no durable solution in sight, have to contend with resulting economic, social or security problems which can be additional burdens on often fragile domestic structures. These countries are increasingly looking to UNHCR to institute burden-sharing measures as well as to expedite solutions.

**Managed Migration and Globalization Trends:** In many parts of the world, the entanglement of migration and asylum has made the work of UNHCR more challenging. Globalisation has inter alia led to a higher degree of mobility. Resulting migration trends have influenced perceptions by governments of the proper role and function of resettlement as a feature of global governance of international migration. Efforts both to limit or indeed to expand labour migration are starting again to impact approaches to resettlement. There is a danger that the unique characteristics of refugees, just as States' obligations under the 1951 Convention, will be obscured in the process.







**Irregular, Secondary or Onwards Movements:** The management of migration through increasingly restrictive measures has contributed to a rise in irregular movements. This has negatively impacted on resettlement, with countries increasingly unwilling to consider accepting refugees who move irregularly, for fear that this will encourage illegal migration, and that the people smugglers who make huge profits from it will be rewarded and encouraged to continue.

**Security Concerns:** Heightened security concerns have led to greater restrictions on refugee admissions in major resettlement countries. While some countries have instituted more restrictive legislation and other requirements for refugees, others have reduced the number of processing locations and increased security checks which have greatly extended the time required for processing. The predictability that once characterized the commitments of resettlement countries has proven most regrettably to be another casualty of recently implemented security measures. In view of the prevailing uncertainties in terms of quotas, criteria and timing, UNHCR offices are hindered in planning their resettlement work, in terms of making the necessary resources available and submitting candidates in a timely way.



**Fraud in the processes:** Refugee status and resettlement places are valuable commodities, particularly in countries with acute poverty, where the temptation to make money by whatever means is strong. This makes the resettlement process quite vulnerable to abuse. It becomes increasingly vulnerable the more restricted the access, and the smaller the resettlement quotas and opportunities. UNHCR has recognized and is acting on its clear responsibilities to tackle forcefully any cases of corruption and fraud. The possibilities for abuse are not, however, a reason for reducing resettlement where the need for it persists.

Security of staff: The aforementioned factors, in particular the smuggling and corruption issues, have contributed to creating an increasingly insecure environment for UNHCR field staff and staff of partner organizations. The possibility of resettlement engenders high expectations on the part of many refugees caught in limbo. Action to expose fraud, combined with frustrated expectations in the face of slow moving processes, delayed departures or rejected resettlement applications are resulting in threats to the safety of UNHCR and that of their partners in the field.

ESSENTIAL READING:

-  *Agenda for Protection, A/AC.96/965/Add.1.*
-  *Convention Plus Core Group on the Strategic Use of Resettlement: Multilateral Framework of Understandings on Resettlement, 21 June 2004.*
-  *The Strategic Use of Resettlement (A Discussion Paper Prepared by the Working Group on Resettlement), Standing Committee 27<sup>th</sup> meeting, EC/53/SC/CRP.10/Add.1, 3 June 2003.*
-  *Strengthening and Expanding Resettlement Today: Dilemmas, Challenges and Opportunities, Global Consultations on International Protection, EC/GC/02/7, 25 April 2002.*
-  *New Directions for Resettlement Policy and Practice, Standing Committee Information Note, EC/51/SC/INF.2, 14 June 2001.*
-  *Progress Report on Resettlement, Standing Committee, 30<sup>th</sup> meeting, EC/54/SC/CRP.10, 7 June 2004.*

FURTHER REFERENCE:

-  *Convention Plus at a Glance (as of 14 May 2004), UNHCR, Geneva, 14 May 2004.*
-  *The State of the World's Refugees. Fifty Years of Humanitarian Action, UNHCR. 2000.*

*Handout no. 9*

**UNHCR RESETTLEMENT HANDBOOK, CHAPTER 4:  
UNHCR CRITERIA FOR DETERMINING RESETTLEMENT AS THE APPROPRIATE  
SOLUTION**

(November 2004 – last updated)

UNHCR Resettlement handbook, Geneva November 2004, UNHCR Resettlement Handbook, Geneva November 2004 (last updated), Chapter 4 "UNHCR Criteria for determining resettlement as the appropriate solution"

The publication is available on the UNHCR website:

[www.unhcr.ch/cgi-bin/teXis/vtx/protect/opedoc.pdf?tbl=PROTECTION&id=3d464db54](http://www.unhcr.ch/cgi-bin/teXis/vtx/protect/opedoc.pdf?tbl=PROTECTION&id=3d464db54)

## UNHCR CRITERIA FOR DETERMINING RESETTLEMENT AS THE APPROPRIATE SOLUTION

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**This Chapter describes the UNHCR resettlement criteria and related considerations, which form the basis for the identification of refugees in need of resettlement and the pursuance of resettlement as the appropriate solution. It also provides guidance on specific procedural aspects relating to particular categories of vulnerable refugees and the resettlement process. This guidance is additional to the basic procedures and standards of the resettlement process outlined in Chapter 5 of this Handbook.<sup>50</sup>**

**Individual resettlement countries generally concur with UNHCR's resettlement criteria. Other elements are also applied in accordance with national legislation and practice. The various provisions for countries with resettlement quotas are outlined in the Country Chapters of this Handbook.**

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<sup>50</sup> The categories are *Survivors of Torture and Violence*, *Medical Cases*, *Cases of Women-at-risk*, *Family Reunification Cases*, and *Children and Adolescents*. The guidance included here is essentially identical with Chapter 6 of the 1997 Handbook as updated in 1998 and 2002. Many of the issues raised are complex and the guidance provided here should not be considered exhaustive. The Resettlement Section at UNHCR Headquarters should be contacted if additional guidance is required.

## 4.1 Basic Considerations

UNHCR resettlement activities constitute a means of providing international protection and appropriate durable solutions to refugees. As seen in previous chapters of this Handbook, resettlement also plays a role in sharing responsibilities and burdens of the refugee problem.

Resettlement should be considered when refugees are at risk in their country of refuge or have particular needs as detailed under the various criteria in this Chapter. The absence of (prospects for) another durable solution is also relevant for determining whether resettlement should be pursued. Before a decision is taken to pursue the resettlement of a refugee, first every effort should be made to fully explore the possibility of local solutions. At the same time, the possibility of voluntary repatriation in the foreseeable future (within an acceptable time frame) should also be evaluated.

This approach will ensure that the needs of refugees identified as requiring special attention are met without unnecessarily uprooting them and that scarce resources are adequately and rationally used. This does not, however, imply a mechanical process, where certain steps have to be taken one after the other over an extended period of time. The potential for any durable solutions may be reviewed at the same time and it may not be necessary that various options for local solutions are followed through, if they are not likely to be successful. As mentioned in Chapter 3, a comprehensive approach entails that the three durable solutions be applied simultaneously in a manner where they complement each- other.

While it is UNHCR's obligation to ensure the protection of refugees, where necessary by promoting their resettlement, unlike voluntary repatriation or seeking asylum, resettlement is not a right of the individual.

The identification of refugees potentially in need of resettlement and the assessment of cases should be an active and systematic process. Close cooperation among all concerned staff across functional units and when applicable with implementing partners, is of considerable importance. The identification and promotion of resettlement cases should depend on the real needs of individual refugees and should not be influenced by external factors (e.g. availability of resettlement places or quotas).

However, in cases not related to immediate protection concerns, particularly those falling under the criteria of *lack of local integration prospects*, a decision to refer for resettlement may be influenced by the availability of places. Without reasonable assurances that cases will be considered, UNHCR abstains from referring cases because doing so may raise expectations, create an unmanageable demand, and in turn even lead to security problems.

At the same time, the potential of resettlement as a durable solution for certain refugees should be brought to the attention of the Resettlement Section at UNHCR Headquarters, so that steps can be taken with a view to request an increase in quota allocations.

It is important that UNHCR resettlement activities are carried out on the basis of a correct and consistent application of the criteria and considerations detailed in this Handbook. This approach will ensure that all refugees in need of resettlement receive the appropriate attention. It will, in addition, help to avoid frustration and aggression among refugees as well as other negative phenomena, like secondary or onwards movements, often related to inconsistent resettlement activities.

A rational and transparent approach will, furthermore, strengthen the credibility of UNHCR in general and widen the confidence of refugees, resettlement countries and other partners, which in turn should help to ensure that resettlement can be done efficiently and effectively.

Among cases to be promoted for resettlement, priority attention should be given to those refugees with acute legal and physical protection needs and, in particular to the most vulnerable such as Women-at-risk and unaccompanied children for whom resettlement has been found to be in their best interests.

While the notion of integration potential should not negatively influence the selection and promotion of resettlement cases, it is important to choose the most appropriate resettlement country for an individual refugee, where such choice exists. For many refugees, moving to a country with a familiar culture, language or climate could make social adjustment and integration much easier. Often, and foremost in cases relating to protection problems, the main objective is, however, the timely relocation of the refugee at risk. Educational level, for example, or other factors considered to be enhancing the prospects for integration, should not be determining factors when submitting cases for resettlement.<sup>51</sup>

Resettlement should not be pursued because individual refugees have become a burden or because of their behaviour or solely in response to action undertaken by refugees to draw attention to their demands - for example, violent or aggressive action towards office staff or hunger strikes.<sup>52</sup>

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<sup>51</sup> In the context of the *Global Consultations on International Protection* it has been stated that “Integration potential” should not play a determining role in the consideration of protection resettlement cases”, see *Strengthening and Expanding Resettlement Today: Dilemmas, Challenges and Opportunities*, Global Consultations on International Protection, 4<sup>th</sup> mtg., EC/GC/02/7, 25 April 2002.

<sup>52</sup> Please refer to the *Guidelines on Security Incidents* (OMS 2) and *Guidelines on Security* (PER 2) for further information related to these issues.








While such individuals may have concerns which need to be heard and require an appropriate response, resettlement should only be considered if the case meets UNHCR's criteria.

Resettlement should again not be promoted merely for reasons of pity for a refugee's plight, because of the individual's impressive qualifications or previous professional status or as a reward for a "deserving" individual.

Decisions on whether or not to promote resettlement should not be clouded by value judgements. This is equally true for efforts to reach a decision on an *individual's need* for resettlement. A distinction should be drawn between a refugee's *need* for resettlement and the possible *desire* of that person for this durable solution. Some may maintain that offering the possibility of a *better* quality of life, which is assumed to be provided by developed countries, is inevitably in the best interests of a refugee from a developing country. Others may share, with equal conviction, an assumption that resettlement in a third country is always a traumatic and undesirable experience which should only be contemplated as a last resort. Furthermore, refugees, some claim, are not always welcome in the resettlement countries and have serious difficulties integrating thereby eventually representing a long-term problem for the receiving nations. Particularly when resettlement is considered as a durable solution for reasons other than individual protection needs, there is a risk that decisions may be driven by such value judgements.

The particular criteria outlined in the following Sub-Chapters should be seen as dynamic. In many cases, criteria may overlap and cumulative effects should be considered and emphasized in a resettlement submission.

#### **FURTHER REFERENCE:**

-  *Guidelines on Security Incidents (Sample Indicators and Scenarios) (OMS 2)*. UNHCR Geneva, December 1992.
-  *Guidelines on Security (PER 2)*. UNHCR Geneva, December 1992.
-  *Security Recommendations*. UNHCR Geneva, 1995.
-  *Safety Guidelines for Handling Threats, Verbal Abuse and Intimidation from Refugees*, 17 April 2003.
-  *Guidelines for Handling Protests, Demonstrations and other Group Disturbances*, 12 May 2004.
-  *A Framework for People Oriented Planning in Refugee Situations Taking Account of Women, Men and Children*. UNHCR Geneva, December 1992.
-  *People Oriented Planning at Work*. Using POP to Improve UNHCR Programming. UNHCR Geneva, December 1994.



## 4.2 Legal and Physical Protection Needs

As an instrument of international protection resettlement is, first, a guarantee for the legal and physical protection of refugees. Resettlement may offer the only means to preserve human rights and to guarantee protection when refugees are faced with threats which seriously jeopardize their continued stay in a country of refuge. The legal and physical protection needs of refugees may differ depending on personal characteristics of the individual concerned, such as their sex, age, disability, or other characteristic.

Gender may play a role in determining both the nature of the threat and the required responses and/or preventative measures needed. For instance, in the case of refugee women and girls, the threat to physical safety may take the form of sexual violence, including rape, trafficking for the purposes of sexual slavery, and forced marriage. These acts can be committed at the hands of persons in authority, paramilitary groups, quasi-state actors, fellow refugees, members of the local population, or even nationals or residents of the refugee's country of origin who have easy access to the country of asylum due to porous borders or otherwise.

It is the responsibility of any country to provide protection to and ensure the safety of refugees on its territory or at its borders.

It is UNHCR's responsibility to intervene with the authorities of the country of refuge with a view to ensure that such protection is provided. Only if all means of intervention have been exhausted or at least evaluated, should resettlement based on individual protection needs be considered. In certain instances, careful consideration has to be given in deciding on resettlement or not, weighing in the balance the need for resettlement against the interest of prosecution of culprits by the appropriate authorities or enforcement of legal remedies.

**Resettlement is linked to legal and/or physical protection when a refugee's situation meets one or more of the following conditions:**

- Immediate or long-term threat of *refoulement* to the country of origin or expulsion to another country from where the refugee may be *refouled*.
- Threat of arbitrary arrest, detention or imprisonment.
- Threat to physical safety or human rights in the country of refuge, rendering asylum untenable.

#### **4.2.1 Threat of *refoulement*, expulsion and arbitrary arrest and/or detention**

In some circumstances refugees may be refused entry to the country to which they have been trying to flee or may be threatened with expulsion. Such a scenario is most likely to occur when the potential country of asylum believes that the refugees concerned would threaten its political, social or economic stability if they were allowed entry or to remain. Refugees may also be under threat of deportation, possibly combined with prolonged arbitrary detention, in situations where the Governments of the country of origin and the country of refuge enjoy a close political relationship and share a mutual antagonism towards the exiles concerned, or insist there is no reason to flee from the country of origin.

In some countries which are not signatories to the 1951 Convention or its 1967 Protocol, asylum seekers or even refugees who are recognized under UNHCR's mandate are subject to detention and prosecution, if not deportation. In order to ensure that refugees will not be *refouled* or deported to a country where their life, safety and freedom may be endangered, resettlement may be the only option. A number of countries offer asylum to refugees only on a temporary basis, on condition that they are subsequently resettled, sometimes within a specific time frame. Where UNHCR in principle should promote state responsibility for refugee protection, including the provision of a durable solution, resettlement may be resorted to in such cases if the alternative would be that protection of the refugee would not be available.

Where asylum seekers or refugees are subjected to detention, prosecution and or deportation in countries that *are* State Parties to the 1951 and/or its 1967 Protocol, UNHCR should advise the State to live up to international standards for refugee protection. In such situations resettlement should normally not be considered. However, in practice resettlement may in fact be the only solution.




#### **4.2.2 Threat to physical safety or human rights in the country of refuge**

Where a direct, current threat to the life and/or personal safety of a refugee exists, resettlement may be the only solution. The threat must be real and direct, not accidental or collateral. While past harassment, especially when repetitive, may provide such an indication, it is not a prerequisite. The threat may be targeted at an individual, but it also can be aimed at a group - such as a family or neighbourhood. The threat must still exist. Past harassment, even if repetitive, would normally not be enough, although an assessment of the appropriateness of resettlement would depend on the circumstances.

In situations where it has been established that the denial of human rights by the authorities of the country of asylum places the refugee at risk and renders asylum untenable, resettlement should be pursued after all other efforts have been exhausted or at least considered.

In other situations, refugees who have been admitted to a country of asylum may be threatened not by the authorities of that State, but by other hostile groups or Governments. If under such circumstances the host country is not willing or able to provide protection from such threats, resettlement may be the only solution. This may exceptionally include cases of domestic violence, blood or family feuds where the physical safety or human rights of the refugee is threatened in the asylum country. In addition, such circumstances would also need to be deemed as rendering asylum untenable before pursuing resettlement as an option. Re-establishment of protection by the authorities or relocation internally in the country of asylum where feasible should be pursued prior to submission for resettlement.

**FURTHER REFERENCE:**

-  *An Introduction to the International Protection of Refugees.* Training Module. UNHCR Geneva. (Draft to be issued 2004).
-  *Human Rights and Refugee Protection. Part I: General Introduction* (RLD 5). Training Module. UNHCR Geneva, October 1995.
-  *Human Rights and Refugee Protection. Part II: Specific Issues* (RLD 6). Training Module. UNHCR Geneva, 1996.

## 4.3 Survivors of Violence and Torture

### 4.3.1 Eligibility for resettlement under this criterion

Basic guidance on how to recognize people who have been subjected to severe forms of violence and how to interact with them may be obtained from the WHO/UNHCR publication *Mental Health of Refugees*.

The *1984 Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* defines torture in the following manner:

“Article 1(1). For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third persons has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Article 16 refers to acts of cruel, inhuman or degrading treatment or punishment.

Where resettlement is determined to be the appropriate durable solution, torture survivors submitted either for protection reasons or compelling medical reasons, should be given priority.

#### **4.3.2 Specific Aspects in Cases of Survivors of Torture and Violence**

In dealing with resettlement cases considered under the present criterion, specific aspects – procedural and otherwise - need to be taken into consideration:

Survivors of torture or other severe forms of violence will require coordinated medical care, counselling and other types of special assistance, in particular when they suffer from physical and/or serious psychological problems. Not all torture survivors develop medical conditions which are easily identifiable. In cases of refugees who sustained torture but do not show obvious consequences of it, one should always consider the risk of latent effects.

It is important to remember that the families of the survivors may have complex feelings of trauma, guilt and helplessness and may in turn need special care and attention. Furthermore, information on how a particular community reacts to trauma, loss, grief and mental illness will have to be considered and included in the resettlement file. This is particularly relevant in cases of sexual violence, including rape, where the victim and the victim's spouse and family may face further victimisation and/or ostracism by their community.





Violence and torture may be experienced differently by women and men and they may have different coping mechanisms that are particular to their sex. The forms of violence and torture may also vary, depending on the sex or age of the victim. In the case of women and girls, violence may be inflicted through rape and other forms of sexual assault.

The report of a qualified physician having examined a refugee's physical condition is required. Qualified observations and comments by a psychologist or psychiatrist on a refugee's psychological state are also important. If it is not feasible to have such reports, observations and comments prepared by qualified medical personal (which might not be available in some locations), this should be explained in the RRF. If no symptoms or injuries are evident, it is particularly important to ensure that the RRF is properly documented so that the receiving country will have as much relevant information on the refugee's background as possible. In cases of refugees who sustained torture but who do not show obvious consequences, the resettlement country to which they are presented should be informed of the history of torture in order that appropriate services can be provided.

Care must be taken that survivors of violence and torture are resettled to locations where adequate services, both medical and psychological, will be available to meet their needs.

Good communication with Headquarters, Field Offices in resettlement countries and where appropriate, with officials of resettlement countries, will help ensure that such persons receive appropriate assistance in the country of resettlement. It should, however, be noted that UNHCR cannot guarantee that the refugee will always have access to required counselling and support services.

**ESSENTIAL READING:**

-  ***Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons. Guidelines for Prevention and Response, UNHCR, Geneva, May 2003.***
-  ***Prevention and Response to Sexual and Gender-Based Violence in Refugee Situations (Report of Inter-Agency Lessons Learned Conference Proceedings, 27-29 March 2001, Geneva).***
-  ***Mental Health of Refugees. World Health Organisation/ United Nations High Commissioner for Refugees, WHO Geneva 1999.***
-  ***Draft Guidelines: Evaluation and Care of Victims of Trauma and Violence. UNHCR Geneva, December 1993.***

#### **4.4 Medical Needs**

Before considering a person for resettlement on the basis of medical needs, special care must be exercised by all staff concerned to ascertain whether the basic considerations outlined in Chapter 4.1 have been fully applied. Medical cases must be approached on a case-by-case basis. It is essential that qualified medical personnel be consulted when determining whether to recommend resettlement of a medical case. The resettlement of persons with medical needs is challenging, and resettlement opportunities are limited. It is essential that UNHCR identify cases with the most serious problems that can only be addressed through resettlement.

#### 4.4.1 Specific determination criteria

To specifically determine that resettlement is the appropriate solution to the medical needs of a refugee, the following conditions must be met:

- o The health condition is life-threatening without proper treatment; or
- o There is a risk of irreversible loss of functions; or
- o The health condition presents a significant obstacle to leading a normal life and achieving self-sufficiency;

and

- o Adequate treatment is not available in the country of asylum, due to lack of medical facilities and expertise;
- o Adequate treatment cannot be ensured through temporary medical evacuation<sup>53</sup>;
- o In the case of a disability, the situation in the country of asylum prevents the individual from becoming well adjusted and from functioning at a satisfactory level;

and

- o There is a favourable prognosis that treatment and/or residence in the country of resettlement would successfully address the health problem and, if possible, given the expected state of health after treatment/relocation, enable the individual to gain partial or total independence; or
- o The particular situation in the country of asylum is the reason for, or significantly worsens, the health condition;

and

- o It is the expressed wish of the individual, after having been counselled in particular with regard to the social, cultural and psychological adaptation required in a new community.

#### 4.4.2 Setting priorities

Among cases meeting the above conditions, priority should be given to the needs of persons whose medical condition is directly related to their persecution, flight or exile (see also 4.3 Survivors of Violence and Torture).

Priority should furthermore be given to children and to women alone or with children/ dependants.

#### 4.4.3 Family unity

Both married and single persons are eligible and the disabled or sick person must be resettled with the family/ dependants.

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<sup>53</sup> See UNHCR/FOM/58/96 dated 18 July 1996 on Guidelines for International Medical Referral of Refugees under Project VAR/LS/401. Only limited funds are available under this project.

If resettlement is done on emergency and urgent cases basis, measures should be taken to ensure that family members/dependants of the resettled refugee be reunified with him or her in the country of resettlement.

#### **4.4.4 Disabilities**

Disabled refugees who are well-adjusted to their disability and are functioning at a satisfactory level are generally not to be considered for resettlement. For example, deaf and mute refugees who have learned sign language and who are able to exercise a profession, or who can benefit from training in the country of refuge, would not need resettlement. Conditions which can be properly addressed through the provision of such things as hearing aids or prosthetics should be treated in the country of refuge whenever possible. Only when such disabilities are untreatable locally, and when they seriously threaten the person's safety or quality of life, should resettlement be explored.

#### **4.4.5 Diseases and other medical conditions**

Cases in which a disease or medical condition can be adequately addressed by medication, a change in diet or environment, or through other treatment available in the country of refuge, should not be referred for resettlement. Where it is believed that a medical condition might be amenable to treatment elsewhere, it should be determined if indeed such treatment is available locally, and whether medical evacuation or other alternatives to resettlement might be feasible.

#### **4.4.6 Considerations in dealing with refugees with HIV/AIDS**

The fact that a refugee has HIV/AIDS should not adversely affect a resettlement claim based on other grounds such as family reunion, protection, or other special needs.

In some circumstances, the awareness among other refugees, the local population, or government authorities that a refugee has HIV/AIDS might result in risk to the person's physical safety, or jeopardize the individual's asylum status. Such cases, although presenting a medical problem, may need resettlement based on legal/protection grounds.

UNHCR has developed a policy on refugees and HIV/AIDS<sup>54</sup> which provides guidance on issues such as medical considerations, voluntary counseling and testing (VCT), and confidentiality of information.

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<sup>54</sup> UNHCR Strategic Plan (2005-2007): HIV/AIDS and Refugees)

UNHCR and IOM have issued a joint policy which opposes mandatory HIV screening and/or restrictions based on a refugee's HIV status. Nevertheless, a few resettlement countries have adopted mandatory HIV testing as part of the pre-departure medical screening. These resettlement countries undertake such screening in order to ensure that appropriate services are in place prior to the person's arrival, or to evaluate whether related health-care costs may prove a bar to resettlement. It is UNHCR's position that where HIV seropositivity or AIDS constitutes a bar to resettlement, the person concerned should be granted a waiver as a matter of course<sup>55</sup>; however this position has not been accepted by all resettlement countries.

States should advise refugees regarding the legal options for persons with HIV/AIDS, e.g. waiver procedures, exceptions, etc.

While UNHCR recognizes that HIV testing in the context of resettlement may not be strictly voluntary, when required by resettlement countries, such testing must be carried out in line with international standards and best practice.<sup>56</sup> UNHCR must closely monitor medical screening practices to ensure that appropriate pre- and post- HIV test counselling is provided and that confidentiality is maintained when the refugee concerned is notified of test results.<sup>57</sup> Notification of results should be in the context of post-test counseling so that appropriate advice and referral to support services can be ensured. States may also require that the applicant be officially notified of test results in writing; this should not occur in advance of notification by the physician or relevant counselor during post-test counseling<sup>58</sup>.

A key area of concern is the need to respect an individual's right to privacy and to confidentiality of all information relating to his or her HIV status. Procedural safeguards should be put in place to ensure that HIV test results are kept confidential and are only shared with 3<sup>rd</sup> parties, including family members, implementing partners and UNHCR staff, after having obtaining the informed consent of the concerned individual.<sup>59</sup>

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<sup>55</sup> Please see the relevant country chapters for procedures on medical screening and waivers.

<sup>56</sup> In addition to the documents cited above on *HIV/AIDS and Human Rights*, see also, for example: *Opening up the HIV/AIDS epidemic: Guidance on encouraging beneficial disclosure, ethical partner counseling and appropriate use of HIV case-reporting*, (Geneva, November 2000). Available at: [www.unaids.org/html/pub/Publications/IRC-pub05/JC488-OpenUp\\_en\\_pdf.pdf](http://www.unaids.org/html/pub/Publications/IRC-pub05/JC488-OpenUp_en_pdf.pdf)

<sup>57</sup> See Article 17 of the International Covenant on Civil and Political Rights. See also UN-AIDS/OHCHR *HIV/AIDS and Human Rights: International Guidelines* (Geneva, 23-25 September 1996), available at: [www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.1997.37.En?Opendocument#guidelines](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.1997.37.En?Opendocument#guidelines); as well as UNAIDS/OHCHR, *HIV/AIDS and Human Rights: Revised Guideline 6*, available at: [www.unhchr.ch/hiv/g6.pdf](http://www.unhchr.ch/hiv/g6.pdf)

<sup>58</sup> Panel physicians conducting medical screening on behalf of resettlement countries, in addition to their contractual obligations under that agreement, are usually bound by strict ethical guidelines on VCT issued by their national professional body (i.e., non-adherence could affect registration with a professional council).

<sup>59</sup> See UNHCR's Confidentiality Guidelines of August 2001 (IOM/71/2001-FOM/68/2001) and UNHCR Policy and Guidelines regarding Refugee Protection and Assistance and Acquired Immune Deficiency Syndrome (AIDS)" (IOM/82/92-FOM/81/92 of 12 November 1992).



In cases where a child has tested HIV positive, it should be noted that there is an obligation to protect confidentiality of the test results consistent with the child's right to privacy. Information on the HIV status of children should not be disclosed to third parties, including parents, without the child's consent, unless the best interests of the child so demand. Counselling and testing services must pay due attention to the evolving capacities of children taking into consideration the standards set out in the Convention on the Rights of the Child.<sup>60</sup>

In view of the complicated nature of HIV testing in the context of resettlement, Offices in the field which become aware of a denial (or non-acceptance) based on HIV status may wish to contact the Resettlement Section at UNHCR Headquarters for advice and guidance on general requirements for waivers or exceptions. Similarly, incidents where pre- and post-test counseling has not been provided to an individual, or confidentiality has not been maintained in notification of results, including when the responsibility for notification falls erroneously to a UNHCR Officer, Offices should inform authorities from the concerned country as well as UNHCR Headquarters (Resettlement Section).

#### **4.4.7 Specific Aspects in Medical Cases**

For submissions under the medical need criteria, the following should be borne in mind:



- The Resettlement Registration Form should always be completed with the head of family as the Principal Applicant, and not the sick/disabled family member (if not at the same time the head of the family).
- The UNHCR Medical Assessment Form should be used. It should be fully completed by the examining physician.
- If the UNHCR form is not used by the attending physician, the report provided should include details of:
  - the medical history;
  - the diagnosis;
  - the prognosis, including recommended treatment; and
  - the follow-up required.
- The Medical Assessment Form and/or other medical reports should be *legible*.
- All documents should be signed and dated.
- X-rays, CT scans, photographs, etc., if available, should be included in the file.

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<sup>60</sup> See, *inter alia*, Articles 3, 12, 13, and 16 of the Convention on the Rights of the Child, as well as General Comment by the Committee on the Rights of the Child on "HIV/AIDS and the rights of the child", No. 3 (2003).

The Resettlement Section at Headquarters will continue to receive and facilitate medical referrals.

**ESSENTIAL READING:**

-  *UNHCR Policy and Guidelines Regarding Refugee Protection and Assistance and Acquired Immune Deficiency Syndrome (AIDS)*, 12, Nov. 1992
-  *UNHCR Policy Regarding Refugees and Acquired Immune Deficiency Syndrome (AIDS)*, UNHCR/IOM/78/98, UNHCR/FOM/84/98, 1 Dec. 1998.

**FURTHER REFERENCE:**

-  *Refugees and HIV/AIDS*, Executive Committee of the High Commissioner's Programme, Standing Committee, 20<sup>th</sup> mtg., UN Doc. EC/51/SC//CRP.7, 15 Feb 2001.
-  *Assisting Disabled Refugees. A Community-based Approach*. UNHCR Geneva, May 1996 (Second Edition).
-  *Mental Health of Refugees*. World Health Organisation/ United Nations High Commissioner for Refugees, WHO Geneva 1999.
-  *IOM Medical Manual 1993*.
-  *UNHCR Strategic Plan (2005-2007): HIV/AIDS and Refugees)*
-  *Opening up the HIV/AIDS epidemic: Guidance on encouraging beneficial disclosure, ethical partner counseling and appropriate use of HIV case-reporting*, Geneva, November 2000.
-  *UNAIDS/OHCHR HIV/AIDS and Human Rights: International Guidelines*, Geneva, 23-25 September 1996.
-  *UNAIDS/OHCHR, HIV/AIDS and Human Rights: Revised Guideline 6*
-  *General Comment by the Committee on the Rights of the Child on "HIV/AIDS and the rights of the child", No. 3 (2003)*.

## 4.5 Women-at-risk

Like other refugees, refugee women and girls may face physical and legal protection problems in the country of refuge. In this respect, they need to be safeguarded against *refoulement*, arbitrary arrest or other forms of human rights violations. They also require a legal status that accords adequate social and economic rights and access to such basic necessities as food, shelter and clothing. In addition, they may face unique or gender-related forms of persecution or violence, as a result of their sex. These particular protection challenges faced by women and girls often require specific responses.

Historically, this is one of the reasons why certain countries introduced special resettlement quotas and/or programmes for refugee women.

In a given refugee context, women refugees may be more vulnerable than other refugees, finding themselves separated from their family members or traditional support mechanisms, or isolated from their communities. They may have to assume new roles and status as a result. In addition to coping with the impelling reasons for their flight, they may be confronted with new challenges, such as providing for themselves and their children in situations of particular hardship, as well as new forms of violence and risks, in the country of refuge.

While resettlement opportunities for women exist equally under the other resettlement criteria, the complexity of their individual situations and/or the particular nature of their protection needs may necessitate a specific response. The Women-at-risk resettlement criterion is one of these responses.

An accurate and gender-sensitive assessment of the refugee's protection needs and particular vulnerabilities in the country of refuge can sometimes be critical in determining her eligibility for resettlement. In this regard, it is important to bear in mind the role that gender can play in refugee status determination and resettlement eligibility interviews.

#### **4.5.1 The rationale for the Women-at-risk criteria:**

- **To provide international protection and assistance through resettlement to refugee women who face particular protection problems, as a result of their sex.**
- **To obtain priority processing and accelerated departure for those refugee women considered “at-risk”.**
- **To ensure that refugee Women-at-risk receive specialized care, if needed, and appropriate support upon arrival in the country of resettlement with a view to achieving socio-economic integration and self-sufficiency.**

#### **4.5.2 Identifying Women-at-risk for Resettlement**

In the context of displacement and refugee flight, in either refugee-camp or urban situations, women and girls may experience special protection problems as a result of their sex. Risks of abduction, rape, sexual abuse, harassment and exploitation are just some of the problems experienced by refugee women, *whether they are single, widowed, or accompanied by a male family member.*

In particular instances, past traumatic experiences in the country of origin and circumstances of severe hardship in the country of refuge may magnify or exacerbate the protection problems of refugee women and add to the precariousness of their situation. Early identification and assessment of these protection problems is critical for a correct application of the Women-at-risk criteria.

### **Definition of a Women-at-risk**

For the purposes of resettlement, UNHCR considers as Women-at-risk those women or girls who have protection problems particular to their gender, whether they are single heads of families, unaccompanied girls, or together with their male (or female) family members. Refugee women or girls may be at risk of or have suffered from a wide range of protection problems, including expulsion, *refoulement* and other security threats, sexual violence, physical abuse, intimidation, torture, particular economic hardship or marginalization, lack of integration prospects, community hostility, and different forms of exploitation. Such problems and threats are often compounded by the effects of past-persecution sustained either in their country of origin or during flight. The trauma of having been uprooted, deprived of normal family and community support systems and cultural ties, the abrupt change in roles and status, the fact or threat of violence, or the absence of male family members (while not an absolute condition), may render some refugee women or girls particularly vulnerable. These are contributing factors in determining whether resettlement is the appropriate solution.

#### **4.5.3 Precarious security situations**

Refugee women may suffer from a wide range of threats to their personal security, including risk of expulsion, *refoulement*, or sexual and gender based violence, such as sexual harassment, domestic violence, abuse, torture, trafficking for the purposes of sexual slavery or exploitation or forced labor, and other forms of exploitation. The fact of displacement often exacerbates these threats. Such threats may be derived from the host community, local government or military, other armed elements, or from within the refugee community itself. Members of her family or community may prove unable to address her concerns, or may even be unwilling to offer assistance due to social or cultural attitudes which do not recognize the rights of refugee women. UNHCR and other aid agencies may also be unable to address these issues in the short-term in any effective way, due to the endemic nature of the problem or the difficulty in changing long-held cultural values. Strict social codes in the refugee community can mean that the physical protection of refugee women is further jeopardized.

The victimization and stigmatization of women victims of rape, abuse, or other forms of violence, is not uncommon, particularly in traditional societies, and can require the immediate removal of such victims, possibly by way of third country resettlement.

Specifically as regards cases of domestic violence considered for resettlement under the Women-at-risk criterion, a number of practical and legal aspects may appear to be insurmountable to field offices and hence comprise a *de facto* obstacle to resettlement. For example, it may be required to move the woman and any children in the relationship to a secure location pending emergency resettlement. It may be necessary to change that location for security reasons. Moreover, if the partner of the woman becomes aware of the involvement of UNHCR and/ or other organizations, this may lead to security concerns for staff members. The office may also need to address complex legal issues relating to the custody of children and to marriage law of the country in question.

In principle, UNHCR should not stop short of exercising its mandate by using resettlement as a means of protection in cases involving domestic violence. This also applies where child custody or other rights of the husband or partner become relevant in the course of pursuing resettlement for the woman and child(ren). Where children are involved, BID principles should be applied, see Chapter 5.1 of this Handbook.

As these issues may, however, be contentious and complex, and put the office under some strain as a result, Headquarters should be consulted and kept informed of the case(s) in question. Moreover, it is crucial that *national authorities in the country of asylum and authorities in the potential resettlement country have indicated their willingness to accept resettlement as a solution and offer their full cooperation throughout the procedure.*

#### **4.5.4 Specific needs arising from past persecution and/or past trauma**

Past persecution may affect a refugee woman's protection situation in the host country and her ability to cope with the challenge of displacement. The assessment of past persecution provides important indicators of the needs of refugee women and the required response or preventive action required.

Very often, refugee women who have already been severely traumatized in their country of origin are more vulnerable to being re-traumatized. Latent psychological effects of past torture or trauma, coupled with adverse circumstances in the country of refuge, are likely to exacerbate their state of mental health. Such women may require mental, psychological or social counseling or rehabilitation or qualified medical care for any meaningful recovery, and such opportunities may not be readily available in the country of refuge.

Past trauma may also negatively affect a refugee's capacity and willingness to locally integrate in the country of refuge and to provide for her own children.

It is equally important, in the search for solutions, to ensure the protection of secondary victims, often her children or family members. In the case of women victims of sexual violence, specific medical assistance may be needed in order to address the consequences of, for example, self-practiced abortion, sexually transmitted diseases including HIV/AIDS, or other related health problems.

#### **4.5.5 Circumstances of severe hardship**

For some refugee women, severe hardship in the host country, combined with a precarious legal and social status, may result in further exposure to the risk of abuse and exploitation/extortion. Some women may be subjected to extremely difficult living conditions and forced to sell their personal possessions to provide for themselves and their children, or they may be forced into prostitution.

Circumstances of hardship may be particularly acute in the context of urban settings, where access to humanitarian assistance and income-generating activities is often minimal. Women who have managed to find employment may suffer from discrimination and harassment by their local employers because of their sex, ethnicity or uncertain legal status. In the context of a precarious legal regime, some refugees may face eviction from their homes and forced to live in abject poverty. To overcome these difficulties, some refugee women may be induced or forced to rely on "local protectors" in exchange for material assistance, accommodation, personal documentation and/or residence permits. Protracted situations of severe hardship may result in higher levels of physical and mental illness for refugee women and/or their families, as well as increases in domestic violence.

#### **4.5.6 Changes of social status as a result of suspension or deviation of social norms**

Social norms are often spontaneously suspended in times of civil conflict and refugee displacement. Suspension of social norms, customs, laws and values under refugee conditions often leaves women unprotected and subject to various violations of their human rights. The perpetration of particular crimes, such as rape or other forms of sexual aggression, increases significantly in situations of displacement compared with non-refugee-situations, due to the break-down in traditional or legal protection and conflict resolution mechanisms, leaving women particularly vulnerable and perpetrators free from prosecution or sanctions.

Suspension of traditional norms brings changes in the prevailing social mores, including the attitude and the perception of the 'proper' role of women. In some instances, this triggers a positive redefinition of tradi-

tional notions of sex and gender in women's favor and results in an improvement of women's self-definition.

New and creative mechanisms such as women's associations or networks may replace traditional protection structures and provide alternative reference points and different systems of support.

In other cases, however, traditional mechanisms of protection and social norms remain in place but deviate substantially within the refugee context thus becoming a threat to refugee women. Shifts in cultural values, in fact, may lead to clashes within the refugee's family or the extended community and this often results in instances of serious domestic violence or stigmatization of the refugee woman by her community. In the case of victims of sexual or gender-related violence within the refugee community, the implementation of community-based customary practices to settle the offence may result in serious violations of a woman's basic human rights.

#### **4.5.7 Refugee Girls**

Resettlement under the Women-at-risk criteria is equally open to refugee girls facing particular types of protection concerns. Where these factors exist, special attention should be given to refugee girls, who, because of their age and level of maturity, may be at increased risk of violence, abuse or exploitation, and may be less able to cope with any associated trauma, or their circumstances of displacement. Young girls without adult supervision due to separation from family members, or death of parents, often find themselves responsible for younger siblings. In such cases, the burden on young girls is particularly severe, with access to school limited due to other household and family responsibilities, and heavy responsibility for younger family members who may also be at risk of various protection threats. Girls in foster care also often face deprivation of their rights to participate in community life, including school, and may face threats of exploitation. Such girls may need to be separated from their foster families. Refugee girls may also face forced or early marriage; they may be at risk of female genital mutilation to which they object, or sexual slavery, as well as at greater risk of exploitation. Such cases should be considered for resettlement under the Women-at-risk criteria.

**Resettlement of refugee women or girls to be considered when:**

- She faces precarious security or physical protection threats as a result of her sex.
- She has specific needs arising from past persecution and/or traumatization.
- She faces circumstances of severe hardship resulting in exposure to exploitation and abuse, rendering asylum untenable.
- There has been a change in the social norms, customs, laws and values resulting in the suspension of or deviation from traditional protection and conflict resolution mechanisms and the lack of alternative systems of support and protection. Consideration should be given to resettlement under such circumstances if this places the refugee woman or girl at such risk that it renders asylum untenable.

4.5.8 Identification of refugee Women-at-risk: Operational guidelines

Accurate assessment of the refugee protection situation

A proper and correct identification of refugee Women-at-risk begins with an accurate, systematic and early assessment of the overall protection situation in the country of refuge. Close and regular monitoring activities should be engaged by protection, field and resettlement staff, as well as community, social and medical services staff. Other partners such as religious leaders, local hospitals, local charitable organizations, and in particular refugee groups, should be involved in the process, in particular, refugee women's groups and leaders. A multi-sectoral approach is essential to the early and effective identification of the protection needs of refugee women.

Through systematic monitoring, cases of Women-at-risk will be identified, after which, an assessment of their immediate protection needs, followed by their longer-term protection needs, should be undertaken. Resettlement is not necessarily the solution in all cases of refugee women facing particular protection problems, but in line with the Women-at-risk criteria, together with the other resettlement criteria, an assessment of her resettlement needs should include the *intensity* of one or more of the factors mentioned above, as well as the *urgency* of the case, as well as any specific follow-up action in the country of resettlement should be determined.



#### **4.5.9 Counseling of refugee Women-at-risk**

Because of the sensitivities often associated with the protection needs of refugee women, discrete and confidential counseling services should be provided to refugee women identified as “at risk” by qualified female staff.

Each refugee woman qualifying for resettlement should be counseled prior to the submission of their case to a resettlement country, as well as in preparation for departure. All family members and particularly the refugee’s husband where applicable, should receive appropriate counseling.

**A uniform and consistent approach for submissions under the Women**





#### **4.5.10 Specific Aspects in Cases of Women-at-risk**

Submissions of cases under Women-at-risk criteria may be made directly by a Field Office. As basic documentation, the *Special Needs* section of the Resettlement Registration Form (RRF) must be completed by the UNHCR Field Office or its implementing partner. A complete narrative, including reasons why the refugee is considered a woman-at-risk, should be contained in the submission.







The completeness of submissions in this special category is important in order to avoid processing delays.

Useful guidance for the assessment of cases of women refugees is provided in the documents reproduced in Annex 6. In addition to the information already provided in this Chapter 4.5, please refer to Annex 7 for more details on the specific submission requirements under the special Women-at-risk programmes. Australia, Canada and New Zealand have special programmes to address the resettlement of Women-at-risk. Other countries which do not have specific AWR programmes also accept Women-at-risk.

**ESSENTIAL READING:**

-  ***Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons. Guidelines for Prevention and Response, UNHCR, Geneva, May 2003.***
-  ***Mental Health of Refugees. World Health Organisation/ United Nations High Commissioner for Refugees, WHO Geneva 1999. (Especially Unit 9: Helping victims of rape and their communities).***
-  ***Guidelines on the Protection of Refugee Women. UNHCR Geneva, July 1991.***
-  ***UNHCR Policy on Refugee Women. UNHCR Geneva, 1990.***

**FURTHER READING:**

-  *Procedural Standards for Refugee Status Determination under UNHCR's mandate, specifically unit 3.4.4 on Women with Special Needs, and unit 4.3 on The RSD Interview.*
-  *Refugee Women, Global Consultations on International Protection, 4<sup>th</sup> mtg., U.N. Doc. EC/GC/02/8. 25 April 2002.*
-  *A UNHCR Guide to Women's Rights Awareness Training. A Practical Tool for UNHCR Staff. UNHCR Geneva, 1996 (Draft).*
-  *UNHCR Training Module RLD4 Interviewing Applicants for Refugee Status (1995) generally, and specifically, Chapter 4 on Interviewing Women Refugee Applicants.*
-  *UNHCR Training Module RLD3 Interpreting in a Refugee Context (June 1993) generally, and specifically, pages 34-38: Interpreting for Refugee Women.*
-  *A UNHCR Guide to Women's Rights Awareness Training. A Practical Tool for UNHCR Staff. UNHCR Geneva, 1996 (Draft).*

## 4.6 Family Reunification

The importance of resettlement as a tool of international protection extends to cases where it preserves or restores the basic dignity of a refugee's life, for example, through family reunification. When refugees flee their country of origin, family members are frequently left behind or dispersed during flight. In some cases, refugee families are separated when a family member has not been able to accompany the rest of his or her family to a country of resettlement.

In such situations, separation leads to hardship and sometimes has tragic consequences. It may also create serious obstacles to a refugee's integration in a new country. Indeed, the realization of family unity is considered an important aspect of local integration in the country of refuge.<sup>61</sup> This is also the case where the issue is integration of resettled refugees. Otherwise, resettlement runs the risk of not being a meaningful, durable and sustainable solution. Guided by both humanitarian and practical considerations, and pursuant to its responsibility under the Statute to provide international protection to refugees, to promote measures designed to improve the situation of refugees and to facilitate their integration within new national communities, UNHCR seeks to ensure the reunification of refugee families separated as a result of their persecution or flight.

The criteria and policies set out in this Handbook are to be followed by UNHCR staff in handling family reunification cases, despite the fact that UNHCR criteria may not always correspond with those applied by the State to which applications for family reunification are submitted.

#### 4.6.1 The right to family unity

UNHCR's action in promoting family reunification is supported by the principle, set forth in both the Universal Declaration of Human Rights of 1948 and the International Covenant on Civil and Political Rights of 1966, that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State."<sup>62</sup>

In its Final Act, the Conference of Plenipotentiaries which adopted the 1951 Convention relating to the Status of Refugees, unanimously approved the following recommendation on the subject of family unity in the case of refugees:

*"The Conference,*

*Considering that the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee, and that such unity is constantly threatened, and*

*Noting with satisfaction that, according to the official commentary of the Ad Hoc Committee on Statelessness and Related Problems the rights granted to a refugee are extended to members of his family,*

*Recommends Governments to take the necessary measures for the protection of the refugee's family, especially with a view to:*

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<sup>61</sup> *Local Integration*, Global Consultations on International Protection, EC/GC/02/6, 25 April 2002, para. 6.

<sup>62</sup> See Annex 2 for additional references to relevant international provisions.

- (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 need to promote the reunification of dispersed families was also underlined by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts of 1977.<sup>63</sup>

Family reunification was also considered by the Executive Committee of the High Commissioner's Programme (EXCOM) which has adopted Conclusions on this matter on several sessions.<sup>64</sup>

The 1989 Convention on the Rights of the Child (CRC) reaffirms that “the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.” Articles 9 and 10 of this Convention concern children separated from their families and emphasize that the reunification of children with their parents should be dealt with in a “positive, humane and expeditious manner.”<sup>65</sup>

#### **4.6.2 State approaches to family reunification**

Governments have adopted a variety of approaches with regard to the reunification of refugee families across international borders. Some States consider such cases within overall resettlement quotas; others have created separate quotas for the purpose of family reunification; still others process applications for family reunification on an individual basis under general provisions of their immigration laws. Corresponding to these approaches, countries apply varying types of procedures and criteria. There are also differences in the type of status the person may receive, for example, a family member may be granted a residency status that provides less protection against deportation, possibly amounting to *refoulement*, than does refugee status.

Some resettlement countries do not provide for family (re)unification of refugee families where a resettled refugee marries or finds a partner outside of the resettlement country subsequent to the arrival in the resettlement country.

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<sup>63</sup> Article 74 of Protocol I Additional to the Geneva Convention of 1949, reproduced in Annex 2.

<sup>64</sup> See Annex 1.

<sup>65</sup> These and other relevant articles of the CRC are reproduced in Annex 2.

In these situations, the question as to whether or not the spouse should be permitted to enter the State to establish or reestablish family life would generally be determined by the domestic law normally applied to non-nationals in the State.

Sometimes refusal to allow entry would present a serious impediment to (re)establishing family life, bearing in mind in particular that the refugee cannot be returned to his or her country of origin. If, in such situations, it would be practically impossible for the refugee to live outside the country of asylum, then any interference in the right to family unity and to marry and found a family<sup>66</sup> would need to be proportionate to the legitimate aim pursued by the State. To make this assessment, it would be necessary to bear in mind the refugee's particular situation, which precludes return to the country of origin, and to assess whether family life could be established elsewhere, including whether refugee status would be maintained with no danger of *refoulement* in the alternative country. Other relevant factors include

- the situation of the spouse/partner;
- the degree of family members' economic and social integration and prospects for the future in each State;
- the State in which the greater number of family members resides;
- the duration of residence in each State; and/or
- the likelihood of maintaining a livelihood and of achieving effective protection, including access to durable solutions.

#### **4.6.3 UNHCR activities to promote refugees' family unity**

One of the main functions of UNHCR in facilitating family (re)unification is to obtain the overall cooperation of the authorities of the States concerned and the adoption on their part of criteria and resources permitting reunification. This ongoing task of laying the political, legal, administrative and operational groundwork for the smooth and orderly resolution of family reunification cases is a normal part of UNHCR's international protection activities. Besides promoting liberal admission policies, the Office seeks, whenever appropriate, to ensure that family members are granted the same legal status and accorded the same standards of treatment as refugees.

In seeking to promote the reunion of separated refugee families (as well as the family unity and right to marry and found a family of resettled refugees)

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<sup>66</sup> According to the Human Rights Committee, "[t]he right to found a family implies, in principle, the possibility to procreate and live together ...". See Human Rights Committee, General Comment No. 19 on Article 23 of the 1966 International Covenant on Civil and Political Rights (ICCPR), 1990, paragraph 5. The right to marry and found a family is contained in Article 16 of the 1948 Universal Declaration of Human Rights (UDHR); Article 23 of the 1966 ICCPR; Article 5 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (providing that "States Parties undertake "to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of... the right to marry and choice of spouse"); Article 17 (2) of the 1969 American Convention on Human Rights (ACHR); and Article 12 of the 1950 European Convention for the Protection of Fundamental Rights and Freedoms (ECHR).

UNHCR is guided by basic humanitarian considerations and also by its Statute of the Office which entrusts the organization, *inter alia*, with the functions of improving the situation of refugees and facilitating their assimilation<sup>67</sup> within new national communities. In its 1977 Conclusion No. 9 on Family Reunion, the Executive Committee reiterated the fundamental importance of the principle of family reunion and reaffirmed the coordinating role of UNHCR with a view to promoting the reunion of separated refugee families through appropriate interventions with Governments and with inter-governmental and non-governmental organizations.<sup>68</sup>

#### 4.6.4 Eligibility for UNHCR assistance with family reunification

UNHCR promotes and assists the reunification of families of persons who are refugees within its mandate. In addition, UNHCR may extend such assistance to displaced persons outside their country of origin who are considered to be of concern to the Office by virtue of applicable UN General Assembly Resolutions.

Except for certain special programmes,<sup>69</sup> eligibility for UNHCR assistance with family reunification requires that at least one person within the family unit which is to be reunited must be a refugee under UNHCR's mandate or a person otherwise of concern to the organization.<sup>70</sup>

In a case where a non-refugee is being resettled in order to join a family member who is a refugee, UNHCR considers that it is the refugee who is the recipient of the Office's assistance.

In a mass influx situation, where circumstances may appear to render the reunification of families temporarily impractical, Field Offices should consult with UNHCR Headquarters as to the course of action to be followed.

#### 4.6.5 Family reunification cases outside the competence of UNHCR

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<sup>67</sup> While both Article 34 of the 1951 Convention and UNHCR's Statute make reference to "assimilation", the international community has otherwise generally rejected the notion that refugees should be expected to abandon their own culture and way of life, so as to become indistinguishable from nationals of the host community. See *Local Integration*, Global Consultations on International Protection, EC/GC/02/6, 25 April 2002, para. 5, footnote 3.

<sup>68</sup> EXCOM Conclusions Nos. 1, 9, 24, 84, 85 and 85 each reaffirm States' obligation to take measures which respect family unity and family reunion, see Annex 2.

<sup>69</sup> One example is the Orderly Departure Programme (ODP) from Vietnam, where UNHCR was requested to undertake special programmes which may even benefit persons not within its mandate who are in need of assistance with family reunification.

<sup>70</sup> See also Chapter 5.2 of this handbook as regards the possibility of resettling non-refugee stateless persons.

UNHCR Offices sometimes receive requests for help with family reunification or travel with respect to persons not eligible for assistance under the established criteria and procedures.

Such requests may involve persons not within the mandate of the Office, relatives not belonging to the family unit, or family members wishing merely to visit the refugee family in the country of asylum. They often relate to the completion of formalities, obtaining visas and travel documents, or even the financing of travel. When it is determined that a request is outside the mandate of UNHCR, an applicant should be advised that UNHCR cannot assist and should be directed to the relevant embassy, immigration office or non-governmental organization, where appropriate. An applicant may be advised to contact IOM for information about the latter's subsidized migration schemes.

#### **4.6.6 Who can be a family member?**

A *nuclear family* is generally accepted as consisting of husband and wife, their minor or dependent, unmarried children and minor siblings.

Beyond this, the concept of dependency is central to the factual identification of family members. Dependency infers that a relationship or a bond exists between family members, whether this is social, emotional or economic. For operational purposes, with regard to the active involvement of UNHCR offices in individual cases, the concept of *dependent* should be understood to be someone who depends for his or her existence substantially and directly on any other person, in particular for economic reasons, but also taking social or emotional dependency into consideration. The relationship or bond between the persons in question will normally be one which is strong, continuous and of reasonable duration. Dependency does not require complete dependence, such as that of a parent and child, but can be mutual or partial dependence, as in the case of spouses. Dependency may usually be assumed to exist when a person is under the age of 18 years, or if the individual (over the age of 18) in question is not financially independent, for example because he or she is a full-time student. Dependency should be recognized if a person is disabled and incapable of self-support, either permanently or for a period expected to be of long duration. Dependency can also include dependent elder members of the family, such as grandparents.

#### **4.6.7 Setting priorities**

UNHCR offices should give priority attention to the reunification of family members mentioned in Section (a) below and, in particular, to unaccompanied minors.

#### **4.6.8 Types of family reunification promoted by UNHCR**

In accordance with the principles referred to above, the following types of family reunification should receive the support of UNHCR:

### **(a) Reunification of the *nuclear family***

There is a consensus in the international community concerning the need to reunite members of the *nuclear family*. In this respect and in addition to the general definition provided above, the following points should be noted:

#### **Husband and wife**

Besides legally married spouses, couples who are actually engaged to be married, who have entered into a customary marriage, or couples who have formed a household of reasonable duration are eligible for UNHCR assistance. Principles of non-discrimination also indicate that same sex partnerships should be included in the definition of family.

The same applies in principle to spouses in a polygamous marriage, if it was contracted in a valid manner. However, most resettlement countries will only accept one spouse in view of their own national legislation forbidding polygamy. In such cases, it is better not to risk splitting up the family by requesting that one spouse be chosen. It would normally be more appropriate to explore the possibility of reunification in a country which would allow the family to be resettled together.

On the other hand, estranged spouses who do not intend to live as a family unit in the country of resettlement are not normally eligible for UNHCR assistance for reunification with each other; they may, however, qualify for reunification with their children.

#### **Parents and children**

Although some countries of asylum make a distinction between minor children and those who have come of age, it is UNHCR policy to promote the reunification of parents with dependent, unmarried children, regardless of age, who were living with the parents in the country of origin. This would include adopted children, whether adopted legally or on a customary basis.

#### **Separated and unaccompanied children and parents or siblings**

The special needs of children and adolescents for a stable family environment mean that the reunification of separated and unaccompanied children with their parents or guardians should be treated as a matter of urgency. In addition, reunification of an unaccompanied child with another sibling should also be accorded priority because of the importance of the support that siblings can give to each other. Family reunification may not, however, always be the best solution for a child/adolescent. In all situations involving separated or unaccompanied children, an assessment should be made based on the best interests of the minor (see Chapter 5, Special Issues, of this Handbook).



The quality of the relationship between the child and the parent(s) and whether the parents will be able to offer guidance, support and emotional care are among the issues which must be assessed.

If a child has arrived first in a country of asylum, the right to family unity requires that the child's next-of-kin be allowed to join him or her in that country, unless it is in the best interests of the child under the circumstances to join the relative in the country where the relative resides or in a third country.

Other aspects of the special responsibility of UNHCR to promote the best interests of refugee or displaced separated or unaccompanied children as well as issues related to the tracing of family members are treated in separate chapters of this Handbook (see Chapters 4.7 and 5.8).

### **(b) Reunification of other dependent members of the family unit**

It is UNHCR's position that the reunification of the following categories of persons of particular concern is also required by the right of family unity:

#### **Dependent parents of adult refugees**

Based on humanitarian and economic considerations, reunification should be carried out for dependent parents who originally lived with the refugee or refugee family, or who would otherwise be left alone or destitute.

#### **Other dependent relatives**

Where persons such as single/lone brothers, sisters, aunts, uncles, cousins, etc. were living with the family unit as dependants in the country of origin, or where their situation has subsequently changed in such a way that they have become dependent upon refugee family members in the country of asylum (e.g., by the death of a spouse, parent or wage earner/breadwinner), they should also be considered eligible for family reunification. Unaccompanied children may be considered for family reunification with relatives who are not part of the nuclear family when this is in the child's best interests, and when it will not interfere with family tracing.

#### **Other dependent members of the family unit**

Sometimes families have taken in and cared for other individuals, such as friends or foster children, with whom there is no blood relation. If these individuals are in the same situation as the relatives mentioned under *Other dependent relatives* above, they should also be considered eligible for UNHCR assistance with reunification. Particular care should be taken to verify the true situation and circumstances of such persons.

With regard to foster children, arrangements should be made to maintain records and notify all concerned of the child's location, in order to ensure that the child can be easily located if tracing efforts are successful.

Due consideration should be given to any implication the reunification may have on the legal status or nationality of the child, in particular where the child is a national of the asylum country.

### **(c) Other relatives who may be considered for resettlement**

In certain cultures, the basic family unit also includes grandparents, grandchildren, married brothers and sisters, their spouses and children, etc. For practical reasons, however, it is not the policy of the Office to actively promote the reunification of members of an extended family or other relatives, unless they come within the categories of persons defined above.

UNHCR nevertheless strongly supports the adoption by States of broad and flexible criteria for family reunification with respect to the selection of refugees for resettlement. Efforts should be made to preserve the integrity of family groups in the course of resettlement operations and to promote the admission of refugees who need to be resettled in countries where they have relatives or other personal ties.

#### **4.6.9 Specific Aspects in Family Reunification Cases**

Family reunification is undertaken, in accordance with the basic criteria of Chapter 4.6, with a view to respecting basic rights as well as improving the prospects for integration upon resettlement.

Several mechanisms exist for family tracing and reunification, including direct processing by resettlement countries and immigration procedures initiated by family members either in the country of resettlement or from abroad. Some Governments have established separate quotas for family reunification cases under humanitarian categories. Others do not limit the number of family reunification cases.

International organizations, such as International Committee of the Red Cross (ICRC) and IOM, and various NGOs implement projects supporting family tracing and family reunification.

Particular scenarios encountered

In practice, the issues which arise when seeking to reunite a refugee family vary depending on the circumstances. The main scenarios encountered are outlined below:

- One part of the family has reached a country of resettlement, while the rest of the family is still in the country of origin. This is a common situation in which UNHCR assistance with family reunification is warranted. It may be necessary to intervene with the respective authorities in order to obtain authorization for the departure of family members from the country of origin and/or for their entry into the country of resettlement.
- One part of the family has reached a country of resettlement, while the other is in a country of refuge. Although in this case all members of the refugee family have left the country of origin, reunification sometimes still presents problems. Difficulties or delays may be encountered in obtaining admission of the remaining family members into the country of resettlement and UNHCR intervention in this respect is often necessary.
- Members of the same family have reached different countries of temporary refuge. In such cases, Field Offices should where possible promote the reunification of the family members in one of the countries of temporary refuge while awaiting a durable solution. Where there are specific concerns, resettlement should be coordinated between relevant UNHCR offices, Governments and partners to allow for eventual family reunification in the same country of permanent asylum. This could be the case in circumstances where urgent relocation of one or both parts of the family is necessary under other UNHCR resettlement criteria, e.g. if particular physical, legal and material protection needs arise.
- Members of the same family are separated in different parts of the same country of temporary refuge. This often occurs when refugees are confined in camps in situations of mass influx. The Office should promote reunification of family members as soon as this is feasible.
- Members of the family find themselves in different countries of resettlement. Owing to the absence of precise rules concerning which part of a family should join the other, problems may arise if the authorities of the countries of resettlement concerned refuse entry because each is of the opinion that reunification should take place in the other country. Sometimes personal disagreements between individual family members, especially with respect to living conditions or job opportunities, prevent such families from reuniting. Although dependants can normally be expected to proceed to the country where the head of the family is resettled, a different solution may be appropriate under certain circumstances, e.g. when the prospects for the successful integration of the family in that country are poor or when the family has much closer links elsewhere.

#### **4.6.10 UNHCR activities**

##### **(a) Promoting the adoption of appropriate national policies**

One of the functions of UNHCR in facilitating reunification of refugee families is to obtain the overall cooperation of the authorities of the States concerned and the adoption on their part of criteria and measures permitting such reunification. This ongoing task of laying the political, legal, administrative and operational groundwork for the smooth and regular resolution of family reunification cases is a normal part of UNHCR's international protection activities which must be undertaken vis-à-vis both countries of asylum and countries of origin. In its 1977 Conclusion No. 9 (XXVIII) on Family Reunion, the Executive Committee reiterated the fundamental importance of the principle of family reunification and reaffirmed the co-coordinating role of UNHCR with a view to promoting the reunification of separated refugee families through appropriate interventions with Governments and with inter-governmental and non-governmental organizations. See also ExCom Conclusion No. 88 of 1999.

##### **Promotion of inclusive family reunification**

In many cases, a refugee's next-of-kin remain behind in the country of origin, or in a country of first refuge, because they are not considered by the prospective country of reception to belong to what is known as the "nuclear family", that is to say father, mother and minor children. While there is justification in giving priority to safeguarding this basic unit, the exclusion of members of a refugee household, who have been deprived of their social and economic support as a result of the break-up of the family unit, often results in hardship. While it may not always be possible to reunite entire groups which, in the country of origin, formed part of a family in the broad or traditional sense, Governments should be encouraged to give positive consideration to the inclusion of those persons - regardless of their age, level of education or marital status - whose economic and social viability remains dependent on the nuclear family. This concept of dependency is set out in greater detail in section 4.6.6 above.

##### **Requirements for documentary evidence**

A related problem is that of determining the marital or civil status of family members for admission purposes. While every effort should be made to establish parentage and filiations, the particular circumstances existing in the refugees' country of origin or in their country of refuge may need to be taken into account. These circumstances may make it difficult or even impossible for a refugee to meet formal requirements or to bring the documentary evidence normally required before family reunification can be authorized. UNHCR should therefore encourage government's to adopt legislation and practice on family reunification which does not per se require documentary proof of the formal validity of a marriage or of the filiations of children.

## Special measures

Family reunification is often prevented or delayed by the operation of general domestic immigration regulations requiring that individuals sponsoring applicants be able to provide accommodation and support them. Refugees are often unable to fulfill such requirements especially if family members are experiencing economic, employment or housing problems in the country of resettlement. As it is known that prolonged separation creates serious social problems for both sides of split families, it is highly desirable that in such cases receiving States adapt their legal provisions in this respect or take special measures to assist refugees to accommodate their dependants, thereby facilitating early reunification.

## Status of joining family members

The status provided for refugees under the relevant international instruments and national legislation has as one of its principal aims to facilitate their integration in new national communities and to help them to cease being refugees as rapidly as possible. In order to promote the smooth and timely integration of refugee families in the country of settlement, it is necessary to grant joining family members the same legal status and facilities as those family members already present. Unless their personal situation expressly excludes them (e.g. due to formal consideration, such as a different citizenship, or the application of exclusion clauses), the family members concerned should have their status as refugees regularized, if they so wish.

### **(b) Types of UNHCR assistance in individual cases**

The Office encourages members of dispersed families to take the first steps towards reunification and to initiate the necessary formalities, whenever this is possible without risk to themselves or other family members. In such cases, the role of the Office is limited to informing refugees of the procedures to be followed and monitoring the process. In many cases, however, the help of UNHCR is required to bring about reunification. UNHCR assistance may extend to the following fields:

### Tracing family members

When the whereabouts of relatives is unknown, it may be necessary for UNHCR to facilitate tracing. The Central Tracing Agency of the ICRC and its national counterparts have special competence in this area and may be of assistance. Recourse may also be had in certain circumstances to country-level UNHCR bio-data systems, or to the records of the authorities of countries of resettlement. Experience has shown, moreover, that the efforts of refugees themselves, using their own contacts, are often a most effective method of tracing. When special problems arise, such as the tracing of the families of separated or unaccompanied children involuntarily separated from their parents, UNHCR Headquarters should be consulted.

Caution should be had as regards contacting the country of origin for tracing purposes as this may violate UNHCR policy on confidentiality and international principles on data protection.

### Travel documents

When it is not feasible for family members to use passports issued by their country of origin, some other form of travel documentation will be necessary. In some cases, depending on the itinerary, the mode of travel and the administrative requirements of the countries involved, a letter in lieu of a visa from the authorities of the destination country may suffice. Often, however, a more formal travel document is needed. Certain countries of temporary stay may be willing to issue a special, or aliens, passport. In States party to the 1951 Convention and/or its 1967 Protocol, a Convention Travel Document shall be granted to family members who also qualify for refugee status. When no other travel document is available and the family members are outside their country of origin, an ICRC Travel Document may be obtained. UNHCR Headquarters should be consulted if assistance is needed.

### Entry visa

Refugees residing in a country of settlement who wish to be reunited with other family members who are still in the country of origin or in third countries should be advised, in the first instance, to apply to the competent authorities for the necessary entry visas or immigration authorization for their family members.

Should difficulties arise, the competent UNHCR Field Office may have to intervene with the Government concerned in order to seek permission for such reunification, pointing where necessary to the relevant international instruments and to the Executive Committee Conclusions on the subject. (See above and EXCOM Conclusion No. 24 (XXXII) of 1981 on family reunification.) Where countries make admission contingent upon the fulfillment of conditions which the refugee cannot meet, or refuse altogether to authorize certain types of family reunification, such difficulties should be reported to UNHCR Headquarters. Since the objective is reunification of the refugee family, the Office should ensure that any visa issued allows indefinite stay.

### Exit visa

In many cases, family members are required to make a formal application for authorization to leave the country of origin or temporary refuge. Where this is feasible, family members in the country of origin should try to obtain these authorizations themselves provided they can do so without placing themselves or others at risk. When in such cases UNHCR assistance becomes necessary, it should be kept in mind that interventions may be a very delicate matter and are not always successful. Family members should be counseled in advance to this effect.

## Travel arrangements

Unless travel is arranged within the framework of an ongoing resettlement operation, making travel arrangements is in principle the responsibility of the refugee family. Nevertheless, some countries make and meet, usually through IOM, the costs of travel arrangements for the individual family reunification of refugees.

UNHCR would provide assistance only if needed, as, for example, in the case of separated or unaccompanied children. Family members may, however, be advised to contact IOM for more information about its subsidized migration schemes. Under these schemes, IOM helps refugees and other persons in need of assistance, in particular through the handling of pre-departure and transport arrangements. IOM has concluded special tariff agreements with the airline industry which allow for considerable reductions in air fares and may also provide an increased free baggage allowance. Where direct communication between family members and IOM is not possible, UNHCR Field Offices may be requested to help.

## Financial assistance

As with travel arrangements, the financing of the travel of family members from abroad is in principle the responsibility of the refugee family, unless travel is arranged within the framework of an ongoing resettlement operation.

UNHCR funding of costs relating to family reunification cases may be considered once the case has been thoroughly assessed to identify whether it meets *all of* the following conditions:

- all family members concerned are eligible for family reunification under the established criteria (see Chapter 4.6); in particular:
- at least one of the family members has been determined as a refugee under UNHCR's mandate;
- the separation of the refugee family was involuntary and related to persecution or flight;
- the granting of assistance is appropriate under UNHCR guidelines (see Chapter 5.4 on Onward or Secondary Movement); and
- the family members are in need and therefore unable to meet the travel expenses themselves; and
- no other source of funding is available (e.g. from the receiving country, relatives, sponsors or charitable organizations); and
- adequate financial resources under the project are available.

Where UNHCR Field Offices do not have travel funds placed under their direct responsibility, prior authorization from UNHCR Headquarters must be obtained.

All requests for financial assistance for family reunification cases to the Resettlement Section at UNHCR Headquarters should be submitted together with a completed Family Reunification Questionnaire and a recommendation for travel assistance. The family members in the anticipated country of resettlement should be requested to complete this form - Part A, while family members in the country from which the movement is to take place should be asked to complete Part B of the questionnaire (sample reproduced in Toolkit, Annex 2). UNHCR offices responsible for the respective countries should exchange copies of these forms. Where UNHCR Headquarters involvement is required, copies of both parts should be provided to the Resettlement Section.

Upon approval of the request, UNHCR Headquarters will liaise with IOM Geneva to make travel arrangements or alternatively authorize the Field Office to arrange travel locally, charging the appropriate resettlement project. IOM benefits from reduced air fares and, with financing from UNHCR, Governments and other sources, administers a variety of travel projects, sometimes involving travel loan programmes. Travel arrangements should be made only after the necessary exit and entry visas have been obtained.

Family members should be advised of the possibility of directly procuring air tickets at reduced fares through IOM, without involvement of or approval by UNHCR.

### Resettlement processing

When members of a refugee family are in one or more countries of temporary refuge, it may be necessary for UNHCR Field Offices in those countries to intervene so as to ensure their admission to the same country of resettlement in accordance with the right to family unity. Such intervention is often required to prevent the separation of foster children, adult dependants, fiancé (e)s, or other relatives forming part of the basic family unit. The assistance of UNHCR Headquarters should be requested when the matter cannot be resolved by the Field Offices concerned.

### Separation due to admission criteria

A refugee family may be separated because a family member has not been able to accompany the rest of the family to a country of resettlement because he or she does not meet that country's criteria for admission. In such cases, it is often necessary for the Office to approach the authorities of the resettlement country with a view to the family member being admitted on humanitarian grounds or on the basis of international obligations.






### (c) Considerations in cases of unaccompanied minors




Problems related to family reunification have assumed considerable importance with regard to the situation of unaccompanied minors, especially infants and young children. Unaccompanied children and adolescents are a priority concern of UNHCR. Particularly in refugee emergencies, there will usually be minors who are separated from their families.

Other aspects of the special responsibility of UNHCR to promote the best interests of refugee unaccompanied minors as well as further issues related to the tracing and reunification of family members are treated in a separate chapter of this Handbook (see Chapter 4.7).

#### ESSENTIAL READING:

-  *Guidelines on International Protection: The Right to Family Unity and Family Life*, UNHCR, Geneva (Forthcoming).
-  *Summary Conclusions on Family Unity*, Global Consultation on International Protection, Geneva Expert Roundtable, 8-9 November 2001.
-  *Background Note for the Agenda Item: Family Reunification in the Context of Resettlement and Integration. Protecting the Family: Challenges in Implementing Policy in the Resettlement Context*, Annual Tripartite Consultations on Resettlement, Geneva, 20-21 June 2001.

#### FURTHER REFERENCE:

-  *Report on Family Reunification. Overview of Policies and Practices in IGC Participating States*. Secretariat of the Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC). Geneva, March 1997.
-  *UNHCR Guidelines on Reunification of Refugee Families*, July 1983.
-  *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, 1979, Re-edited 1992, Chapter VI, Paragraphs 181-188.

## 4.7 Children and Adolescents

Under the Convention on the Rights of the Child, children and adolescents are “entitled to special care and assistance”. Their developmental needs, their dependency, and the questions of their “lesser” legal and social status make this special attention essential. This Section will discuss how resettlement criteria should be applied to minors.

The *Convention on the Rights of the Child* (CRC)<sup>71</sup> applies to everyone below the age of eighteen years unless, under the applicable law, majority is attained earlier (article 1). In other words, it applies to all minors. The terminology of the CRC causes confusion, however. Article 1 says that, “For the purpose of the present Convention, a child means ....” Confusion is caused because the word *child* in the treaty is being used in an unusual way. According to the dictionary, a *child* is a person who has not yet reached puberty or sexual maturity, and in common usage it is not applied to anyone over 14 or 15 years. A person who is no longer a child but not yet an adult is an adolescent. It is helpful to remember that article 1 of the CRC is defining a word in a legal text, and is not defining real life human beings. In lawyers’ jargon, the term *child* is a *legal fiction*, that is, an artificial definition in a legal text.

### Who is a child?<sup>72</sup>

For operational purposes, UNHCR takes the definition of a child given in Article 1 of the CRC, which defines a **child** as any person under the age of 18, unless under the (national) law applicable to the child, majority is attained earlier.

**Separated children** are those separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

**Unaccompanied children** (also called unaccompanied minors) are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

<sup>71</sup> The CRC is the treaty which sets the most standards concerning children. While the CRC is not a refugee treaty, refugee children are covered because all CRC rights are to be granted to all persons under 18 years of age (article 1) without discrimination of any kind (article 2). Selected articles of the CRC are reproduced in Annex 2.

<sup>72</sup> These definitions are taken from the *Inter-Agency Guiding Principles on Unaccompanied and Separated Children* of January 2004, p. 13.

**Orphans** are children, both of whose parents are known to be dead. In some countries, it should, however, be borne in mind that a child who has lost one parent is called an orphan.

#### **4.7.1 Unaccompanied or separated minors are a priority concern to UNHCR**

Experience has shown that in emergency situations refugee children may be with an extended family member, therefore “accompanied”, but they may still face risks similar to those faced by unaccompanied refugee children. To ensure that all such children benefit from efforts to trace and to reunify them with their previous primary caregivers, UNHCR, UNICEF, ICRC, the International Save the Children Alliance and other organizations have adopted the broader concept “separated children”.<sup>73</sup>

Separated children are defined as children under 18 years who are separated from both parents or from their previous legal or customary primary caregiver.<sup>74</sup>

The terms *unaccompanied minor* or *separated minor* should be distinguished from *orphan*. A person is an orphan only if both parents are dead. This always requires careful verification and must never be merely assumed.

It may be difficult for an unaccompanied minor to establish refugee status using the same refugee criteria and procedures applied to adults. When a child is unable to articulate a claim, or it is not possible to determine the refugee status of a minor, a decision should be made as to what durable solution would be in the minor’s *best interests*.<sup>75</sup> In the context of resettlement, it should be borne in mind that some countries require that every individual, including children, meets the refugee definition. UNHCR encourages countries to consider the best interests of the child when determining the refugee status of a minor, and to determine refugee status using the broadest possible interpretation. See also Art. 22 of the CRC.

UNHCR has developed comprehensive guidelines on protection and care of refugee children which set forth clear principles and procedures to ensure the protection and care of all refugee children including the most vulnerable,

<sup>73</sup> *Refugee Children*, Global Consultations on International Protection, 4<sup>th</sup> Meeting, UN Doc.

EC/GC/02/9, 25 April 2002, in *Refugee Survey Quarterly*, Vol. 22, No. 2/3 2003, p.266, para.5.

<sup>74</sup> Use of the term “unaccompanied children” has declined. It was used to define those who are separated from both parents and are not being cared for by any adult who, by law or custom, is responsible for doing so. The definition of “separated children” is included in EC/50/SC/CRP.7 of 7 February 2000 and sought and received wide support by the UNHCR Standing Committee.

<sup>75</sup> For details on the *best interests rule* see Chapter XX5 (Special Issues) of this Handbook as well as Chapter 8 of *Refugee Children: Guidelines on Protection and Care*.

namely those who are unaccompanied. In the context of a determination as to whether resettlement is the appropriate solution for an unaccompanied minor, the following issues have to be considered:

- ❑ Any intervention on behalf of unaccompanied minors, particularly their movement, must *follow the existing guidelines* given in UNHCR's *Refugee Children: Guidelines on Protection and Care*<sup>76</sup>. It must be ensured that the best interests of the child are met.
- ❑ Resettlement of unaccompanied or separated minors should be considered carefully only where other solutions are not appropriate. Decisions concerning durable solutions for unaccompanied or separated refugee children must, ideally, be taken by competent bodies that include *experienced child welfare personnel*. The possibility of voluntary repatriation should always be given full consideration in the first instance, particularly if the minor has family remaining in the country of origin.
- ❑ The procedure should permit the *effective participation of the refugee child* and, as with status determination, arrangements should be made for the minor to be represented. It should be ensured that the *minors be informed* that what is happening affects their future. Too often, things are done to, for or on behalf of children and adolescents, ostensibly in their interest, but without letting the minors know. Where possible, the views of the parents, or others who perform this role, should be obtained.

Unaccompanied or separated refugee minors over the age of 16 are usually mature enough to make their *own decisions* about long-term solutions and some even at an earlier age. Depending on their degree of maturity, children over the age of nine or ten may be able to make rational choices if provided with adequate information. Their preferences should, therefore, receive consideration.

Children below nine or ten years of age may not be sufficiently mature to make an independent judgement; but they should always be given the chance to express their views. In each case, a minor's evolving mental maturity must be determined in the light of the personal, family and cultural background.

- ❑ Where the resettlement, local integration or repatriation of a *family caring for a child or adolescent other than their own* is being considered, the nature and durability of the relationship between the minor and the family must be carefully assessed by an experienced child welfare worker to determine whether they should remain together. There must be assurances that the family will continue to provide for the minor. It is important to balance the minor's need for continuity of care and the degree of attachment to the foster family against the possibility of ultimate family reunification.

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<sup>76</sup> See in particular Chapters 10 and 11.

Resettlement may be determined as the appropriate solution for an unaccompanied minor if the basic considerations outlined in Chapter 4.1 are met and the child or adolescent falls within the categories outlined in the following.

#### **4.7.2 Basic principles of child protection**

Experience globally shows that the vast majority of unaccompanied or separated children and adolescents do in fact have parents or other relatives alive who can be located through tracing activities and who are able and willing to care for the minor. Recognition of this fact is fundamental to the approach to helping unaccompanied minors and to the basic principles listed below.

Most of these principles are in accordance with provisions laid out in the 1989 Convention on the Rights of the Child (see Annex 2). All policies and actions regarding unaccompanied minors should be in keeping with international provisions and relevant national child welfare legislation. In case of refugee children and adolescents, the provisions of the 1951 Convention and the 1967 Protocol also apply. Minors in countries other than their own are entitled to care, protection and representation regardless of their legal status.

##### **(a) Basic rights of children and adolescents**

###### *Best interest*

The best interest of the minor is the overriding consideration in all decisions and actions concerning young persons separated from their families. When tracing is successful, an assessment must still be undertaken to determine whether family reunification is in the best interest of the minor. For details see Chapter 7.1 of this Handbook.

###### **Protection**

All minors, including those who are separated from their families, are entitled to protection of their personal security and rights under national and international law, to provision for their basic subsistence and to care that is nurturing and appropriate to their age and individual needs.

###### **Participation**

Children and adolescents of all ages, in keeping with their degree of mental, emotional and social maturity, have the right to express their views and have those views taken into account in decisions regarding arrangements for themselves and their siblings.

###### **Legal representation and rights**

Unaccompanied or separated minors have a right to physical and legal protection as their individual circumstances require. This includes legal representation and designation of guardians, where needed, and securing land and other inheritance rights when all immediate family members have died.

### Family unity

All children have a right to a family, and families have a right and responsibility to care for their children. All reasonable measures should be taken to help families stay together and to reunite families which become separated. Action should never be taken if it might encourage family separations or make family tracing and reunification more difficult.

### Reunification of separated families

Unaccompanied or separated minors have a right to be reunited with parents, guardians, siblings or extended family members. Those intervening on behalf of unaccompanied minors have an obligation to assist them to find, communicate with and rejoin family members through tracing and other services. Family tracing is pursued as a priority for all children and adolescents separated from their families.

## **(b) Appropriate care**

### Safety and well-being

Pending family reunification, unaccompanied minors should be cared for in ways which assure their safety, protect them from abuse and exploitation, and meet their individual emotional and developmental needs as well as their physical needs.

### Community integration

Separated minors should be integrated with the rest of their communities, their needs met and services provided to a similar level and, to the extent possible, in the same manner available to other young persons.

### Stability and continuity

Continuity should be preserved as much as possible in separated minor's relationships with adults and other youngsters, and in their cultural and religious traditions. Sibling groups should be kept together. The care of unaccompanied minors should be provided by members of their own community wherever

### Community responsibility

Communities and local authorities have a responsibility for assuring the protection and care of unaccompanied minors, and assisting family reunification.

### No separate evacuation

Separated minors should be evacuated from an area only if it is deemed necessary to evacuate all young persons living in the area or community concerned. However, this is not an absolute policy in all situations. Some, albeit rare, situations call for the evacuation of unaccompanied or separated minors before the evacuation of the community.

### No early adoption

Separated minors shall not be considered for adoption during an emergency or before extensive tracing efforts have been made without success, normally over a period of at least 2 years. For further information on tracing and adoption, reference is made to Chapters 4.7.4 and 4.7.5 below.

### 4.7.3 Best Interests of Children and Adolescents

The *best interests rule* is one of the fundamental rights in the 1989 Convention on the Rights of the Child (CRC).<sup>77</sup> But while the phrase *best interests of minors* is a simple expression, applying it to real life situations is not so easy. This section presents a framework for the application of the *best interests rule*.

#### A framework for applying the *best interests rule* to refugee minors

The best interests rule is contained in article 3 of the Convention on the Rights of the Child. It states that:

“In all matters concerning [minors], whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of [minors] shall be a primary consideration.”

The best interests rule covers all persons under the age of 18 years, or the age of majority (legal adulthood) in any country where majority is attained earlier. Because the CRC has been almost universally ratified, the best interests rule should be considered to apply in any State’s decision that affects a minor who is present in that State, and this includes all refugee or asylum seeking minors. Furthermore, because UNHCR has adopted the CRC as its *normative frame of reference* the rule should be applied in any decision made by the Office which affects a minor of concern to UNHCR.

The best interests rule was originally devised to guide judges when they decide custody disputes during divorce cases or petitions for adoption. Under the “traditional” best interests rule, the welfare of the minor must be *the primary* or *the paramount* consideration, that is, the interests of the minor must override the interests of either parent, or prospective parents, in these types of cases.

The best interests rule in article 3 differs from the “traditional” rule in family court cases in several respects. Because our framework for applying article 3 is based on the traditional rule, and because many people have at least some familiarity with the traditional rule in the context of custody disputes, it will be helpful to begin by comparing article 3 and the traditional rule.

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<sup>77</sup> Selected articles of the CRC are reproduced in Annex 2.

First, article 3 not only applies to decisions that have an impact on an individual minor, it also applies to decisions that affect a group of minors. This complicates matters because sometimes the interests of an individual minor will conflict with the interests of a group of minors.

Second, article 3 *expands* the traditional rule because it applies to *all* decisions that a Government makes that may affect minors, and is not limited to just divorces and adoptions. This expansion further complicates matters because the interests of minors can sometimes conflict with the interests of other groups in society.

Third, article 3 *contracts* the traditional rule: Article 3 only requires that the best interests of minors be “*a primary consideration*”, in contrast to the traditional rule which requires that their interests be *the* primary consideration. Under article 3, a Government must actively take into account the interests of minors, but their welfare does not automatically override all other societal interests. The complication here is that the best interests rule in article 3 does not tell us how to resolve conflicts between interests; it does not tell us when to give priority to the interests of an individual minor or group of minors.

Fourth, the requirement in article 3 that the best interests of minors be “*a primary consideration*” is only a minimum standard. There will still be categories of situations where a minor’s interests will need to be given priority, as in the case of adoptions (e.g. CRC article 21).

Sometimes the traditional rule is criticized because it does not contain any standards by which judges can evaluate what course of action will be best for a young person. While this objection is superficially correct, judges do employ principles or standards in deciding custody and adoption cases. It is by identifying these underlying principles that we can construct a framework for applying the best interests rule of article 3.

In essence, **the best interests rule is composed of four elements.**

The rule is:

- a set of principles about the developmental needs of children and adolescents;
- a set of attitudes that a decision-maker needs to have;
- a set of procedures that a decision-maker needs to follow; and
- various institutional structures to help ensure rationality and fairness in the decision-making process.

The rest of this Section will outline the contents of these four elements.



**(a) Principles relating to developmental needs of minors**

- psychological and social needs must be given equal importance to physical needs;
- children and adolescents need to feel wanted and valued;
- there must be continuity of a minor's emotional bonds with the "psychological parents";
- we need to consider the infant's and young child's "sense of time";
- socialization, or the learning of social and cultural values and skills, is essential;
- minors must be prepared for adulthood: earning a living, parenthood, and citizenship;
- continuity of a minor's sense of identity should be maintained;
- participation in decision-making is important to healthy development.

**(b) Attitudes that a decision-maker needs to have**

The decision-maker must have willingness to:

- separate the interests of the minor(s) from the interests of all others, including the parents, other adults, social groups, institutions, and the State itself.
- subordinate the interests of all others in favour of the minor's welfare.
- take the thoughts and feelings of a young person seriously.
- perceive children and adolescents as bearers of human rights.

**(c) Procedures that a decision-maker needs to follow**

- conduct an impact-assessment on how a course of action may affect decision-making must be individualised whenever possible.
- minors need to participate in the decision-making process;
- there should be an independent assessment of the minor's best interests; and
- there must be an opportunity for the decision-maker to receive input from persons who are experienced in child- or adolescent-welfare issues.

**(d) Institutional structures**

Suggestions for governmental structures include:

- an ombudsman for children and adolescents;
- an office responsible for minors' issues, at the appropriate level of Government;
- inter-ministerial and inter-departmental committees on minors;
- independent advisory panels;
- systematic data collection and research focused on children and adolescents;

- a yearly “state of the nation’s youth” report;
- dissemination and training on the CRC;
- forums and procedures for the participation of minors;
- procedures for on-going consultations with citizens’ groups concerned with the rights and welfare of minors.

#### **4.7.4 Identification of unaccompanied or separated minors and tracing activities**

##### **(a) Identification**

Searches and inquiries should be organized within each community to identify minors who are unaccompanied or separated, but in a way that does not disrupt existing care arrangements or encourage families to abandon children. Community social workers, volunteers, community and religious leaders should be mobilized to do this early in an emergency. All youngsters who appear to be unaccompanied or separated must be immediately screened to determine whether or not they are indeed separated from their families and, if they are, whether there is another adult with whom the child has been living who, with some support, could continue providing appropriate care. Only young persons who will be without continued care should be placed in emergency care.

For each minor who cannot be immediately reunited with parents or members of the extended family, immediate action should be taken to register information concerning the minor, including where and when the minor was found, who brought the minor to the attention of UNHCR or who the minor was with when found, photographs, details of accompanying siblings, and circumstances of the separation. It is also necessary to provide each minor with an identity bracelet or an identity card and to arrange a health check and psychological screening.

Similar arrangements are needed to record documentation on parents who have lost their children and are searching for them. A central database is established, normally by ICRC, to receive and store data in a standard format on both children and parents. In recent emergencies, it has been agreed between UNICEF, UNHCR and the main participating NGOs that ICRC would maintain the database on unaccompanied or separated children and information from the database would be accessible to all users.

##### **(b) Tracing**

As soon as a minor is identified as unaccompanied or separated, tracing efforts are started. All tracing activities are carried out in a manner that protects the personal security of the minor and family members concerned. No action is taken that may hinder eventual family reunification, such as adoption, change of name or movement to places far from the likely locations of family reunification. Usually, “passive” and “active” tracing efforts are simultaneously implemented by organizations working at the local level. Passive tracing involves comparing records of children and records of parents searching for lost children in order to match them.

This is done both centrally and at the local level by each organization involved in the registration and documentation of separated family members. Active tracing involves actually pursuing investigations concerning the identity of the minor, the identity and location of parents or other close family members.

During the tracing process, co-ordination and information sharing between ICRC and organizations dealing with unaccompanied minors is essential. All parties involved in providing care and protection for unaccompanied or separated minors participate in efforts at local level, but common standards and systems of notification or verification should be agreed upon, as well as a common approach concerning confidentiality and the best interests of the minor. Where host Governments have the right of access to information on unaccompanied minors, this should only be done in the best interest of the minors.

In cases of refugee minors, tracing activities must be closely co-coordinated between the country of asylum and the country of origin. Arrangements must also be made for the reunification of youngsters with their families found in another country, and for the continuation of care for and tracing of minors among the population groups returning to their country of origin as part of a voluntary repatriation programme. This requires close co-operation and joint planning between Governments, UNHCR, ICRC, UNICEF and implementing agencies in both countries.

#### **4.7.5 Family reunification, alternative long-term placements and adoption**

When tracing is successful, an assessment is undertaken to determine whether family reunification is in the best interests of the minor. If assistance with family reunification is granted, follow-up with the reunited family should be undertaken by UNHCR or other qualified agents, including the host government departments. However, alternative long-care arrangements should be made when family reunification proves not to be possible within a reasonable period and when it is considered that reunion would be harmful to the minor's interests.

UNHCR decisions concerning family reunification or alternative long-term care arrangements should be made on a case-by-case basis on the advice of trained child welfare personnel, within the framework of statutory or customary law, taking account of:

- the wishes and rights of the parents;
- the age and wishes of the child or adolescent;
- the length of separation (especially in the case of infants and very young children);
- the strength of the minor's psychological attachments to the present care-givers (i.e. foster parents);
- the wishes of the present care-givers;
- the previous family/child relationship.

The safety, immediate well-being, and the long range developmental needs of the minor are always the overriding concerns, but decisions are not always easy; the young person and adults may not agree on what is in the young person's best interests.

In order to avoid occurrences where private foster care services make the critical decisions regarding the minor's placement or future, reunification programmes should be monitored for compliance with the law and child welfare principles. The rights of children and adolescents to be with their families and to have all decisions made in light of their best interests must always prevail.

With regard to foster children, arrangements should be made to maintain records and notify all concerned of the minor's movement so that the young person can be located in the event that family tracing is successful.

Other aspects of the special responsibility of UNHCR to promote the best interests of refugee or displaced unaccompanied or separated minors, as well as issues related to the tracing of family members, are treated in separate chapters of this Handbook.

Adoption is not normally thought of as a resettlement possibility because in almost all cases where a child needs to be adopted there will be extended families members, others from the child's community of origin, or from the country of asylum, who can fulfil this need. If efforts are made to locate these persons, and perhaps to provide some initial support services, then there is rarely a need for international adoption.

In the resettlement context, adoption might be sought by extended family members or by persons who are unrelated to the child. In such cases, strict compliance with legal standards must be observed. The Convention on the Rights of the Child requires that "the best interests of the child shall be the paramount consideration", that is, the welfare of the child must never be compromised by competing interests, including those of the proposed adoptive parents. Furthermore, the Convention requires, among other things, that all necessary steps are taken to "ensure that the adoption of the child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary". (CRC article 21(a))

The Convention also requires that "due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (CRC article 20.3). This article does not prohibit inter-ethnic, -religious, or -racial adoptions. Instead, all factors must be considered, with the final judgement made on a case-by-case basis, with the child's best interests being the paramount consideration.

International adoption is also regulated by the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption with respect to State parties to the treaty.<sup>78</sup>

Based on its experience, UNHCR has adopted standards which are applicable to all minors of concern whenever adoption is being considered.

*Refugee Children: Guidelines on Protection and Care* states:







“It is UNHCR’s policy that children in an emergency context are not available for adoption. Any adoption of an unaccompanied child of concern to the High Commissioner must be determined as being in the child’s best interests and carried out in keeping with applicable national and international law. It should not be carried out if:

- o there is a reasonable hope for successful tracing and family reunification in the child’s best interests;
- o a reasonable period (normally at least two years) during which time all feasible steps to trace the parents or other surviving family members have been carried out has not elapsed;
- o it is against the expressed wish of the child or the parent; or
- o voluntary repatriation in conditions of safety and dignity appears feasible in the near future and options in the child’s country of origin would provide better for the psycho-social and cultural needs of the child than adoption in the country of asylum or a third country” (pages 130-131).






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<sup>78</sup> UNHCR’s policy on intercountry adoption is elaborated in UNHCR/IOM/59/95-FOM/62/95 on Adoption of Refugee Children dated 22 August 1995. This document also contains relevant articles of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) and the Recommendation concerning the Application to Refugee Children and other Internationally Displaced Children (1994) of this Convention. See also, *Refugee Children*, Global Consultations on International Protection, 4<sup>th</sup> Meeting, UN Doc. EC/GC/02/9, 25 April 2002, in *Refugee Survey Quarterly*, Vol. 22, No. 2/3 2003, p.267 f., para.9, recommendations 6 and 7.

**ESSENTIAL READING:**

-  *Refugee Children*, Global Consultation on International Protection, 4<sup>th</sup> mtg., U.N. Doc. EX/GC/02/9, 25 April 2002.
-  *Refugee Children: Guidelines on Protection and Care*. UNHCR Geneva, 1994.
-  *Guidelines for Interviewing Unaccompanied Refugee Children and Adolescents and Preparing Social Histories*. UNHCR Social Services Section, April 1990.
-  *Adoption of Refugee Children*, UNHCR/IOM/59/95-FOM/62/95, 22 August 1995.
-  *Best Interest Determination Guidelines in the case of Sudanese Unaccompanied and Separated Children in the refugee camps in western Ethiopia*, UNHCR-RTSS, DRAFT November 2002.
-  *Action for the Rights of Children Resource Pack, Foundations, International Legal Standards*, September 2002, pp.16-17, and *Foundations, Child and Adolescent Development*, April 2001, topic 6, pp. 36-41

**FURTHER REFERENCE:**

-  *UNHCR Policy on Refugee Children*. UNHCR Geneva, August 1993.
-  *Interviewing Applicants for Refugee Status (RLD 4)*. Training Module. UNHCR Geneva, 1995 (in particular Chapter Five: Interviewing Children).
-  *Mental Health of Refugees*. World Health Organisation/ United Nations High Commissioner for Refugees, WHO Geneva 1999.
-  *UNHCR/IOM/59/95-FOM/62/95 on Adoption of Refugee Children* dated 22 August 1995.
-  *Evacuation of Children from Conflict Areas. Considerations and guidelines*. UNHCR/UNICEF. Geneva, December 1992 (Edited by Everett M. Ressler).

-  *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum.* UNHCR Geneva, February 1997.
-  *Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally.* General Assembly Resolution A/RES/41/85, 3 December 1986.
-  *Working with Unaccompanied Minors in the Community. A Family-Based Approach.* UNHCR (PTSS/Community Services) Geneva, 1994 (especially Chapter 3: Communication and Documentation).
-  *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees,* UNHCR, Geneva, re-edited January 1992 (paras. 213-219).

## 4.8 Older Refugees

Older refugees may be particularly vulnerable when confronted with the causes and effects of becoming a refugee. Some may have been separated from family, friends or community during their flight, or have witnessed the killing of family members. The physical hardship of exile may well take its toll on the older refugees, who, if already frail, may not have the strength to ward off disease and illness. The stresses of being forced to flee and then having to adapt in a new environment during the first stages of exile, particularly for those without the support of family, place untold demands on the coping ability of many older refugees.

There is no fixed age to define an older refugee as *elderly*, largely because life expectancy differs among groups, and the process of ageing is affected by a number of factors, such as an individual's physical and psychological health, along with family and social support, cultural background, living conditions and economic situation.

It should be noted that some resettlement countries set age limits for the admission of older dependent parents under family reunification criteria or otherwise strictly apply dependency criteria.




Whenever possible, older refugees should be reunited with their family or members of their community.

If the family members of an older refugee cannot be traced in the country of refuge (or in the country of origin), an appropriate foster family should be found. It should be remembered that most refugee communities have great respect for their older members. They should participate in planning and implementing of community programmes.

Unless an individual has his/her own claim to resettlement under other criteria outlined in this Handbook, resettlement of the older should only be considered in the context of family reunification and elderly dependants should be included in resettlement submissions. It should, however, be understood that older refugees are sometimes reluctant to uproot themselves and leave an asylum country either with or to join family members who are already living in a resettlement country. In such circumstances, their interests and needs should be taken into account before a decision on resettlement is reached.

Further considerations and criteria related to family reunification are summarized in Chapter 4.6.

#### **FURTHER REFERENCE:**

-  *Age and gender dimensions in international Refugee law*, Alice Edwards in *Refugee Protection in International Law, UNHCR's Global Consultation on International Protection*, Erika Feller, Volker Türk and Frances Nicholson (Eds.), Cambridge University Press, 2003.
-  *Older Refugees: Looking Beyond the International Year of Older Persons*, Executive Committee of the High Commissioner's Programme, Standing Committee, 17<sup>th</sup> mtg. UN Doc. EC/50/SC/CRP.8, 7 Feb. 2000.
-  *The Situation of Older Refugees*, Executive Committee of the High Commissioner's Programme, Standing Committee, 48<sup>th</sup> Sess., UN. Doc. EC/48/SC/CRP.39, 14 Aug. 1998.

## **4.9 Refugees without Local Integration Prospects**

Resettlement may be considered for refugees who do not have an opportunity to establish themselves in their country of refuge in a manner appropriate to their cultural, social, religious or educational backgrounds.



Resettlement may be promoted under such circumstances when it can be established that a refugee, unable to return home in the foreseeable future, is also not able to integrate locally. In this regard, the quality of asylum and the level of social prospects inherent in it should play a key role in the assessment of resettlement needs.

Under the broad concept of seeking resettlement as a durable solution when resettlement for immediate protection reasons is not necessary, UNHCR may consider promoting resettlement for specific individual cases or even groups. However, resettlement of refugees without local integration prospects, as distinguished from the more immediate need of resettlement for reasons of protection, should be promoted by UNHCR only when specific conditions are met, as specified below.

The concept of “local integration” as a durable solution is defined above in Chapter 2 of this Handbook, as is the relationship between local integration, self-reliance and local settlement. As a concept, local integration sets explicit legal, economic, social and cultural standards for its attainment. The resettlement criterion of “lack of local integration prospects”, in fact, is *future-oriented*. It balances the quality of asylum in a given country at a given moment against the prospects of enhancing asylum and prospects of local integration within a specific timeframe. The major challenge for UNHCR in this respect is to continue upholding its protection principles by resettling refugees who objectively are without local integration prospects in the host country, while at the same time working towards expanding and strengthening the quality of asylum and the refugees’ local integration prospects in that same country. This comprises the rationale for the premise that all resettlement efforts, in particular resettlement as a durable solution, should be incorporated into a broader, comprehensive, protection framework that provides for a clear strategy in this regard.

It should be recalled that *self-reliance* is promoted by UNHCR at all times, and provides the basis for any of the three durable solutions. *As such it does not in itself constitute local integration nor does it preclude resettlement.* Field Offices should reflect this in communicating with refugees, governments and other partners, in order to address any misperceptions and to ensure a correct understanding of the applicability of the resettlement criterion ‘lack of local integration prospects’, see below for details.

In submitting a case for resettlement based on a *lack of local integration prospects* as the primary criterion, it is paramount to include adequate justification in the RRF,. A blanked reference to lack of local integration prospects does not suffice. In the assessment and justification, the indicators and preconditions listed below would need to have been considered carefully in reaching a decision.

#### **4.9.1 Basic considerations and methodology**

The basic considerations outlined in Chapter 4.1 have to be fully applied and met. Moreover, in order to facilitate implementation and ensure consistency, a methodology is required.

- The first step in such a methodology would be the *profiling of a resettlement caseload*. Application of the present criterion is greatly facilitated by the undertaking of the “mapping needs exercise” described in Chapter 8.3 of this Handbook, which identifies groups or categories of refugees with common resettlement needs and characteristics. Understanding the needs of the refugee population, and instrumentalizing the provision of appropriate solutions to their specific problems, is the primary means of realizing the *complementarity* of the three durable solutions, an element that is of particular importance in ascertaining the potential applicability of the resettlement criterion “lack of local integration prospects”.
- Second, in determining whether a refugee or a group of refugees are without local integration prospects, the formulation and application of a set of *objective indicators related to different areas of protection* is crucial. These are set out below and cover indicators related to legal protection and durable solutions, conditions of asylum, socio-economic considerations, and psycho-social considerations.
- Third, it should be noted that an individual-level analysis may identify case-specific grounds for utilizing this resettlement criterion, thereby adding a subjective element to the use of the indicators.
- Fourth, as it will be apparent the objective indicators provided below are of an interrelated, general and non-exhaustive nature. Therefore, UNHCR field offices are encouraged to develop additional, country specific indicators as needed and appropriate.

#### **4.9.2 Setting Objective Indicators**

All the indicators that local integration is not an option, which have been listed below are to be met in order for a refugee or a particular refugee category to be considered for resettlement under this criterion.

##### **4.9.2.1 Indicators relating to Legal Protection and durable solutions**

(a) Legal, social and economic protection in the country of asylum

The definition of local integration, as included under Chapter 2 of this Handbook includes as a key element a “*legal process*, whereby refugees are granted a progressively wider range of rights and entitlements by the host State

that are broadly commensurate with those enjoyed by its citizens”.<sup>79</sup> Broadly speaking, this can be translated into the question as to whether the host country – at the minimum - provides a protection regime which complies with the principles enshrined in the 1951 Convention with regard to the treatment of refugees as well as with basic international human rights instruments. In the affirmative, the refugees in question would not be a resettlement priority at the moment. Where, however,

- *refugees are at best only tolerated in the country of refuge and/or considered as “illegal immigrants”, or*
- *their stay in the host country is based on a temporary protection regime, which is discretionary in nature,*

the lack of local integration criterion would still be an option and application of the remainder of the indicators would need to be analysed.

#### (b) Prospects for voluntary repatriation in the foreseeable future?

A determination of whether voluntary return to the country of origin is feasible in the foreseeable future is necessary. While this assessment needs to take into account individual socio-economic and psycho-social aspects (see below), an analysis of mere objective factors may lead to the assumption that

- *voluntary repatriation in safety and with dignity is still precluded for the specific category of refugees under consideration, and*
- *there are no indicators that the situation in the country of origin will improve in the foreseeable future for any category within a refugee population.*

Both would be indicators that the lack of local integration prospects criterion for resettlement might remain an option for the refugee(s) in question.

Voluntary repatriation does not necessarily foreclose the possibility of resettlement for certain individuals.

In situations where spontaneous voluntary repatriation takes place or when voluntary repatriation is actively promoted, there may be individuals who are unable to repatriate due to a continued fear of persecution in their country of origin. In the absence of the possibility of local integration in the country of asylum, resettlement for these refugees may provide the only durable solution. Such cases should, however, be processed with discretion in order not to disrupt the repatriation operation. In consultation with UNHCR Headquarters, a determination should be made as to whether resettlement is warranted in such cases, provided resettlement places are available.

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<sup>79</sup> *Local Integration*, Global Consultations on International Protection, 4<sup>th</sup> mtg., UN DOC. EC/GC/02/6, 25 April 2002, in *Refugee Survey Quarterly*, Vol. 22, No. 2/3 2003, p. 240, para. 6.

(c) Do refugees have meaningful prospects of local integration in the country of refuge?

This may not be the case where local authorities despite efforts on part of UNHCR, refugees themselves and other actors remain firmly opposed to the facilitation of, even limited, integration opportunities for the refugee population in general or the category/nationality under consideration.

Indications of meaningful integration prospects include (but are not limited to) issuance of work permits, inclusion of refugees in local apprenticeship schemes, significant number of marriages between refugees and the members of the local population and an inclination on part of the authorities to grant citizenship to refugees of a specific nationality/category.

An individual refugee's case for resettlement should, furthermore, be examined in light of conditions faced by other refugees similarly situated. This includes a realistic evaluation of how best to address the needs of other refugees in a similar category or those in identical circumstances in the country of refuge or neighbouring countries. For these purposes and to ensure regional consistency, close consultations should be held among UNHCR offices with a refugee population of a similar profile.

#### **4.9.2.2 Indicators relating to Conditions of Asylum**

(a) Length of stay in the country of refuge

There is no definite length of stay in a country of refuge after which it can be said that a refugee lacks a durable solution. The emphasis in this regard is on the careful assessment of the local integration prospects of the individual or group rather than on hard and fast rules relating to time frames.

However approximate time-frames can be set out as a yardstick in determining local integration prospects, under the basic assumption that the longer the stay without having been provided with a durable solution, the lower the potential for eventually being allowed to locally integrate. The indicators below include such approximate time frames, in noting situations under which the application of the criterion 'lack of local integration prospects' is relevant:

- Refugees have been staying in the country of refuge for a protracted period of time (more than six years). Refugee children and adolescents born in the country of refuge have never known any other environment (refugee camp, urban area) nor seen their homeland. Given their overall situation these children/adolescents are at risk of becoming a "lost generation".

- Refugees have been in the country of refuge *between two and six years*. Refugee children born in the country of refuge have completed a primary cycle of education and there is still potential for them to recover from the negative consequences of their prolonged refugee situation.

(b) Refugees' living conditions in the country of refuge

Where refugees are located

- in *closed camps*, or
- in an urban setting in *below standards living conditions* (i.e. with an income below the minimum wage of local daily labourers in the host country),

this would indicate that local integration prospects are limited. If refugees, on the contrary, are based in open camps with freedom of movement from/to the camp and opportunities for interaction with the local population this would represent the opposite assumption. This also applies for refugees living under reasonable living conditions in an urban setting (meaning that they reach the minimum wage of local daily labourers in the host country).

(c) Refugees' living conditions within the region compared to refugees of the same group/category

In the event that living conditions in the country of refuge are worse or similar to those of refugees in other countries within the region, resettlement should be maintained as an option. For example, if refugees of a particular profile (ethnicity, nationality etc.) are hosted in closed camps in one country but enjoy freedom of movement in neighbouring country this would call for further analysis of the potential for usage of the 'lack of local integration prospects' criterion.

#### 4.9.2.3 Socio-Economic Indicators

(a) Access to fundamental services.

In the instance that refugees do not have access to basic services (essentially constituting certain human rights), indications are that resettlement may be relevant. The pointers listed below are indicative of lack of local integration prospects:

Education

- Refugee children do not have access to primary public education facilities
- Refugee children and/or adults do not have access to the secondary public education or vocational training schemes

### Medical services

- Refugees have no access/limited access to public medical facilities:
  - because they are refugees
  - because as refugees belonging to a minority they have poorer facilities or limited access to general facilities

### Access to work

- Refugees do not enjoy the right to employment or access to other economic activity because, for example, they are prevented from trading in local markets or vulnerable to harassment or detention when pursuing economic opportunities in urban areas.

### Access to property

- Refugees are *de jure* or *de facto* prevented from renting or buying property. A *de facto* obstacle may derive from discrimination against the refugee category or population generally and take the form and shape of, for example, an obligation to pay higher prices than the local population.

### (b) Overall living standards for local population in a similar situation

Where refugees, compared to the local population in a similar situation, are discriminated against with regard to access to services and/or accommodation, as a matter of government policy, and such treatment cannot be justified under the 1951 Convention or international human rights instruments, this may indicate that resettlement should be pursued if other indicators equally point to this solution.

### (c) Resettlement opportunities for the particular refugee category within the region.

The below listed assumptions indicate that resettlement might be appropriate:

- Resettlement under this criterion is carried out consistently for the same category of refugees within the country of refuge, whether in camps or in urban areas.
- Refugees belonging to the category under consideration have equal resettlement opportunities within the region.
- Resettlement for the refugee category under consideration is carried out as part of a regional integrated approach that aims at attaining local integration for other categories among the same refugee constituency (e.g. refugees married to local citizens; refugees with the same cultural and linguistic background).

(d) Family support and integration into the refugee community

This indicator goes more to the subjective level of the individual refugee. It should be established whether the refugee individual/group is: Separated from close family members; or has lost close family members; or s/he is single. In addition, s/he has no support from the refugee community. If it is concluded that family or community support is absent, resettlement should be considered.

(e) The refugees' individual socio-economic profile

- The refugee individual/group is excluded from refugees' predominant social, economic and community networks. (*Note: This is particularly relevant in urban contexts, where refugees are known to survive thanks to the support of community-based networks and the sharing of resources among members of the same clan or community*).
- The refugee individual/group is entirely dependent upon UNHCR's assistance and is inactive for external reasons (e.g. a Government's restrictive approach to refugees).

In these cases, resettlement should be considered.

#### 4.9.2.4 Psycho-Social Indicators

(a) The refugees' past history of persecution and circumstances of flight

As with other indicators listed in this section, if the subjective indicators outlined below are met, resettlement should be considered in so far as all the other indicators also apply.

- The persecution history of the refugee individual/group is relatively more severe than that of other refugees/groups in a similar situation. *Without meeting the requirements for submission under special needs categories*, the circumstances of the refugee's/the group's flight have resulted in a negative impact on his/her/its motivation, emotional capacity and strength to cope with the challenge of integrating in his/her/its present country of refuge.
- The refugee individual/group has a several-year multiple flight history behind him/her/them (e.g. Refugees who were uprooted from their home country at a very young age and have not stopped fleeing ever since then).
- This has strongly affected the refugees' emotional stability and their opportunities for self-development (education and training). Refugees under this category are considered socially and economically disadvantaged.

(b) Efforts made on part of the refugees to improve their personal situation

- The refugee individual/group has demonstrated self-initiative and resourcefulness in trying to improve his/her/its own situation in the country of refuge by taking advantage of all existing opportunities (e.g. community work, self-education, language-training).

#### **4.9.3 Adverse effects**

When a determination is made of the need of an individual or group of refugees for resettlement because of a lack of local integration prospects, it is important to ensure that there will be no negative effects on other areas such as the prevailing asylum conditions and the standards of protection in the region for other individuals or groups of refugees.

Particular care must be taken so that “pull-factors” do not compromise or overwhelm a specific initiative.

#### **4.9.4 Consultation process**

Identification of cases without local integration prospects should take into account the likelihood of resettlement countries accepting such cases. For this reason, UNHCR Field Offices should consult with UNHCR Headquarters when considering the promotion for resettlement of such caseloads in order to determine resettlement countries’ criteria and capacities in this regard. This will help inform the decision-making of UNHCR Field Offices so that a realistic assessment of resettlement possibilities can be made. It may be necessary to promote a *broad-based* approach, involving several resettlement countries.




In the context of such consultations, and *prior* to initiating resettlement interviews or indicating to refugees that resettlement is a possibility, a resource assessment of the availability of resettlement places, financial requirements and the processing capacity of all parties involved has to be undertaken. This includes detailed planning and negotiations with countries of resettlement, UNHCR Headquarters, and interested and experienced NGOs.



#### 4.9.5 Setting priorities

Individuals or groups should be assisted only where the opportunity (resettlement quota/places being offered) arises, and if resources (including staff and funding) are available. It is recognized that such cases have an on-going, not an urgent, need for resettlement. When resettlement places are limited, or adequate resources for conducting resettlement activities are not available, cases related to urgent protection concerns will *always* take precedence.

##### **FURTHER REFERENCE:**

-  *Global Consultations on International Protection, 4<sup>th</sup> meeting, 25 April 2002, EC/GC/02/6, Local Integration.*
-  *Refugee Resettlement: An International Handbook to Guide Reception and Integration, 30 Sept. 2002.*
-  *Framework for Durable Solutions for Refugees and Persons of Concern (DAR, 4Rs, DLI), Core Group on Resettlement, UNHCR Geneva, May 2003.*

*Handout no. 10*

**MULTILATERAL FRAMEWORK OF UNDERSTANDINGS ON RESETTLEMENT  
CONVENTION PLUS, HIGH COMMISSIONER'S FORUM, FORUM/2004/6 16  
SEPTEMBER 2004**

Multilateral framework of understanding on resettlement, Convention Plus, High Commissioner's  
Forum, Forum/2004/6, 16 September 2004

The document can be found at the following website:

[www.unhcr.ch/cgi-bin/teXis/vtx/home/+VwwBmeP-J5exxwwwnwwwwwwwhFqA72ZR0gRfZntFgrpGdBnqBAFqA72ZR0gRfZncFqewyOPezkImDVnDBodDa7c15CalotragdMMo55odDnGe5AxD-dG1MCa-dG1MeRyBDX6eRRmDW\\_aInpBnMxnGa+XX6CaT1cBocwBnGwca-GwMnidGAadhauDmnG5BwDmoDt5adDa2n5nBBcnMnDBaDzmxwwwwww/openoc.pdf](http://www.unhcr.ch/cgi-bin/teXis/vtx/home/+VwwBmeP-J5exxwwwnwwwwwwwhFqA72ZR0gRfZntFgrpGdBnqBAFqA72ZR0gRfZncFqewyOPezkImDVnDBodDa7c15CalotragdMMo55odDnGe5AxD-dG1MCa-dG1MeRyBDX6eRRmDW_aInpBnMxnGa+XX6CaT1cBocwBnGwca-GwMnidGAadhauDmnG5BwDmoDt5adDa2n5nBBcnMnDBaDzmxwwwwww/openoc.pdf)

HIGH COMMISSIONER'S FORUM

FORUM/2004/6

16 September 2004

## MULTILATERAL FRAMEWORK OF UNDERSTANDINGS ON RESETTLEMENT

### I. PREAMBLE

1. Resettlement is one of the three durable solutions for refugees. It is also a vital instrument of international solidarity, and burden and responsibility sharing, particularly for large-scale and protracted refugee situations. It is equally an important tool for ensuring the protection of refugees. It may help to reduce irregular secondary movements. The Agenda for Protection, endorsed by the Executive Committee of the High Commissioner's Programme and welcomed by the United Nations General Assembly in 2002, among other elements, recognised the need to expand resettlement opportunities and to use resettlement more strategically, and thereby achieve durable solutions for more refugees. Resettlement therefore plays an important role in the context of the United Nations High Commissioner for Refugees' Convention Plus initiative, aimed at providing comprehensive solutions to refugee situations.

2. The following understandings, reached in the context of that Convention Plus initiative, while not legally binding, are intended to strengthen the international refugee protection system through a more strategic use of resettlement for the benefit of a greater number of refugees. Their purpose is to guide parties to situation-specific multilateral agreements (namely, UNHCR, refugee hosting countries, resettlement countries, countries of origin, the International Organization for Migration (IOM) and other relevant resettlement partners) in designing comprehensive arrangements which involve multilateral resettlement operations. While not all of the understandings will be relevant to every situation, where they are appropriate, they are to be relied upon. It is also recognized that each multilateral agreement will be unique, depending upon the circumstances.

3. In the context of Convention Plus comprehensive arrangements to achieve durable solutions, resettlement will normally be undertaken in concert with the other durable solutions for refugees and initiatives relating to persons found not to be in need of international protection. There may be situations, however, in which a multilateral resettlement response alone to a refugee situation is appropriate, although a comprehensive resolution of the plight of an entire refugee population may not yet be possible. In such circumstances, the understandings outlined here may also be useful.

4. Convention Plus comprehensive arrangements to achieve durable solutions, as well as multilateral resettlement operations, will be designed and implemented so as to respect fully:

- UNHCR's international responsibilities pursuant to its mandate;

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- the international law obligations of States as set out in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, and other international refugee, humanitarian and human rights law instruments; and
- national legislation and policy applicable to resettlement.

## II. OPERATIVE PARAGRAPHS

### A. Leadership and Coordination

*To maximize the benefits of a multilateral resettlement operation, there is a need for the roles and responsibilities of all parties to be clearly articulated at the outset.*

5. UNHCR to identify, at its own initiative or upon request, refugee situations that would benefit from a multilateral resettlement operation, with special consideration being given to protracted refugee situations. This analysis to focus on the protection and durable solutions needs of the refugee population, the strategic benefits accruing from resettlement and the identification of potential obstacles and constraints.

6. In the context of a multilateral resettlement operation, UNHCR to ensure clear coordination, wide participatory planning, ongoing oversight and monitoring, and regular reporting. UNHCR to organize and facilitate regular and, when necessary, emergency meetings of all parties.

7. UNHCR to lead wide consultations among all relevant stakeholders regarding the logistical, operational and infrastructure requirements of the multilateral resettlement operation and the most time and cost-effective way to meet them.

8. All parties to examine the resource implications, including personnel and training needs, to meet the objectives of the multilateral resettlement operation. Each party, as appropriate, to formulate a plan of action to meet any additional resource and training requirements that are identified.

9. Recognizing that resettlement is a core activity, UNHCR to work to ensure that its capacity to discharge its resettlement responsibility is adequate and/or adjusted to meet prevailing needs, and to seek assistance and support as necessary.

10. In some situations it may be necessary for UNHCR to launch an appeal for funding in order to meet the financial requirements of the multilateral resettlement operation. Any such appeal to include, as appropriate, the needs of UNHCR, IOM, and other parties. Such an appeal may invite countries and organizations not involved in providing resettlement places to contribute resources and lend their support by any other appropriate means.

11. Resettlement countries to cooperate in pledging places with the aim of meeting the identified resettlement needs and to provide undertakings regarding the number of refugees and profiles of populations to be resettled. In this regard, resettlement countries to consult with UNHCR and relevant resettlement partners so as to make best use of their respective expertise, in order to maximize the number of resettlement places being made available.

### B. Timely Registration and Documentation

*To maximize the benefits of a multilateral resettlement operation, all parties must know the characteristics of the refugees, including the most vulnerable.*

12. Host countries, with the assistance of UNHCR and relevant resettlement partners, to register and document a refugee population in a timely manner in line with the basic guidelines set out in Executive Committee Conclusion No. 91 (LII) 2001.<sup>1</sup> The absence of comprehensive information provided through registration, however, should not preclude the use of resettlement in emergency and/or mass influx situations.

13. All parties to seek a full understanding of the characteristics of the refugee population, including particularly vulnerable cases such as survivors of violence and torture, persons with medical needs (e.g. HIV/AIDS, mental health needs, disabilities), women-at-risk, separated children and the elderly, so as to best delineate and coordinate their respective responsibilities.

14. Registration preferably to include biometric data where possible.

15. At the time of registration, UNHCR, host countries and relevant partners to coordinate efforts to establish the identity of individual refugees and identify all members of a family present in the host country and in other countries.

16. UNHCR, in consultation with relevant resettlement partners, to develop a resettlement identification and referral plan to be agreed to by the parties.

### C. Selection Criteria

*Flexible resettlement criteria and the use of group methodology can contribute to securing protection and durable solutions for more refugees.*

17. Resettlement countries to consider developing selection criteria to provide themselves with the flexibility to resettle persons of concern to UNHCR who may not fall within the terms of the 1951 Convention. Governments may wish to consider the refugee definitions contained in the 1969 OAU Convention governing the specific aspects of refugee problems in Africa and/or the 1984 Cartagena Declaration on Refugees.

18. UNHCR to continue to develop its methodology for identifying groups for resettlement based on common characteristics.

19. Under the leadership of UNHCR, resettlement countries to cooperate, where appropriate, in the use of the group methodology for identifying groups in need of resettlement. The use of this methodology is not to preclude the application of individual

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<sup>1</sup> See also *UNHCR Resettlement Handbook*, UNHCR, Department of International Protection, (Rev. July 2002). UNHCR is in the process of revising the *Resettlement Handbook*. See also *UNHCR Handbook for Registration* (2003).

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selection criteria. As national legislation and policy may dictate the manner in which individual resettlement countries deal with the referral of groups, any limitations with respect to group processing to be identified at the outset.

20. Refugees are not arbitrarily to be screened out of a multilateral resettlement operation solely on account of characteristics such as physical and mental condition, gender, ethnicity, race, religion, age, political opinion, nationality or country of origin.

#### D. Family Unity

*Family is the fundamental unit of society. Successive Executive Committee Conclusions<sup>2</sup> call on States to respect family unity and support family reunion. Family members can provide a strong and effective support system and, in so doing, enhance the integration of resettled refugees.*

21. Without prejudice to individual refugee preference, all parties to respect and maintain family unity. In this context, “family” at a minimum includes immediate family, as provided for in national legislation or policy.

22. Resettlement countries to endeavour to maintain the unity of broader family units, taking into account cultural variations, as well as economic and emotional dependency factors.

23. In situations where immediate family members are in the same host country, that country to permit and facilitate the unification of family members within the country.

24. Resettlement countries to respect the unity of the family when processing applications for resettlement. Where immediate family members are in different host countries and resettlement is the preferred durable solution, resettlement countries to make every effort to facilitate reunification through resettlement of the family in one country.

25. If a refugee has immediate family members who are already established in a participating country, that country normally to be the first to consider an application to reunite the family, when resettlement is the most appropriate durable solution.

26. If a refugee has immediate family members who are already established in a non-participating country, UNHCR to ask that country to consider an application to reunite the family.

27. Resettlement countries to consider all available lawful channels, including non-refugee admission procedures, in endeavoring to ensure the unity of the family.

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<sup>2</sup> See Conclusion Nos. 1, 9, 24, 84, 84 and 88.

### E. Transparency

*Multilateral resettlement operations require open communication among parties on all matters that have an impact on resettlement processing. It is important that refugees be consulted and provided with information on the resettlement process.*

28. All parties to maintain the transparency of the resettlement process, giving due consideration to the privacy needs of individuals.

29. UNHCR, in consultation with other parties and partners, to develop a strategy to inform and consult with refugees on the resettlement process, so as to ensure that the multilateral resettlement operation is not adversely affected due to false information or unrealistic expectations, and that refugees participate in the process on an informed basis.

30. UNHCR to work with host countries and relevant resettlement partners as well as refugee communities to provide appropriately targeted information and counselling to refugees on:

- their options for durable solutions;
- eligibility and selection criteria, and information on groups or types of individuals identified for resettlement by a particular country; and
- in the case of refugees considered for resettlement, the procedures for resettlement and for family reunification.

### F. Integrity of Process

*Misuse of resettlement processes compromises multilateral resettlement operations, and jeopardizes the strategic use of resettlement.*

31. All parties to put in place the necessary management systems to deter, detect and take appropriate action against those who engage in fraudulent practices relating to the resettlement process, including registration.

32. All parties to assist in the investigation of fraudulent activities affecting the resettlement process and, when appropriate, countries to prosecute any persons within their national territories who engage in such activities contrary to national legislation.

33. Where appropriate, UNHCR, host countries and resettlement countries to endeavor to provide adequate protection to those who report fraudulent activities.

34. Host countries, with the assistance of UNHCR where appropriate, to monitor new arrivals in host countries and to establish coherent screening processes. All parties to contribute to a collective response to detect and deter non protection-related population movements in order to ensure the integrity and continuation of the resettlement effort.

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### G. Maximizing effective programme delivery

*Among the benefits of multilateral resettlement operations are the efficiencies that can be gained by pooling resources and expertise, and by having ready access to refugees for resettlement purposes. Time and cost savings may result in additional resources to assist more refugees.*

35. All parties to endeavour to avoid duplication of efforts by sharing information and resources, while respecting confidentiality concerns.

36. Host countries, with the assistance of the parties and the international community where appropriate, to:

- ensure that candidates for resettlement are readily accessible to UNHCR, resettlement countries and relevant resettlement partners, including for the purpose of selection interviews and follow-up procedures;
- facilitate resettlement activities through the prompt issuance of entry and other necessary documentation and authorization to the staff of UNHCR and relevant resettlement countries and partners;
- allow the movement of refugees for the purposes of resettlement eligibility interviews, medical examinations, security checks, visas, family reunification and other pre-departure requirements for resettlement; and
- facilitate the departure of refugees selected for resettlement, including by the timely issuance of exit permits and travel documents, and to avoid taking measures which might impede the process.

37. While respecting privacy principles and the need to safeguard individual security, all parties to share personal information when it is consistent with the purpose for which it was collected such as identifying special needs, facilitating medical clearances and family unity, as well as for exclusion purposes.

38. UNHCR and relevant resettlement partners to provide logistical support to the host and resettlement countries throughout the multilateral resettlement operation. This may include arranging and facilitating interviews, assisting with the arrangement of medical examinations and transportation, facilitating the issuance of exit permits and travel documents, and assisting with any other procedures integral to the resettlement process.

39. In some situations, to enhance the effectiveness of resettlement efforts, countries and UNHCR to avail themselves of the expertise and to rely on the support of relevant resettlement partners in activities integral to the resettlement process. Some examples may include:

- assisting UNHCR in the identification of refugees for resettlement;
- case preparation and verification of refugee files for management by UNHCR and consideration by resettlement countries;



- assisting in the facilitation of resettlement countries' interview and adjudication missions;
- arranging medical examinations;
- providing pre-departure cultural orientation and integration briefings; and
- requesting security checks, facilitating the issuance of exit permits and travel documents, and arranging transportation.

#### H. Integration Support

*Resettlement is a process beginning with the identification and assessment of refugees requiring protection and ultimately resulting in a durable solution leading to their successful reception and integration.<sup>3</sup> Resettlement countries to ensure that, prior to resettlement, measures are put in place to provide for the appropriate reception and integration of resettled refugees. The full and mutual benefits of resettlement are enhanced by such measures, as elaborated, for example, in Refugee Resettlement: An International Handbook to Guide Reception and Integration.<sup>4</sup>*

40. Resettlement countries and relevant resettlement partners to work with refugees, as needed, to enhance their effective integration, with a view to progressively attaining the standards enjoyed by nationals. The following are some examples of the kinds of services that have proven helpful:

- providing pre-departure and post-arrival orientation;
- providing access to education (including language training and skills development), employment and health and social services;
- working to engender public support and acceptance, including through public relations campaigns, especially in situations where a number of refugees are resettled in a short period of time; and
- promoting naturalization.

41. Resettlement countries to accord resettled refugees secure legal status upon arrival, including civil, political, economic, social and cultural rights.

42. Resettlement countries to endeavour to ensure that resettled family members of resettled refugees receive a secure legal status unaffected by subsequent changes in the family unit, such as through divorce or death.

<sup>3</sup> See ExCom Conclusion 90 (LII) 2001, para. (I).

<sup>4</sup> First published in September 2002 by the Victoria Foundation for Survivors of Torture (VFST), Melbourne, Australia in cooperation with UNHCR and its international partners in refugee resettlement. This publication builds on deliberations of the International Conference on the Reception and Integration of Resettled Refugees (Norrköping, Sweden, 25-27 April 2001).

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I. Sustained and enhanced commitment

*Multilateral resettlement operations require sustained commitment. Such commitment is also needed to protect and offer durable solutions to refugees who are not covered by a multilateral resettlement operation. Expanding resettlement opportunities is an ambition of this framework, and includes increasing the number of countries engaged in resettlement and consolidating the capacity of new resettlement countries.*

43. All parties to maintain their commitment to the multilateral resettlement operation and the provision of durable solutions until the objectives of the multilateral agreement have been achieved.

44. Working in close co-operation with UNHCR, all parties to endeavour to assist emerging resettlement countries that have made a commitment to participate in the multilateral resettlement operation. This can be done, for example, by providing technical support, training, sharing information about good practices in refugee reception and integration or, if appropriate, financial support.

45. All parties, working in close co-operation with UNHCR, to encourage the participation of countries not currently active in refugee resettlement so as to expand and diversify resettlement opportunities globally.

46. Host countries to continue to provide secure first asylum to refugees and adhere to the principle of *non-refoulement* in accordance with international standards.

47. In cases in which refugees are not selected or accepted for the multilateral resettlement operation, all parties to continue to respond to their asylum and assistance needs while actively seeking other durable solutions.

48. Resettlement countries to continue to address through resettlement the needs of other refugees who are not included in the multilateral resettlement operation but for whom resettlement is the appropriate solution and/or the only means to guarantee their protection.

Handout no. 11

## **AGENDA FOR INTERNATIONAL PROTECTION<sup>80</sup>**

Global Consultations on International Protection/General (June 2002)  
(Excerpts)

(Goals 5,6)

### **5. Expansion of resettlement opportunities**

- UNHCR to work to enhance protection through an expansion of the number of countries engaged in resettlement, as well as through more strategic use of resettlement for the benefit of as many refugees as possible, taking, however, into account the resource implications thereof.
- States that do not yet offer resettlement opportunities to give active consideration to making some resettlement places available.
- States and UNHCR, in cooperation with NGOs, to develop capacity-building programmes with new resettlement countries, involving training, as well as "twinning" and related support.
- States that offer resettlement opportunities to consider increasing their resettlement quotas, diversifying their intake of refugee groups, and introducing more flexible resettlement criteria.
- States to put in place policies to ensure that resettlement runs in tandem with a more vigorous integration policy, aimed at enabling refugees having durable residence status to enjoy equality of rights and opportunities in the social, economic and cultural life of the country, especially as regards: education, including language training and skills development; the labour market; family reunification; and citizenship.

### **6. More efficient use of resettlement both as a protection tool and as a durable solution**

<sup>22</sup> See also Goal 3, objective 6.

- States and UNHCR, working in cooperation with NGOs, to streamline requirements for the processing of applications for resettlement, with a stronger focus on protection needs.
- States and UNHCR to explore the feasibility of establishing a central biometric registration system to support the identification of refugees in need of resettlement.
- States and UNHCR to examine how to carry out earlier analysis of data deriving from refugee registration, to anticipate the needs for resettlement of individuals or specific groups and to process more rapidly resettlement applications, particularly in emergency situations.
- States and UNHCR to give increased attention to gender related protection needs in their resettlement programmes, in addition to the Women-at-risk category.
- UNHCR to improve methods and mechanisms to minimize the potential for malfeasance and address corruption and fraud, and to keep ExCom informed of this effort.
- States and UNHCR to ensure the availability of increased resources for resettlement activities, integrated in a balanced way in each geographic operation.

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<sup>80</sup> See full document, "Agenda for protection", (2002) at the website of UNHCR: [www.unhcr.ch/cgi-bin/texis/vtx/protect/+QwwBmSe\\_DTpnwwwxFgzvxqnvWx6mFqA72ZR0gRfZnHfQa72ZR0gRfZnTfQrpGdBnqBzFqr72ZR0gRAfQa72ZR0gRfZNDzmxwww1Fqr72ZR0gR/opendoc.pdf](http://www.unhcr.ch/cgi-bin/texis/vtx/protect/+QwwBmSe_DTpnwwwxFgzvxqnvWx6mFqA72ZR0gRfZnHfQa72ZR0gRfZnTfQrpGdBnqBzFqr72ZR0gRAfQa72ZR0gRfZNDzmxwww1Fqr72ZR0gR/opendoc.pdf)

Handout no. 12

**UNHCR EXCOM CONCLUSIONS RELATING TO THE ISSUE OF RESETTLEMENT**

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**CONCLUSIONS ADOPTED BY THE EXECUTIVE COMMITTEE ON INTERNATIONAL PROTECTION OF REFUGEES**

**No. 99 (LV) - 2004**

**General Conclusion on International Protection**

The Executive Committee

(...)

(t) Acknowledges, consistent with UNHCR's Convention Plus initiative, the importance of comprehensive approaches, especially for the resolution of protracted and large-scale refugee situations, which incorporate, as appropriate and given the specifics of each refugee situation, voluntary repatriation, local integration and resettlement; encourages UNHCR, States and other relevant actors to pursue comprehensive arrangements for specific refugee situations that draw upon combinations of solutions; and notes that a community development approach, ensuring the participation of refugee men and women, and refugee children, as appropriate, contributes to the success of such solutions;

(v) Welcomes the Multilateral Framework of Understandings on Resettlement, developed by the Core Group on the Strategic Use of Resettlement; notes that the Framework is part of the comprehensive approach envisaged by the Convention Plus initiative; anticipates that its practical application will improve access to durable solutions for a greater number of refugees and therefore encourages interested States, UNHCR and other relevant partners to make full use of the Framework;

(x) Encourages States and UNHCR to put into practice the strategic use of resettlement in a spirit of international burden and responsibility sharing, in conjunction with other durable solutions, especially to resolve protracted refugee situations; and also encourages the further development of the group resettlement referral methodology and continuing efforts for its implementation, mindful that exploring greater flexibility in refugee resettlement could assist in expanding resettlement opportunities;

(...)

**No. 100 (LV) - 2004**

**Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations**

The Executive Committee

(...)

(m) Recommends further that action to address and facilitate durable solutions, with a view to burden and responsibility sharing, be directed, as appropriate, in the form of voluntary repatriation, local integration or resettlement in third countries or, where applicable, in a strategic combination, and assistance to host countries, including through:

i. the more effective and strategic use of resettlement as a tool of burden and responsibility sharing, including through the application of a group resettlement referral methodology;

(...)

**No. 95 (LIV) - 2003**

**General Conclusion on International Protection**

The Executive Committee

(...)

(i) Reiterates the crucial importance of achieving durable solutions for refugees and urges States and UNHCR to continue their efforts in this regard to promote and facilitate, in conditions of safety and dignity, voluntary repatriation as the preferred solution, in addition to working proactively on local integration and resettlement opportunities where appropriate and feasible;

(j) Notes the willingness of UNHCR, with the support and assistance of the international community, to participate in regional efforts, where appropriate, to provide protection and to achieve durable solutions for refugees, by working closely with countries in the region and other partners;

(p) Welcomes the High Commissioner's "Convention Plus" initiative and encourages the High Commissioner and those States which have offered to facilitate "Convention Plus" agreements to strengthen the international protection regime through the development of comprehensive approaches to resolving refugee situations, including improving international burden and responsibility sharing and realizing durable solutions; and calls on UNHCR to report regularly to the Executive Committee on "Convention Plus" developments;

(q) Welcomes the report of the Working Group on Resettlement<sup>3</sup>, particularly its important reflections on how this durable solution can be enhanced and used more strategically, including as part of comprehensive durable solutions arrangements and reaffirms the vital role of international resettlement in providing orderly, well targeted durable solutions;

(v) Encourages States to co-operate with UNHCR on methods to resolve cases of statelessness and to consider the possibility of providing resettlement places where a stateless person's situation cannot be resolved in the present host country or other country of former habitual residence, and remains precarious;

(...)

#### **N. 85 (XLIX) - 2001**

##### **DURABLE SOLUTIONS**

The Executive Committee

(...)

(ff) Urges States, particularly countries of origin of refugees, resolutely to cooperate at the bilateral, regional and universal levels to address the underlying causes of refugee flows, both in a preventive and curative manner, and to facilitate just and lasting solutions;

(gg) Recalls Conclusion No.62 (XLI) which states that voluntary repatriation, local integration and resettlement, that is, the traditional solutions for refugees, all remain viable and important responses to refugee situations, even while voluntary repatriation is the pre-eminent solution;

(hh) Calls upon countries of origin, countries of asylum, UNHCR, and the international community to take all necessary measures to enable refugees to exercise freely their right to return to their homes in safety and dignity;

(ii) Emphasises the importance of reconciliation for facilitating and ensuring the durability of return and calls upon States and all other actors, including the refugees themselves, to cooperate willingly and generously in all initiatives undertaken to bring lasting peace and justice to reintegrating communities;

(jj) Reaffirms the continuing importance of resettlement as an instrument of protection and an element of burden-sharing; calls on UNHCR to continue to work with resettlement countries to improve the efficiency and timely provision of resettlement opportunities for those where resettlement is the appropriate solution; encourages States which have not already offered resettlement opportunities to refugees, and which are capable of doing so, to join in offering such opportunities, and calls on States and UNHCR to pay particular attention to the resettlement of individual refugees with special protection needs, including Women-at-risk, minors, adolescents, elderly refugees, and survivors of torture.

(...)

#### **N. 87 (L) – 2001**

##### **DURABLE SOLUTIONS**

The Executive Committee

(...)

(r) Reaffirms that voluntary repatriation, local integration and resettlement are the traditional solutions for refugees, and that all remain viable and important responses to refugee situations; reiterates that voluntary repatriation, where and when feasible, remains the preferred solution in the majority of refugee situations; and notes that a combination of solutions, taking into account the specific circumstances of each refugee situation, can help achieve lasting solutions;

Stateless persons and internally displaced persons

(s) Notes with concern the persistence of statelessness problems; welcomes the accession of Chad to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, as well as the accession of St Vincent and the Grenadines and Zimbabwe to the 1954 Convention relating to the Status of Stateless Persons; and encourages UNHCR to continue to promote further accessions to and full implementation of both instruments by the States concerned;

(t) Recalls Conclusion No. 75 (XLV) on internally displaced persons; takes note of resolution 53/125 adopted by the United Nations General Assembly in December 1998; reiterates the relevance of the Guiding Principles on Internal Displacement,[1] and reaffirms its support for UNHCR's role with internally displaced persons on the basis of criteria specified by the General Assembly.

(...)

**N. 90 (LII) – 2001**

**RESETTLEMENT**

The Executive Committee

(...)

(j) Emphasises that the ultimate goal of international protection is to achieve a durable solution for refugees and commends States that continue to facilitate these solutions, notably voluntary repatriation and, where appropriate and feasible, local integration and resettlement, while recognising that voluntary repatriation in conditions of safety and dignity remains the preferred solution for refugees;

(k) Commends in particular efforts made by States and by UNHCR to ensure the diverse uses of resettlement as an important tool of international protection, as a durable solution to be used strategically along with the other two durable solutions, appropriate, as part of a comprehensive approach to enhance protection, and as an expression of international solidarity and a means of burden or responsibility sharing, particularly in countries of asylum coping with large numbers of refugees or protracted refugee situations;

(l) Acknowledges that resettlement is a process beginning with the identification and assessment of refugees requiring protection and ultimately resulting in a durable solution leading to their successful reception and integration; and in this context takes note of the principles on the development and implementation of reception and integration practices developed by the International Conference on the Reception and Integration of Resettled Refugees convened in Norrköping, Sweden, from 25 to 27 April 2001;[1]

(m) Encourages initiatives directed at diversifying resettlement opportunities by further increasing the number of resettlement countries, thereby sharing resettlement needs more widely, and meeting increased resettlement needs; acknowledges that capacity-building is essential to develop and sustain the necessary conditions for successful integration of resettled refugees in emerging resettlement countries, and underlines the important catalytic role which UNHCR should play in this regard; acknowledges the important role that regional arrangements have played in certain regions in supporting diversified resettlement opportunities;

(n) Recognises the importance of further strengthening tripartite partnerships, and of strategically enhancing a consultative and collaborative approach to resettlement and notes that further efforts are needed to ensure more responsive and speedy processing, better identification of urgent needs, and co-ordination; and urges further UNHCR efforts to ensure the integrity of the processing of the resettlement caseload and encourages States and UNHCR to continue to pursue a strategic and systematic approach to the problem of attempted fraud or other abuse;

(...)

**No. 79 (XLVH) - 1996**

**GENERAL CONCLUSION ON INTERNATIONAL PROTECTION**

The Executive Committee,

(...)

(q) Notes that voluntary repatriation, local integration and resettlement are the traditional durable solutions for refugees, while reaffirming that voluntary repatriation of refugees is the most preferred solution, where feasible;

(r) Reaffirms its conclusion 67 (XLII) on resettlement as an instrument of protection and as a durable solution, and welcomes the action taken recently by UNHCR,

including the issuance of the Resettlement Handbook on criteria and procedures, and encourages training activities to support resettlement operations in the field;

(s) Acknowledges the resettlement efforts undertaken by Governments and the efforts being made by UNHCR to take full advantage of resettlement opportunities and to find solutions for individual refugees considered in need of resettlement, and in this connection urges Governments to respond actively to the resettlement needs of refugees in a spirit of burden-sharing;

(t) Encourages the regular exchange of information as part of the ongoing consultations of UNHCR with Governments and NGOs on resettlement;

**No. 77 (XLVI) - 1995**

**GENERAL CONCLUSION ON INTERNATIONAL PROTECTION**

The Executive Committee,

(...)

(a) Distressed at the continued suffering of refugees for whom a solution has yet to be found; reaffirms that respect for fundamental humanitarian principles, including safeguarding the right to seek and enjoy in other countries asylum from persecution, and full regard for the principle of non refoulement, is incumbent on all members of the international community; and urges the continued commitment of States to receive and host refugees and ensure their protection in accordance with accepted legal principles;

(b) Notes that the search for solutions to refugee problems is an integral part of the High Commissioner's mandate for international protection, and that identifying and implementing solutions to the problems of refugees requires the constant support of the international community in order that the will and capacity of individual States are reinforced in this common pursuit;

(p) Reiterates the continued importance of resettlement as an instrument of protection and its use as a durable solution to refugee problems in specific circumstances; welcomes the initiative in commissioning an evaluation study and the UNHCR-sponsored consultation on resettlement; and encourages UNHCR to continue the process of dialogue with interested Governments and non-governmental organizations to strengthen its activities in this connection, and to provide regular reports to the Executive Committee;

(q) Reaffirms its Conclusion 48 (XX7KVIII) on Military or Armed Attacks on Refugee Camps and Settlements and reiterates that, the grant of asylum or refuge being a peaceful and humanitarian act, refugee camps and settlements must maintain their exclusively civilian and humanitarian character, and all parties are obliged to abstain from any activity likely to undermine this; condemns all acts which pose a threat to the personal security of refugees and asylum seekers, and also those which may endanger the safety and stability of States; calls on States of refuge to take all necessary measures to ensure that the civilian and humanitarian character of refugee camps and settlements is maintained and, in this regard, calls on all other States to assist them; and further calls on States of refuge to take effective measures to prevent the infiltration of armed elements, to provide effective physical protection to refugees and asylum seekers, and to afford UNHCR and other appropriate organizations prompt and unhindered access to them.

(...)

**No. 67 (XLII) - 1991**

**RESETTLEMENT AS AN INSTRUMENT OF PROTECTION**

The Executive Committee,

(...)

Reaffirming the link between international protection and resettlement as an instrument of protection and

its important role as a durable solution in specific circumstances,

(a) Calls on governments in a position to assist, to establish refugee admission ceilings, in the context of international burden-sharing;

(b) Requests States when setting refugee admission ceilings to include an adequate contingency provision which could be available depending on need to address

rapidly evolving situations;

(c) Recognizes that rapidly evolving situations can result in fluctuating resettlement requirements from one year to another and that admission ceilings should be adaptable to such developments;

(d) Recognizes the need for rapid and flexible response to UNHCR resettlement requirements in particular for vulnerable groups and emergency protection cases subject to refugee admission requirements of receiving States;

(e) Acknowledges the utility of close consultation with UNHCR in the resettlement activities of the Office;

(f) Recognizes that in reviewing UNHCR resettlement requests the protection element inherent in such requests should be taken into account;

(g) Emphasizes that UNHCR pursues resettlement only as a last resort, when neither voluntary repatriation nor local integration is possible, when it is in the best interests of the refugees and where appropriate.

(...)

**No. 61 (XLI) - 1990**

**GENERAL CONCLUSION ON INTERNATIONAL PROTECTION**

The Executive Committee,

(...)

(e) Emphasizes the close nexus between international protection, international solidarity, material assistance and the provision of solutions through voluntary repatriation, integration in countries of asylum, or resettlement, and calls upon the High Commissioner to continue his efforts to ensure that protection measures are fully integrated into assistance and durable solutions programs;

(f) Noting the link between protection and resettlement, underlines the need for states to provide adequate places for refugees in need of resettlement;

(g) Notes that countries of first asylum carry the major burden of refugees, displaced persons and asylum seekers, and calls on the international community and the High Commissioner to continue efforts to share the task of providing assistance and solutions and to pursue the search for mechanisms that provide solutions appropriate for the groups involved;

(...)

**No. 55 (XL) - 1989**

**GENERAL CONCLUSION ON INTERNATIONAL PROTECTION**

The Executive Committee,

(...)

(m) Underlined that resettlement is not only a possible solution for some refugees, but is also an urgent protection measure in the individual case, welcomed the fact that several African States provide such resettlement opportunities, and invited all states to make places speedily available to respond to urgent or emergency protection situations facing individual refugees;

(...)

**No. 47 (XXXVIII) - 1987**

**REFUGEE CHILDREN**

The Executive Committee,

(...)

(1) Stressed the need for internationally and nationally supported programmes geared to preventive action, special assistance and rehabilitation for disabled refugee children and encouraged States to participate in the "Twenty or More" Plan providing for the resettlement of disabled refugee children;

(...)



**No. 38 (XXXVI) - 1985**

**RESCUE OF ASYLUM SEEKERS IN DISTRESS AT SEA**

The Executive Committee,

(...)

(a) Reaffirmed the fundamental obligation under international law for shipmasters to rescue all persons, including asylum seekers, in distress at sea;

(b) Recalled the conclusions adopted by the Executive Committee at previous sessions recognizing the need to promote measures to facilitate the rescue of asylum seekers in distress at sea [No. 20, No. 23, No. 26, No. 31, No. 34];

(c) Expressed satisfaction that the rescue of asylum seekers in distress at sea has increased significantly in 1985 but at the same time expressed concern that many ships continued to ignore asylum seekers in distress at sea;

(d) Welcomed the fact that the provision of an appropriate number of resettlement places had made it possible for the Rescue at Sea Resettlement Offers (RASRO) scheme to commence on a trial basis as from May 1985;

(e) Welcomed the wide-ranging initiatives undertaken by UNHCR to promote the rescue of asylum seekers in distress at sea and the support given to these initiatives by States;

(f) Strongly recommended that States maintain their support of UNHCR action in this area and, in particular, that they:

(i) join or renew contributions to the DISERO (Disembarkation Resettlement Offers) and to the RASRO (Rescue at Sea Resettlement Offers) schemes, or to either of them, as soon as possible;

(ii) request shipowners to inform all shipmasters in the South China Sea of their responsibility to rescue all asylum seekers in distress at sea.

(...)

**No. 34 (XXXV) - 1984**

**PROBLEMS RELATED TO THE RESCUE OF ASYLUM SEEKERS IN DISTRESS AT SEA**

The Executive Committee,

(...)

(a) Noted with concern that rescue of asylum seekers in distress at sea has decreased significantly in 1983 and again in 1984;

(b) Recalled the Conclusion on the Rescue of Asylum seekers at Sea adopted by the Executive Committee at its thirty-fourth session recognizing the need for promoting measures for facilitating the rescue of asylum seekers in distress at sea;

(c) Welcomed the actions taken by UNHCR to draw attention to the continued need to rescue asylum seekers in distress at sea and expressed the hope that these actions would receive the widest possible support of Governments;

(d) Strongly recommended that the Rescue at Sea Resettlement Offers (RASRO) Scheme be implemented on a trial basis as soon as possible and that additional resettlement places be provided as a matter of urgency;

(e) Recognized the need for continued support for the DISERO (Disembarkation Resettlement Offers) Scheme and recommended that States renew their contributions to this scheme.

(...)

**No. 24 (XXXH) - 1981**

**FAMILY REUNIFICATION**

The Executive Committee,

Adopted the following conclusions on the reunification of separated refugee families.

(...)

7. The separation of refugee families has, in certain regions of the world, given rise to a number of particularly delicate problems relating to unaccompanied minors. Every effort should be made to trace the parents or other close relatives of unaccompanied minors before their resettlement. Efforts to clarify their family situation with sufficient certainty should also be continued after resettlement.

Such efforts are of particular importance before an adoption -- involving a severance of links with the natural family-- is decided upon.(...)

**No. 23 (XXXH) - 1981**

**PROBLEMS RELATED TO THE RESCUE OF ASYLUM SEEKERS IN DISTRESS AT SEA**

The Executive Committee,

(...)

Adopted the following conclusions on problems related to the rescue of asylum seekers in distress at sea.

1. It is recalled that there is a fundamental obligation under international law for ships' masters to rescue any persons in distress at sea, including asylum seekers, and to render them all necessary assistance. Seafaring States should take all appropriate measures to ensure that masters of vessels observe this obligation strictly.
  2. Rescue of asylum seekers in distress at sea has been facilitated by the willingness of the flag States of rescuing ships to provide guarantees of resettlement required by certain coastal States as a condition for disembarkation. It has also been facilitated by the agreement of these and other States to contribute to a pool of resettlement guarantees under the DISERO scheme which should be further encouraged. All countries should continue to provide durable solutions for asylum seekers rescued at sea.
  3. In accordance with established international practice, supported by the relevant international instruments, persons rescued at sea should normally be disembarked at the next port of call. This practice should also be applied in the case of asylum seekers rescued at sea. In cases of large-scale influx, asylum seekers rescued at sea should always be admitted, at least on a temporary basis. States should assist in facilitating their disembarkation by acting in accordance with the principles of international solidarity and burden-sharing in granting resettlement opportunities.
  4. As a result of concerted efforts by many countries, large numbers of resettlement opportunities have been, and continue to be, provided for boat people. In view of this development, the question arises as to whether the first port of call countries might wish to examine their present policy of requiring resettlement guarantees as a precondition for disembarkation. Pending a review of practice by coastal States, it is of course desirable that present arrangements for facilitating disembarkation be continued.
  5. In view of the complexity of the problems arising from the rescue, disembarkation and resettlement of asylum seekers at sea, the High Commissioner is requested to convene at an early opportunity a working group comprising representatives of the maritime States and the coastal States most concerned, potential countries of resettlement, and representatives of international bodies competent in this field. The working group should study the various problems mentioned and elaborate principles and measures which would provide a solution and should submit a report on the matter to the Executive Committee at its thirty-third session.
- (...)

**No. 22 (XXXII) - 1981**

**PROTECTION OF ASYLUM SEEKERS IN SITUATIONS OF LARGE-SCALE INFLUX**

The Executive Committee,

Noting with appreciation the report of the Group of Experts on temporary refuge in situations of largescale influx, which met in Geneva from 21-24 April 1981, adopted the following conclusions in regard to the

protection of asylum seekers in situations of large-scale influx.

(...)

**IV. International solidarity, burden-sharing and duties of States**

1. A mass influx may place unduly heavy burdens on certain countries; a satisfactory solution of a problem, international in scope and nature, cannot be achieved without international co-operation. States shall, within the framework of international solidarity and burden-sharing, take all necessary measures to assist, at their request, States which have admitted asylum seekers in large-scale influx situations.

2. Such action should be taken bilaterally or multilaterally at the regional or at the universal levels and in co-operation with IJNHCR, as appropriate. Primary consideration should be given to the possibility of finding suitable solutions within the regional context.
3. Action with a view to burden-sharing should be directed towards facilitating Voluntary repatriation, promoting local settlement in the receiving country, providing resettlement possibilities in third countries, as appropriate.
4. The measures to be taken within the context of such burden-sharing arrangements should be adapted to the particular situation. They should include, as necessary, emergency, financial and technical assistance, assistance in kind and advance pledging of further financial or other assistance beyond the emergency phase until durable solutions are found, and where voluntary repatriation or local settlement cannot be envisaged, the provision for asylum seekers of resettlement possibilities in a cultural environment appropriate for their well-being. (...)

## GENDER AND RESETTLEMENT- PROCEDURAL ISSUES

### All training materials needed:

#### **PowerPoint slides:**

Nos. 8.1, 8.2, 8.3, 8.4 8.5 Gender and resettlement – procedural issues

#### **Handouts:**

**No. 13** Gender-sensitivity and procedural issues in the context of refugee status determination and durable solutions;

**No. 14** Gender-sensitivity and the 1951 Refugee Definition;

**No. 15** Conducting an interview;

**No. 16** Interviewing applicants who have suffered a trauma;

**No. 17** Barriers to communications.

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## Gender and resettlement – procedural issues



- The presence of qualified and gender trained staff is promoted and, where possible, ensured at all stages of the asylum procedures and the resettlement procedures;
- Refugees are provided with any information they need in a manner and language s/he understand;
- Refugees are informed of their possibility to choose an interpreter and resettlement officer of the same sex; and women refugees are automatically provided same sex interpreter and resettlement officer;
- Equal access exists for men and women refugees to information on resettlement;
- Equal access exists for men and women refugees to resettlement procedures, e.g. no barriers exist for women to get access, such as male guardians outside the office, fear of sexual harassment, not enough female interpreters;
- The resettlement officer is well informed about the human rights situation for women and lesbian, gay, bisexual and transgender refugees in the relevant country of asylum as well as in the country of asylum;

PowerPoint-slide no. 8.1

## Cont.



- The resettlement officer is familiar with the UNHCR Gender Guidelines (2002) and checklists exist in order to ensure that adequate measures are in place to both identify and respond to gender-based violence.
- Accelerated resettlement procedures are in place for refugee women at risk;
- Separate interviews are ensured -without the presence of family members;
- Refugees are informed that every person, including a woman and a child, may have a valid claim in his/her own right;
- Resettlement officers and interpreters are aware and responsive to cultural or religious sensitivities or other personal factors (gender, age, education);
- An open and reassuring environment is provided e.g. with regard to interview room;
- The resettlement officer introduces him/herself and the interpreter, and explains roles of each person as well as purpose of interview;

PowerPoint-slide no. 8.2

## Cont.



- The resettlement officer explains the resettlement criteria and the refugee definition to the applicant as well as the resettlement process and type of questions which will be asked,  
  
including questions relating to gender roles and gender-based violence and discrimination in the family, community and the state as well as opinions on the same;
- The resettlement officer reminds the applicant of his or her rights and obligations, inter alia the right to confidentiality,
- The resettlement officer remains neutral, compassionate and objective during the interview;
- The resettlement officer avoids body language or gestures that may be perceived as intimidating or culturally insensitive or inappropriate;

PowerPoint-slide no. 8.3

## Cont.



- The resettlement officer is aware of gender differences in communication, especially regarding non-verbal communication.
- The resettlement officer ensures minimal interruption while applicant presents her claim;
- Both 'open-ended' and specific questions are used as appropriate;
- The resettlement officer should be aware that lack of knowledge, or even contradictory answers, on the part of female family members does not mean the entire testimony should be discounted as lacking credibility;

PowerPoint-slide no. 8.4

## Cont.



- The resettlement officer employs the eligibility criteria related to gender-related persecution and asks questions in a manner which encourages women to speak out about their experiences, inter alia:
  - is aware and adapts questions to the fact that some women may not associate themselves with politics and they may not label as torture or ill-treatment the forms of gender-based violence they have experienced in the country of origin.
  - asks questions about gender relations in the state, community and family.
  - ensures the employment of a gender-sensitive questionnaire.
- The resettlement officer should be responsive to the trauma and emotion of claimants, including being open to take a break or to and stop an interview where claimant is becoming emotionally distressed;
- Mechanisms for referral to psychosocial counselling and other support services should be made available where necessary;
- Second and subsequent interviews may be needed in order to establish trust and to obtain all necessary information;

PowerPoint-slide no. 8.5

Handout no. 13

**GENDER SENSITIVITY AND PROCEDURAL ISSUES IN THE CONTEXT OF  
REFUGEE STATUS DETERMINATION AND DURABLE SOLUTIONS  
- A CHECKLIST<sup>82</sup>**

**1. Overall Standard**

- The presence of qualified and gender trained staff, (i.e. border guards, RSD-workers, resettlement officers, protection officers, interpreters, adjudicators, counsellors, doctors and psychologist and other law enforcement personnel, who meet asylum seekers and refugees) is promoted and, where possible, ensured at all stages of the asylum procedures and the resettlement procedures, in order to facilitate sensitivity to gender needs and issues.
- Checklists and guidelines on gender issues exist and are used by government, law enforcement personnel, UNHCR, and NGO staff.
- Men and women have equal access to all forms of assistance,
- No barriers exist for women to get access to the asylum process as well as to resettlement procedures, e.g. male guardians outside the office, fear of sexual harassment, not enough female interpreters, no information about the asylum system at places women may visit.
- Equal and easy access to legal counselling and orientation of asylum seekers is ensured for both women and men upon arrival at the entry points.
- Special support is given to women asylum seekers, especially women who are unaccompanied, and pregnant and nursing mothers, including provision of play corner for children and private areas for breast-feeding/baby care.
- Emergency medical assistance is provided equally to male and female asylum seekers awaiting registration.
- The office has a policy of giving expedited procedures for groups, such as traumatised women and children and unaccompanied children etc.
- Routine assessment of needs and analysis of risks are made in order to ensure appropriate protection and assistance to men and women.
- Activities are undertaken to promote awareness and understanding of human rights and to ensure appropriate protection and assistance to men and women.
- Opportunities are created for equal representation of women and men in structures/mechanisms of co-operation between refugees and UNHCR, and its partners, as well as in decision-making mechanisms within their own communities.
- UNHCR and counterparts (both government and NGO) include in all their reports gender/age disaggregated information and statistical analysis which should be the basis for targeting population and assistance planning (POP).
- Regular trainings take place of UNHCR, NGO, and government staff to recognise gender issues.
- Local, government, UN and other international agencies that have a gender-specific programme as part of their priority agenda are identified. Advocacy, capacity-building, and networking with these agencies are initiated or sustained,
- Mechanisms exist for women to provide feedback on appropriateness of systems and services.

**2. Refugee Status Determination Procedures (RSD)**

**Before or at a very early stage of the interview**

- Ensure that the interview room is arranged to encourage discussion, promote confidentiality and lessen possibility of perceived power imbalances and ensure that

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<sup>82</sup> This handout is compiled by Maria Bexelius, consultant UNHCR, 2005. It is largely based upon training document "Interviewing applicants for refugee status, UNHCR Training module R2D4, 1995, as well as UNHCR Gender Guidelines dated 2002 and 1991 and the UK Gender Guidelines (2000).

you and the interpreter adopt an appropriate dress code and approach to ensure establishment of a trusting and respectful atmosphere.

- ❑ Ensure availability of trained psychosocial counsellors before, during and after interview.
  - ❑ Ensure that questionnaires are gender-sensitive.
  - ❑ Ensure that the interview is performed in a way which corresponds with a gender-sensitive interpretation of the 1951 UN Refugee Convention's definition of who is a refugee (see separate checklist on how to ensure a gender-sensitive interpretation of the refugee definition).
  - ❑ Where it is envisaged that a case may give rise to a gender-related claim, adequate preparation is needed, both with regard to procedural issues and the interpretation of the 1951 Refugee Convention (see separate checklist for the latter).
  - ❑ Provide same sex RSD-workers and interpreters automatically for women claimants. For claimants who allege to have been victims of sexual attack, a trained staff member of the same sex must always conduct the interviews unless the applicant requests otherwise. The same RSD-worker should remain involved in the case in order to avoid the applicant being handed from one person to another. This would include arranging for the applicant to have follow-up counselling or medical and legal assistance;
  - ❑ The applicant is informed of choice to have RSD-workers and interpreters of the same sex as herself/himself.
  - ❑ Ensure that there will be separate interviews - without the presence of family members.
  - ❑ RSD-worker explains that every person, including a woman and a child, may have a valid claim in their own right;
- 
- ❑ The RSD-worker is well informed about the human rights situation for women and lesbian, gay, bisexual and transgender refugees in the relevant country of asylum as well as in the country of asylum, e.g. discriminatory laws, policies and practices as well as the prevalence of sexual and other forms of gender-based violence in refugee camps or other settings committed by male guards, humanitarian workers or by others within the refugee community or the family (domestic violence etc.).
  - ❑ The RSD-worker is familiar with the UNHCR Sexual and Gender-based Violence against Refugees, Returnees and Internally-Displaced People: Guidelines for Prevention and Response (2003) and checklists exist in order to ensure that adequate measures are in place to both identify and respond to gender-based violence.

#### **The initial part of the interview**

- ❑ Introduce yourself and the interpreter to the applicant, and explain the roles of each person as well as the purpose of the interview.
- ❑ Make sure the applicant and interpreter understand one another before proceeding with the interview.
- ❑ Review the information provided on the basic data/registration form with the applicant to ensure it is accurate and complete;
- ❑ Provide the applicant with information about the RSD process and legal advice in a manner and language they understand.
- ❑ Explain to the applicant the refugee definition and the type of questions you will be asking, including questions relating to gender roles in the family, community and the state as well as opinions on the same;
- ❑ Remind the applicant of his or her right to confidentiality, right to counsel, obligation to provide evidence, and obligation to tell the truth.
- ❑ Reassure the applicant of the confidentiality principle (including with regard to members of own family).
- ❑ Inform the applicant that you meet a lot of asylum seekers, including women subjected to torture and different forms of violence (as appropriate), who carry very difficult experiences and that you thus understand that it sometimes can be very hard to share his/her difficult experiences made before, during and after flight, and even more difficult to share these with a public official. Emphasize this, while explaining that it is also essential that s/he reveal as much as possible about his/her experiences in order for you to understand his/her situation as correct as possible



and to have as much information as possible when the risk assessment will take place and the decision will be made on whether or not s/he qualify for refugee status.

- ❑ Inform the applicant that it is ok to take breaks, if s/he feels very bad, and explain that you would be very grateful if s/he can inform you of his feelings if, for example, it feels very difficult to answer some questions because the memories are so painful. Tell him/her that you are well aware of the fact that it sometimes may be difficult to remember details, but that the more details s/he remembers the better as it helps you understand his/her case better.
- ❑ Mention that some answers to questions may appear very self-evident for the applicant, and explain that you might still have to ask some of those questions in order to understand the point of view of the applicant and to avoid unnecessary misunderstandings.
- ❑ Explain that you are not a trauma counsellor.

#### **During the interview**

- ❑ Be aware and responsive to cultural or religious sensitivities or other personal factors (gender, age, education).
- ❑ Remain neutral, compassionate and objective during the interview.
- ❑ Avoid body language or gestures that may be perceived as intimidating or culturally insensitive or inappropriate.
- ❑ Ensure minimal interruption while applicant presents his/her claim.
- ❑ Ensure that you are aware of gender differences in communication, especially regarding non-verbal communication. This is particularly important in the context of cross-cultural communication (e.g. a female may avoid eye contact with the interviewer due to her culture);
- ❑ Employ the eligibility criteria related to gender-related persecution and ask questions in a manner which encourage women to speak out about their experiences;
- ❑ Use both 'open-ended' and specific questions, as appropriate. It may be more appropriate to for example ask about her/his "problems" and when these started, instead of asking a specific question.
- ❑ Remember that questions about political activities should not focus only on political activities as narrowly defined, such as office holding, but should be wider ranging as political activities may also include, but not be limited to, providing food or shelter, message taking, hiding people or refusing to conform to particular social norms regarding gender roles.
- ❑ Ensure that issues regarding gender roles and thus the status of women in the state, society and family are covered, as are opinions around these issues.
- ❑ Ensure that issues regarding the state's willingness and ability to give effective protection to women who are at risk of violence by the husband or other non-state actors are covered and that it is explored whether it would be reasonable or not to require a person to seek state protection.
- ❑ Ensure that issues regarding the reasonability to apply an internal flight alternative are covered.
- ❑ Remember that where questions are asked about "persecution" or "torture" female asylum seekers may not give information about the particular ill-treatment which they have suffered. This may occur because she might not herself understand that the term "torture" or "persecution" may include sexual violence, violence within the family, abortion or other forms of harm suffered by women. A different approach might be to ask whether an applicant has been, and fear to be "treated badly".
- ❑ Use non-confrontational open and/or indirect questions in order to establish the applicant's reasons for fleeing and to obtain indications about whether gender-related harm has occurred.
- ❑ Remember that the applicant might not always know what information is relevant to his/her claim and that he/she does not herself have to phrase her experiences and fear in correspondence with the elements of the refugee definition;
- ❑ Be responsive to the trauma and emotion of applicant and stop an interview where he/she is becoming emotionally distressed.
- ❑ If you suspect that the applicant has been a victim of sexual violence, or if the applicant is unable or unwilling to discuss certain events relating to such an incident,

s/he asks discreet and indirect questions. Give the applicant time to tell her story in his/her own way and in his/her own words. The applicant is never forced to communicate, but is assured that the RSD-worker is available to assist him/her once he/she is ready to talk about the problem.

- ❑ Remember that it is unnecessary to establish the precise details of the act of rape or sexual assault itself; focus could be placed on surrounding circumstances and events.
- ❑ Remember that refugee claimants who have been subjected to sexual and other forms of gender-based violence often exhibit a pattern of symptoms as a consequence of the trauma. The symptoms exhibited may include a loss of self-confidence and self-esteem, difficulty concentrating, feelings of loss of control, fear, and memory loss or distortion of facts. Women who have experienced sexual violence may also feel shame and guilt as a consequence of the stigma and she may fear social ostracism or other forms of punishment if it becomes known what she has been subjected to. Women who have suffered sexual or other forms of gender-based violence may, similar to other torture survivors, for example be reluctant to speak about such incidents, especially to state officials. In some cases, it may be appropriate to consider whether claimants should be allowed to provide their testimony in writing so as to avoid having to recount traumatic events in front of strangers;
- ❑ Remember that second and subsequent interviews may be needed in order to establish trust and to obtain all necessary information. Mechanisms for referral to psychosocial counselling and other support services should be made available where necessary.
- ❑ Remember that the type and level of emotion displayed during the recounting of the applicant's experiences should not affect the credibility: cultural differences and trauma play an important and complex role in determining behaviour.
- ❑ Remember that for some cases, it may be appropriate to seek objective psychological or medical evidence.
- ❑ Ensure availability of trained psychosocial counsellors before and after interview, when necessary.

#### **At the end of the interview**

- ❑ Make sure that you have asked the applicant if he or she has anything to add?
- ❑ Make sure that you have advised the applicant of what will happen following the interview?
- ❑ Remember that it is important to be as specific as you can concerning:
  - when the decision can be expected;
  - what will happen if the application is successful (concerning documentation, family reunification, the right to work, etc.);
  - what will happen if the response is negative (explain the right and procedure to appeal).
- ❑ Make sure that you have reassured the applicant that, whatever the circumstances of the case, you will include all the relevant information in the interview report that will accompany the request for recognition of refugee status.
- ❑ Make sure you have thanked the interpreter and given the applicant the opportunity to do likewise.
- ❑ Make sure you have asked the applicant how he/she feels both at the moment and in general as you must assess whether there is a need for psychological counselling etc.

### **3. DURABLE SOLUTIONS**

#### **Resettlement** (see also separate checklist)

- ❑ Ensure equal access to information on resettlement.
- ❑ Ensure gender-sensitive approaches throughout the process of assessing whether there exists a resettlement need (see above under RSD procedures)
- ❑ Ensure accelerated resettlement procedures for Women-at-risk.

#### **Voluntary repatriation**

- ❑ Ensure equal access of women and men to information concerning repatriation.

- ❑ Ensure participation of women and men in decision-making related to voluntary repatriation.
- ❑ Organize return with consideration of gender-specific needs.
- ❑ Ensure gender-balanced reintegration assistance.

**Local integration**

- ❑ Ensure that appropriate legal and social mechanisms are established for local integration in a gender sensitive manner.
- ❑ Work with NGOs on gender specific-activities.
- ❑ Support participation of refugees (including women and children's groups) in community-based activities.
- ❑ Ensure equal access to citizenship and naturalisation and individualised documentation.

Handout no. 14

## **GENDER SENSITIVITY AND THE 1951 REFUGEE DEFINITION - A CHECKLIST<sup>83</sup>**

### **DOES THE HARM FEARED AMOUNT TO PERSECUTION?**

- The question of persecution was assessed with reference to relevant international human rights instruments;
- It was taken into account that gender-based violence and discrimination may constitute serious harm amounting to persecution, irrespective of the agent of persecution or where the harm takes place;
- It was taken into account that gender-based violence and discrimination may amount to torture;

### **IS THE FEAR WELL-FOUNDED?**

- The assessment of well-founded fear was based on detailed and specific information on personal characteristics, circumstances, experiences and fears;
- The assessment was based on relevant and detailed country-of-origin information, e.g. information on the prevalence of different forms of state discriminatory laws, policies and practices, discriminatory social norms, prevalence of different forms of gender-based violence by state and non-state actors and the authorities ability and willingness to provide effective and durable protection against such human rights violations.
- Case-specific factors correlating with gender was considered, e.g. age, education, ethnicity, class, caste, rural or city-belonging, political and Religions etc.;
- It was taken into account that the required country-of-origin information is often lacking in gender-related cases, and that there is a need to recall the principle the-benefit-of-the-doubt and that an applicant's testimony may stand alone and be the basis of a grant of refugee status.
- It was taken into account that where a woman's fear relates to personal-status laws an otherwise positive change in the country conditions may have no impact, or even a negative impact, on a woman's fear of gender-related persecution.
- It was taken into account that where a well-founded fear of state persecution is concluded to exist, there is a presumption of absence of state protection in all parts of the country.
- The RSD-worker had knowledge on different forms of gender-based violence and discrimination, its causes as well as possible psychological, physical, social and legal consequences.

### **IF THE PERSECUTOR IS NOT AN AGENT OF THE STATE, IS THE STATE ABLE AND WILLING TO OFFER PROTECTION?**

- The assessment of whether the state is unwilling or unable to give protection from gender-based violence and discrimination or other abuses committed by non-state

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<sup>83</sup> This checklist is compiled by Maria Bexelius, consultant UNHCR, 2005. The content of it is largely based upon various UNHCR gender guidelines (e.g. Gender Guidelines dated 1991 and 2002 respectively), reports, documents, including other UNHCR guidelines, training materials (e.g. UNHCR Gender Training Kit on Refugee Protection – Handbook, UNHCR Geneva, December 2002) and the UNHCR Handbook (1992). Other main sources of inspiration and information have been various national gender guidelines (such as guidelines produced by authorities in Canada, the USA, Australia, New Zealand, United Kingdom, Sweden etc.) as well as guidelines produced by national NGOs (i.e. gender guidelines produced by the UK NGO Refugee Women's Legal Group (2000)). The book "Refugees and Gender: Law and Process", by Heaven Crawley (Jordan Publications, London, 2001) has also been a major source of information and inspiration as well as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Declaration on the Elimination of Violence Against Women (DEVAW) and various reports submitted by the UN Special Rapporteur on violence against women. This checklist should be used as a tool for RSD-workers or others who are involved in the assessment of refugee status according to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; a tool complementary to the various UNHCR and country guidelines which should be used as main sources of reference.

actors, was based on relevant and detailed country-of-origin information, e.g. state laws, policy and practice relating to protection from various forms of gender-based violence and discrimination. The following questions were answered, as appropriate:

- Has the State Party ratified all the international human rights instruments including the Convention on the Elimination of All Forms of Discrimination against Women?
  - Is there constitutional authority guaranteeing equality for women or the prohibition of violence against women?
  - Is there national legislation and/or administrative sanctions providing adequate redress for women victims of violence?
  - Are there executive policies or plans of actions that attempt to deal with the question of violence against women?
  - Is the criminal justice system sensitive to the issue of violence against women? In this regard, what is the police practice? How many cases are investigated by the police? How are victims dealt with by the police? How many cases are prosecuted? What type of judgements are given in such cases? Are the health professionals who assist the prosecution sensitive to issues of violence against women?
  - Do women who are victims of violence have support services such as shelters, legal and psychological counselling, specialized assistance and rehabilitation provided either by the Government or by non-governmental organizations?
  - Have appropriate measures been taken in the field of education and the media to raise awareness of violence against women as a human rights violation and to modify practices that discriminate against women?
  - Are data and statistics being collected in a manner that ensures that the problem of violence against women is not visible?"
- A reasonability analysis formed part of the assessment, establishing whether it was reasonable or not to expect the applicant to seek state protection, e.g. by taking into account<sup>84</sup>:
- whether the applicant sought and was denied protection by the government;
  - whether the governing institutions and/or government agents were aware of the harm to the applicant and did nothing to protect her or were unable to;
  - whether the applicant has reasons to believe that it was or would be futile to seek the protection of the government (e.g. if the government has denied protection to similarly situated women, or if the government has systematically failed to apply existing laws).
- It was taken into account that the required country-of-origin information is often lacking in gender-related cases, and that there is a need to recall the principle the-benefit-of-the-doubt and that an applicant's testimony may stand alone and be the basis of a grant of refugee status.
- It was taken into account that a claimant does not need to have approached non-state organizations for protection. NGOs can never replace the state responsibility to give protection.
- It was taken into account that where a woman's human rights are being violated by private citizens, an otherwise positive change in the country conditions may have no impact, or even a negative impact, on a woman's fear of gender-related persecution.
- The assessment of whether or not there exists an internal flight alternative was based on a relevance analysis and a reasonableness analysis, which at least answered the following questions:
- Is the area of relocation practically, safely, and legally accessible to the individual? If any of these conditions is not met, consideration of an alternative location within the country would not be relevant.
  - Is the agent of persecution the State? National authorities are presumed to act throughout the country. If they are the feared persecutors, there is a presumption in principle that an internal flight or relocation alternative is not available.
  - Is the agent of persecution a non-State agent? Where there is a risk that the non-State actor will persecute the claimant in the proposed area, then the area will not be an internal flight or relocation alternative. This finding will depend on a determination of whether the persecutor is likely to pursue the claimant to the area and whether State protection from the harm feared is available there.
  - Would the claimant be exposed to a risk of being persecuted or other serious harm upon relocation? This would include the original or any new form of persecution or other serious harm in the area of relocation.

<sup>84</sup> These three points to consider has been presented by Heaven Crawley in "Refugees and Gender: Law and Process", Jordan Publications, London 2001

- Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship? If not, it would not be reasonable to expect the person to move there."
- It was taken into account that international law does not require threatened individuals to exhaust all options within their own country first before seeking asylum.

## **IS THE FEAR OF PERSECUTION LINKED TO A CONVENTION GROUND?**

### **General**

- It was taken into account that a claimant is not required to identify accurately the reason why he or she has a well-founded fear of being persecuted.
- It was taken into account that the convention ground must be a relevant contributing factor, though it need not be shown to be the sole, or dominant, cause.
- It was taken into account that attribution of a convention ground to a claimant by the State or non-state actor of persecution is sufficient to establish the required causal connection.
- It was taken into account that where there is a risk of being persecuted at the hands of a non-state actors (e.g. husband, partner or other non-state actor) for reasons which are related to one of the convention grounds, the causal link is established, whether or not the absence of State protection is convention related. Alternatively, where the risk of being persecuted at the hands of a non-State actor is unrelated to a convention ground, but the inability or unwillingness of the State to offer protection is for reasons of a Convention ground, the causal link is also established.

### **Political opinion**

- Political opinion was understood in the broad sense, to incorporate any opinion on any matter in which the machinery of the state, government, society or policy may be engaged (This would include an opinion has to gender roles, but it would also include non-conformist behaviour which leads the persecutor to impute a political opinion to him or her.)
- It was taken into account that a claim on the basis of political opinion does presuppose that the claimant holds or is assumed to hold opinions not tolerated by the authorities or society, which are critical of their policies, traditions or methods. It presupposes that such opinions have come or could come to the notice of the authorities or relevant parts of the society, or are attributed by them to the claimant.
- It was taken into account that the image of a political refugee as someone who is fleeing persecution for his or her direct involvement in political activity does not always correspond to the reality of the experiences of women in some societies.
- It was taken into account that women are less likely than their male counterparts to engage in high profile political activity and are more often involved in low level political activities that reflect dominant gender roles, such as nursing sick rebel soldiers, cooking for rebel soldiers, recruiting of sympathisers, preparation and dissemination of leaflets.
- It was considered that women are frequently attributed with political opinions of their family or male relatives, and subjected to persecution because of the activities of their male relatives.

### **Religion**

- It was taken into account that there is an overlap between the grounds of religion and political opinion, especially in the realm of imputed political opinion.
- It was understood that a woman may face harm for her particular religious beliefs or practices, or those attributed to her, including her refusal to hold particular beliefs, to practise a prescribed religion or to conform her behaviour in accordance with the teachings of a prescribed religion.

### **Race**

- It was taken into account that persecution for reasons of race may be expressed in different ways against men and women. For example, the persecutor may choose to destroy the ethnic identity and/or prosperity of a racial group by killing, maiming or incarcerating the men, while the women may be viewed as propagating the ethnic or racial identity and persecuted in a different way, such as through sexual violence or control of reproduction.

- ❑ It was understood that the state failure of extending protection could be highly influenced of a person belonging to a particular ethnic group. Being a woman or homosexual man of a specific ethnicity would therefore indicate a greater risk of persecution.

**Nationality**

- ❑ Nationality was not understood only as citizenship. It also referred to membership of an ethnic or linguistic group and may occasionally have overlapped with the term race.
- ❑ It was taken into account that although persecution on the grounds of nationality (as with race) is not specific to women or men, in many instances the nature of the persecution takes a gender-specific form, most commonly that of sexual violence directed against women and girls.
- ❑ It was considered that state failure of extending protection could be highly influenced of a person belonging to a particular ethnic group. Being a woman or homosexual man of a specific ethnicity, could therefore indicate a greater risk of persecution.

**Particular Social Group (PSG)**

- ❑ The PSG was understood as “A group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights”.
- ❑ Following the above definition, a particular social group was understood as holding characteristics which are historical and therefore cannot be changed or characteristics which ought not to be required to be changed because they are so closely linked to the identity of the person or are an expression of fundamental human rights.
- ❑ Sex was understood as an ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently to men
- ❑ There was no requirement that the group should be cohesive.
- ❑ There was no requirement to demonstrate that all members of a particular social group would be at risk of persecution
- ❑ It was taken into account that the size of the purported social group is not a relevant criterion.

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- ❑ The RSD officer is familiar with the UNHCR Sexual and Gender-based Violence against Refugees, Returnees and Internally-Displaced People: Guidelines for Prevention and Response (2003) and checklists exist in order to ensure that adequate measures are in place to both identify and respond to gender-based violence.

Handout no. 15

## CONDUCTING THE INTERVIEW<sup>85</sup>

The purpose of the interview is to uncover the facts and to provide a picture of events that is as complete and objective as possible. As RSD-worker<sup>86</sup>, there are two pitfalls to avoid: appearing judgmental or aloof; being overly sympathetic.

### 1. OPENING THE INTERVIEW

The way you open the interview will set the tone for the rest of the proceedings. The message you must convey to the applicant from the outset is that you are there to hear his or her story in a totally neutral way and that as a representative of your organisation you are concerned and respectful of his or her distress, but you work within a legal framework which imposes certain specific conditions when it comes to eligibility for refugee status.

#### Putting the applicant at ease

Take care to show courtesy and respect by:

- smiling and shaking hands (or some other appropriate gesture of greeting);
- using the applicant's family name (having already made sure that you know how to pronounce it correctly);
- introducing yourself;
- if the interview is not on time, apologising for the delay;
- asking if the applicant is prepared to be interviewed.

#### Introducing the interpreter

- Introduce the interpreter;
- Explain his or her role;
- Check that the applicant and the interpreter understand one other. (Invite the applicant to talk informally for a few moments with the interpreter, then ask if he or she is satisfied that they understand each other.)
- In the case of women applicants, at this stage every effort should already have been made to use a female interpreter and RSD-worker. This is especially important for claims that may involve aspects of sexual and other forms of gender-based violence.
- In the case of children applicants, age sensitivity is important and you should for example arrange to have a trusted adult accompany the child during the interview.

#### Reviewing basic personal information

You should already have read the applicant's basic data or registration form. However, you may find it necessary to go over certain points to make sure that the information you have is accurate and complete.

#### Asking about the applicant mental and physical health and identifying needs

Ask the applicant how s/he feels presently (e.g. try to find out whether s/he has slept well, eaten, feel nervous, afraid etc.), but also how s/he has generally felt since she arrived in the country and applied for asylum. Try to find out what medical, legal, social and other forms of assistance s/he may have received already and what needs (e.g. psychosocial) she might have during and after the interview.

#### Informing the applicant about your experiences and the possibility to take breaks

Inform the applicant that you meet a lot of asylum seekers and thus understand that it sometimes can be very hard to share the difficult experiences made before, during and after flight, and even more difficult to share these with a public official. Emphasize this, while explaining that it is also essential that s/he reveal as much as possible about his/her experiences in order for you to understand his/her situation as correct as possible and to have as much information as possible when the risk assessment will take place and the decision will be made on whether or not s/he qualify for refugee status.

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<sup>85</sup> This handout is compiled by Maria Bexelius, consultant UNHCR, 2005. It is largely reproduced from the training document "Interviewing applicants for refugee status, UNHCR Training module R2D4, 1995.

<sup>86</sup> The words "RSD-worker" and "interviewer" are used interchangeably in this document.



Inform the applicant that it is ok to take breaks, if s/he feels very bad, and explain that you would be very grateful if s/he can inform you of his feelings if, for example, it feels very difficult to answer some questions because the memories are so painful. Tell him/her that you are well aware of the fact that it sometimes may be difficult to remember details, but that the more details s/he remembers the better.

### **Providing some background explanations**

Before commencing the interview the applicant must be provided with certain information. This can be done by giving written information to the applicant during an earlier contact with your office, or by providing it orally before starting the interview. In either case, the following information should be explained to the applicant:

- the applicable refugee definition;
- the procedures followed with respect to the determination of refugee status.

It is particularly important for the applicant to understand that the following questions must be established:

- Does the applicant fear harm mounting to persecution?
- Is this fear well-founded?
- If the persecutor is a non-state actor, is the state unwilling or unable to provide effective or durable protection?
- Is the persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or for reasons defined in the OAU Convention or Cartagena Declaration definition of a refugee?

S/he must understand that persecution from both state and non-state actors, such as the family, husband, or armed political groups, can form the basis of a claim qualifying for refugee status.

Explain that this is why many of the questions that will be asked during the interview will concern:

- the conditions that exist in the country of origin, and more especially in the region where the applicant comes from;
- what kind of difficulties the applicant, members of his or her family, or similarly situated persons have experienced in the past;
- what difficulties might be expected if he or she were to return to that country; why these difficulties will arise.
- her experiences, thoughts, and feelings as to gender-roles in the family, society and the state.

Mention that some answers to questions may appear very self-evident for the applicant, and explain that you will still have to ask some of those questions in order to understand the point of view of the applicant and to avoid unnecessary misunderstandings. Also mention that you might even ask questions which not only appear self-evident to the applicant, but also to you;

Before proceeding, make sure that the applicant has understood the purpose of the interview, and of the questions you will be asking.

### **Reminding the applicant of his or her rights and obligations**

Having by now explained your role as interviewer, it is important to outline the applicant's own rights and obligations. These mainly include:

- The right to confidentiality. Reassure the applicant that none of the information he or she will reveal to you will be shared with the authorities of the country of origin, or with any other third party without the applicant's express consent. You should reassure the applicant that both you and the interpreter will respect the confidentiality of the interview and are under oath to do so. This reassurance is indispensable in order that the applicant may feel that it is safe to talk openly about past experiences and events.
- The right to counsel. [...] Where national legislation provides for the participation of legal and/or other counsel to assist an applicant in presenting his or her claim, it is essential to allow such counsel to participate in the interview. The presence of a legal representative or other counsel who is familiar with the refugee criteria and local jurisprudence and the applicant's claim, is helpful not only to the applicant but also to the interviewer.
- The right and obligation to give evidence. The granting of refugee status depends upon the facts provided by the applicant. Only he or she can provide these facts. As an interviewer you have a vital role to play in helping and encouraging the applicant to bring to light the relevant details of

his or her past experience and to present them convincingly. In order to substantiate the claim, and thereby assist the applicant, the interviewer may need to obtain supporting documentation such as newspaper articles, witness accounts or human rights reports. It is the duty of the interviewer to assist the applicant by drawing his or her attention to the importance of providing all available evidence in support of his or her claim to refugee status. However, the interview is for the applicant. Although the person conducting the interview should be in control, you should recall that the interview process is an opportunity for the applicant to present his or her claim. One way to help you and the applicant identify the main aspects of the claim is to have the applicant submit a short written statement. This statement can then be used as a preparatory tool before the substantive interview begins.

- The obligation to be truthful. Tell the applicant that giving an honest, open testimony is in his or her best interest. The applicant may have been told by others that the chances for recognition are greater if the story is told in a certain way. As an interviewer you must be aware of such realities. It is your job to impress upon the applicant that the case must be based on true experiences and not on false information.

### **Explaining the process**

Tell the applicant how long you expect the interview to last, whether you plan any breaks, and how the questions will be asked. Having explained the preceding steps 1 through 5, you should ask the applicant whether anything remains unclear and requires further explanation. Once everything has been well understood the interview can proceed.

## **2. CLOSING THE INTERVIEW**

When it comes to closing the interview this brief checklist can help tie up loose ends:

- Have you asked the applicant if he or she has anything to add?
- Have you advised the applicant of what will happen following the interview? It is important to be as specific as you can concerning:
  - when the decision can be expected;
  - what will happen if the application is successful (concerning documentation, family reunification, the right to work, etc.);
  - what will happen if the response is negative ( explain the right and procedure to appeal).
- Have you reassured the applicant that, whatever the circumstances of the case, you will include all the relevant information in the interview report that will accompany the request for recognition of refugee status?
- Have you thanked the interpreter and given the applicant the opportunity to do likewise?

## **3. THE MAIN PART OF THE INTERVIEW**

The purpose of the various steps suggested above is to establish a degree of confidence on the part of the applicant. Your task throughout the interview will be to build on this confidence, remaining vigilant for any signs of incomprehension or tension that may arise and seeking to dispel them at once. To maintain confidence is a crucial for your possibility to obtain as much information as possible from the applicant, and consequently for your possibility to make a correct risk assessment. There are both verbal and non-verbal issues to consider in the course of making an interview.

### **NON-VERBAL ISSUES**

#### **Eye contact**

With the exception of certain cultures, where eye contact can have another significance, maintaining a steady and friendly visual expression and keeping eye contact with the applicant suggests that you are paying careful attention to what is being said. Avoid reading papers while the applicant is speaking. If you need to check on a document, wait until there is a pause. Eye contact should be with the applicant, not with the interpreter. Ask your questions directly to the asylum seeker and not "through" the interpreter.

### **Body posture**

Like eye contact, the physical position you adopt can communicate your interest in what the applicant is saying. Be natural, attentive and relaxed. Keep your movements and facial expressions as neutral as possible. This will encourage the applicant to communicate. Don't slouch or move about in your chair, put your feet on the interviewing table, look out of the window. make any gestures (such as shaking your head or rolling your eyes towards the ceiling) that suggest that you do not agree with or believe the story being told.

## **VERBAL ISSUES**

### **Putting questions in a friendly manner and not too quickly**

Put your questions in a friendly manner and not too quickly. Allow the asylum seeker adequate time to present his or her story as freely as possible. Although you may have a large number of cases to review, avoid pushing an applicant to come more quickly to the main point of the testimony as he or she may be about to reveal an important and relevant detail.

### **Using a questionnaire or question checklist with flexibility**

Questions should lead on naturally rather than be drawn from a list you have prepared in advance. An interview questionnaire or question checklist will alert you to the essential elements which should be covered during the interview, including gender-sensitive issues. However, do not confine yourself to a pre-set format or list of questions as this will unduly restrict the flow and scope of the interview.

### **Modulating the voice and pacing the questions to suit the characteristics of the applicant**

Everyone has a way of speaking which varies according to such factors as speed, tone and rhythm. In order to put the applicant more at ease, and thereby encourage him or her to communicate, you should try to modulate your voice and pace your questions to suit the particular characteristics of the applicant.

### **Being prepared to ask follow-up questions**

Throughout the interview you should be prepared to follow-up with questions on all relevant issues which are raised by the applicant. No reply or issue should be left in doubt when you finish the interview. This requires that you remain alert and intellectually active during the interview process.

#### **Example**

A claimant has testified that she was arrested while attempting to distribute leaflets and was detained for three months. In order to clarify this statement you could follow-up with questions such as:

- Why were you detained?
- How were you treated while in detention?
- Were you ever charged with an offence?
- Did you have any contact with your family while in detention?
- Can you describe the place where you were being detained?

Following-up with these questions will provide an opportunity to obtain additional relevant information from the applicant. Such questions will also show that you are concerned and interested in learning about what happened.

### **Being attentive during silences**

Allow the applicant time to think, especially after a general or open question (see below). Avoid the temptation to break the silence by adding a restricted question which may elicit a quick response, but may also prevent the applicant from revealing the full importance a specific event had for him or her.

#### **Example**

Interviewer: "What happened to you after the military seized power?"

Silence

Interviewer: "Were you ever interrogated or arrested?"

A preferable approach, if the silence is too long, is to re-formulate the general question.

Interviewer: "What happened to you after the military seized power?"

Silence

Interviewer: "You mentioned earlier that your troubles began when the military

overthrew the government. Could you tell me about some of the difficulties you experienced?"

Silence from the interviewer (provided it suggests that he or she is interested and awaiting the rest of the story) may encourage the applicant to talk. It gives time to consider a question carefully and can help the applicant recall past events. Considerable non-verbal communication also occurs during such pauses, to which you must be attentive.

Avoid introducing a new question before the applicant has finished replying to the previous question. Give encouragement even if there are hesitations or silences. Nod and quietly prompt with phrases such as "...and then?"; "I understand..."; or repeat a few key words from the previous response.

**Example**

Applicant: When I heard they were looking for me I didn't know what to do. I was afraid to go back to my house or to my job... (pause )

Interviewer: You were frightened...

Applicant: Every day people disappear... Sometimes their bodies are found and sometimes they just disappear... (pause )

Interviewer: I understand...

Applicant: I went to my friend's house. When I told him what had happened, he said that it was very dangerous for me to stay in the city. That is when I decided to leave.

Interviewer: And then what did you do...

By using this approach the applicant is reassured that the interviewer is listening carefully. The interviewer is perceived as encouraging, but remains neutral without taking a position either for or against the applicant's story. In this way the applicant is more likely to want to communicate further information.

**Using open questions**

An open question is one that asks for general information and cannot be answered by "yes" or "no". It is used to gather information on personal opinions and reactions, and is therefore most appropriate at the beginning of an interview. By using open questions, the interviewer provides the applicant the opportunity to relate events in his or her own way.

**Examples**

- What made you decide to leave your country?
- How did your life change after the war?
- Please describe any difficulties you have had with the authorities in your country?
- What happened when the Government changed?
- What kind of problems may you have if you are sent back to your country and what could, in your opinion, be the reasons for why this would occur to you?
- When did the problems with your husband/father/family begin, what kind of things happened, what feelings did you have, what thoughts came to your mind and how did you respond to the problems?

Open questions can help give the interviewer to get a greater understanding of the background to the applicant's problems and unwillingness to return to his or her country of origin. Open questions are also used to encourage the applicant to talk more openly on an important topic.

**Example**

Applicant: I didn't want to get into trouble with the authorities so I stopped going to the meetings. But it made no difference. I know they were still going to get me.

Interviewer: Could you help me understand why you felt that way?

This type of question is likely to elicit more important information.

Open questions can be time-consuming. If the applicant is nervous, emotionally upset, or has misunderstood the type of information you are seeking he or she may become confused and talk at length about irrelevant details. If this occurs the interviewer must gain control of the interview by politely intervening and changing the line of questioning. When asking open questions you must also take into account the education level and cultural background of the applicant in order to as-

sess whether he or she is capable of providing clear and relevant information in response to your questions.

Remember that the applicant might not always know what information is relevant to his/her claim and that he/she does not herself have to phrase her experiences and fear in correspondence with the elements of the refugee definition; it is the responsibility of the RSD-worker to conduct the interview in a manner which cover these issues and enable the applicant to talk as freely as possible about his/her experiences, including experiences of gender-based violence and discrimination as well as of non-conventional forms of political activities.

### Using closed questions

A closed question calls for a short response, usually "yes", "no", or a simple statement of fact. Try to avoid closed questions unless you make follow-up questions to get clarifications. Closed questions serve to fill in information that is not clear from the applicant's story, particularly when there are contradictory details.

#### Examples

- Where were you detained? How were you treated in prison? What did the prison authorities do to you? How big was your cell? Were you alone in the cell?
- You said that you hid with your brother but on your basic data form you have indicated that your only brother lives abroad. How many brothers do you have?
- When did you leave your country and when did you arrive here? Who paid for your voyage?
- Did you have a visa to enter this country?

### Alternating between open and closed questions

Alternating between open and closed questions will help to reduce tension as the applicant will be able to express him or herself more freely during the interview. It will also help avoid making the applicant feel that you are deliberately pursuing confusing or contradictory points. Keep your questions short and uncomplicated. Don't ask a string of questions that will leave the applicant feeling confused. Don't interrogate as in a cross-examination, or use a harsh tone of voice when asking your questions. Don't treat discrepancies or omissions as if they are automatically indicative of an applicant lack of credibility; be aware that you may have misunderstood the applicant or s/he may have omitted information because of her difficulties to speak with anyone, and especially a law enforcement personnel, about traumatising experiences she has gone through in the past.

#### Example

An RSD-worker says: "When you applied for your visa, you said you had a good job and could only take a two-week holiday. You did not mention any problems with the authorities or your husband. At the airport, you said you had no relatives in this country but your brother is also a refugee applicant, isn't he? Now you tell me you will be persecuted if you are sent back home. You lied to get your visa and you lied at the airport. Why should I believe you now?"

Such type of questions should not be asked. Considering the prevailing difficulties to obtain visas if a person is at risk of human rights violations, and the fact that many countries would reject a visa application to a person who has a well-founded fear of persecution, the statements made in a visa application should generally not be held against the applicant.

#### Example

- An applicant states that she was detained for the last six months of 2002 but her passport was issued in October of that year.

Do not automatically take this as indicative of her lacking in credibility. This discrepancy may be due to a confusion of dates, or to the fact that the passport was obtained by a relative or friend (perhaps using a bribe).

#### Example

- An applicant testifies that her brother was arrested for taking part in a student strike and is still in detention. Her basic data form indicates that the applicant's only brother is living in the United States.

Do not automatically take this as indicative of her lacking in credibility. The use of the word "brother" may have a specific cultural meaning. Alternatively, the interpreter might simply have forgotten to add the second brother's name to the form.

**Example**

- An applicant claims to have taken refuge at a friend's house for fear of being arrested. However, he also declares that he continued to go to work each day at the same job.

In order to understand how he could continue to go to work, ask a neutral question such as: "Weren't you frightened of being arrested at work or followed to your hiding place?" This will encourage the applicant to provide additional explanations. It may well be that he consciously took the risk of going to his work place since he could not afford to leave the country at that time, and his main concern was to remain as long as possible for the safety of his family.

**Example**

- An applicant, fearing her abusive husband and relatives, claims that she was hiding at a friend's house for two months before the travel was arranged through the assistance of the friend and a supportive relative.

Do not take for granted that this means that she could be safe if returned and that she could live at her friend's or supportive relative's house. Remember that she must be sure to get effective and durable protection. Instead of questioning her credibility, encourage her to tell you about the thoughts and feelings she had at that time regarding her situation and what life options she had to choose between at that time.

**Example**

- An applicant, fearing her abusive father and relatives, claims that she did neither turn to any women organisations or other NGOs for help, nor did she report the threats and abuses to the police.

Do not take this information as indicative that she would probably get state protection and that she may even get support from NGO:s. Remember that a reasonability analysis must be made with regard to the availability of state protection and she may have reason to believe that that authorities would not assist her in case submitted a report. Also remember that women organisations and other NGO:s can never replace the responsibility of the state to give effective and durable protection from human rights abuses. Instead of questioning her credibility, encourage her to tell you about the thoughts and feelings she had at that time concerning her situation, fear and what options for the future she considered herself having at that point of time.

**Example**

- An applicant states he received the first death threat in March, and then received them every two or three weeks. In May someone tried to run him over with a truck, yet he only left the country the following February.

In order to better understand his experiences, you may ask him "You must have been very frightened. What did you think about your alternative ways of escaping death? When did you decide that the best alternative was to leave the country? " A question such as this will invite additional information. On the other hand, a direct question such as "Why did you take so long before deciding to leave?" may well create a guarded, defensive reaction and deprive you of the explanations you are seeking.

There may be situations when the RSD-worker needs to pose confronting questions as a means of clarifying that are confusing or appear contradictory. Confronting is a complex skill requiring tact, patience and the ability to convince the applicant of the need to look objectively at his or her testimony and dispel any unclear points or contradictions. Avoid at all costs adopting a critical or judgmental attitude since this will destroy the atmosphere of confidence you have tried so patiently to establish.

If you are faced with contradictory or unclear statements allow the applicant the opportunity to provide an explanation. One technique you could use is to put the blame on yourself and say for example: "I'm sorry, I may have misunderstood you, can we check that part of your story together as I do not want to make any mistakes". In this way you can avoid making the applicant feel uneasy or nervous.

Another method is to try to reformulate your questions. You should recall that due to cultural differences, the translation provided, health problems, or lack of attention, the applicant may have misunderstood what was being asked, In such a case, the applicant may more readily understand your questions if they are reformulated or asked in another way.

Throughout the interview, avoid phrasing your questions in a judgmental way. This will intimidate the applicant and block or distort communication. Be positive in your approach. Use phrases such as "Could you explain...?" or "You seem to be saying...".

If after going over a part of the story the inconsistencies remain, do not push the applicant to provide an explanation. If you cannot confirm or obtain satisfactory explanations at that stage of the interview, drop it, you can always return to that point at a later time. Remember that second and subsequent interviews may be needed in order to establish trust and to obtain all necessary information. Be alert as there may be something that the applicant does not want, or is unable, to tell you, such as traumatic experiences of torture, including sexual or other forms of gender-based violence.

Remember that the type and level of emotion displayed during the recounting of the applicant's experiences should not affect the credibility: cultural differences and trauma play an important and complex role in determining behaviour.

Remember that for some cases, it may be appropriate to seek objective psychological or medical evidence.

#### **Being responsive to trauma**

Be responsive to the trauma and emotion of applicant and stop an interview where he/she is becoming emotionally distressed. Mechanisms for referral to psychosocial counselling and other support services should be made available where necessary.

Remember that it is unnecessary to establish the precise details of the act of rape or sexual assault itself; focus could be placed on surrounding circumstances and events.

## **INTERVIEWING APPLICANTS WHO HAVE SUFFERED TRAUMA<sup>87</sup>**

- Experiences of torture and sexual abuse are not readily reported.
- The intense feelings of powerlessness, shame and guilt and the acute disruption of life, in which the beliefs of a person about the meaning of life are lost, compel people to hide them.
- The coping process is characterised by an alternating pattern of re-experience and denial of the traumatic events, with all associated psychological responses.
- A traumatised person (especially a survivor of torture, including sexual and other forms of gender-based violence) has often difficulties to explain their asylum claim in a coherent, chronological, detailed way and a non-trained RSD-worker might thus wrongly question the applicant's credibility and/or eligibility for refugee status.
- In many cases, ex-detainees, victims of torture including various forms of gender-based violence, are usually very reluctant to speak about their experiences. It is of great importance to recognise that the empathetic way of conducting an interview will to a great extent determine the quality of the disclosure of violent acts.

### **Detecting Traumatised Persons**

Be especially attentive for signs of possible trauma in the following categories of persons:

- individuals who present the physical stigma of torture, e.g. women who have suffered rape. The presence of such stigma is indicative of the nature and extent of torture;
- soldiers and ex-soldiers;
- known POWs or detainees;
- inhabitants of town or village subjected to organised violence;
- members of a specifically persecuted group (ethnic, religious, political, etc.).

### **Trauma Symptoms**

In general the consequences of the trauma of extreme violence can be very diverse. They can be looked at as being part of several categories:

- Recurrent Memory Phenomena (flashbacks, nightmares, intrusive thoughts.
- Hyper-arousal (sleeping problems, irritability, aggressiveness, concentration problems)
- Somatic Symptoms (fatigue, gastrointestinal complaints, cardiac symptoms, headaches, diffuse aches and pains, muscular and joint problems, sexual dysfunction)
- Anxiety reactions (panic attacks, generalised anxiety affecting physical, sexual, mental and social functioning)
- Sadness/Grief (depressed mood, loss of interest in previously pleasurable activities, loss of appetite, suicidal thoughts)

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<sup>87</sup> This handout is compiled by Maria Bexelius, consultant UNHCR, 2005. It is largely based upon UNHCR Guidelines on Evaluation and Care of Victims of Trauma and Violence (1998), and it is also inspired by the UNHCR Gender Guidelines (2002), and UK Gender Guidelines (2000).



- Avoidance of situations which remind the victim of traumatic experiences (including talking about it)
- Phobias
- Emotional numbness (disconnected from family, friends and loved ones, self-medication, etc.)
- Body numbness (frigidity, not feeling one's own body, feeling body changes, feeling like outside one's own body, feeling "possessed").

### **How do I Respond to a Person Suffering from Trauma?**

'Simply acknowledging and inquiring about the realities of a refugee's experience has therapeutic value.'

- Be prepared.
- Brief the interpreter, if you know in advance about particularly sensitive information.
- Explain your function and that of the interpreter so that they know what to expect from you and during the interview.
- Remain calm and neutral, but be an empathetic listener and show sensitivity
- remain professional and in control at all times.

#### **Also**

- Acknowledge how difficult it may be to speak about certain events.
- Acknowledge the pain, wounds or other suffering they may share with you- DO NOT SIMPLY IGNORE these revelations.
- Reassure them, tell them to take their time.
- Offer them a break, a glass of water, a tissue.
  
- To extent possible, do not interrupt them when they are telling their story; it may have taken a lot of courage to get to this point, and they may not be able to regain it and resume their account.
- If they show signs of distress, ask them how they feel, if they would like to take a break or even proceed again the next day.
- It is unnecessary to establish the precise details of the act of rape or sexual assault itself (focus could be placed on surrounding circumstances and events).
- Let them know you are not a psychologist.
- Refer them to someone who can provide them with psychosocial, and medical assistance, and other support services. If possible give them the specific name of a person that they can ask for (it is less impersonal).
- For some cases, it may be appropriate to seek objective psychological or medical evidence.
- Be familiar with practical protection measures for preventing and responding to sexual violence (including recognising symptoms of PTSD and other signs).
- Have the applicant see a trained psychosocial counsellor before and after the interview.
- Seek immediate assistance for the person if you believe they may pose a danger to themselves or to others.

#### **Further readings:**

- The UNHCR Guidelines on Sexual Violence Against Refugees, 1995
- UNHCR Guidelines on Evaluation and Care of Victims of Trauma and Violence, 1998
- UNHCR Guidelines on Gender-Related Persecution (2002)
- WHO [Guidelines for medico-legal care for victims of sexual violence](#) (2003)
- [WHO ethical and safety recommendations for interviewing trafficked women](#) (2003)
- UK Gender Guidelines (2000)

## **BARRIERS TO COMMUNICATION<sup>88</sup>**

Interviewing applicants for refugee status has another dimension than interviewing in other contexts since so much is at stake. A successful outcome can mean a new start and fresh hope for the applicant and his or her family, while a negative result may spell despair and danger. This knowledge places a heavy responsibility upon the RSD-worker. Good communication during the interview is key in order to make a correct risk assessment. It is thus essential that s/he has knowledge of common barriers to communication and has tools which can be used to overcome these.

### **The effects of trauma**

- A person who has undergone a physical or mental shock may be particularly reluctant to re-live the emotions by relating events from which he or she has suffered, as this may be the case when something reminds him/her of the events. The unwillingness to talk may or may not be conscious. In more extreme cases, past experiences have been suppressed from the conscious mind. It is not unusual for an applicant to break down and become incapable of coherent expression, or be able to remember only certain events from his or her past.
- Forgetfulness affects us all and is one of the major obstacles in remembering events. For persons seeking asylum, dates, locations, distances, events, and even significant personal experiences can be forgotten or blurred due to mental shock or lapse of time.
- Omissions, inconsistencies or inaccuracies on the part of the applicant do not necessarily mean dishonesty, but is a common and frequently seen characteristic at persons who have experienced traumatic events, e.g. survivors of torture and ill-treatment, including sexual and other forms of gender-based violence. The chronological order of events may be particularly difficult to reconstruct. Often the applicant remembers the events that affected him or her most in emotional or physical terms while retaining little of the time sequence.

### **Fear to share information**

An asylum seeker having left his or her country through fear of persecution is likely to carry this anguish with him or herself for some time. It may manifest itself in a number of ways, such as:

- fear of persons in authority (particularly those in uniform);
- fear of putting relatives or friends in danger in the country-of-origin;
- fear of the interview process;
- fear of the consequences if the application is rejected;
- fear of the interpreter or RSD-worker breaching the confidentiality agreement;
- fear of the perpetrator/s who threatened the applicant while requiring silence.

### **Loss of self-esteem**

The applicant may seek to withhold information which he or she believes will lower the respect of others towards him or herself. In this context, gender, and cultural and societal expectations are factors to be considered. For example, a man may find it hard to admit to having experienced fear or to having been obliged to leave his wife and children unprotected. A woman who has been subjected to sexual violence may feel such shame and guilt that she cannot think of telling her family, friends or unknown persons about her suffering. A woman who have left her children may also be reluctant to talk about that immediately.

### **Culture shock**

Persons who move from one culture to another, especially if this implies a move from a less developed to a more developed environment, may experience bewilder-

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<sup>88</sup> This handout is compiled by Maria Bexelius, Consultant, UNHCR, 2005. It is largely reproduced from the training document "Interviewing applicants for refugee status, UNHCR Training module R2D4, 1995

ment and anxiety. This in turn can affect their ability to make a clear and coherent statement. The asylum seeker may speak in a confused and unconvincing manner not because he or she is lying, but because of the insecurity and anxiety caused by the difficulties of life in a new social and cultural environment. Unfamiliarity with the style of question-and-answer interview may be another factor which inhibits communication.

### **Disparities of notions and concepts**

Quite common words can carry different meanings from one culture to another and be a source of misunderstanding. This problem can have serious repercussions for an asylum-seeker.

#### **Example**

A Turkish asylum seeker, applying for refugee status in Switzerland, stated that he had escaped arrest by hiding in the *mountains* near his home town. The application was rejected. Among the reasons given was the fact that the town was situated amid *hills*. For the Swiss interviewer there were no mountains in the region and thus the applicant was considered to be not credible. However, in Turkish, the term "mountain" also applies to hilly regions. Other common words that can give rise to misunderstanding include *brother* and *cousin*. For many Africans, for example, these words are not limited to close relatives but extend to all members of the tribe. Notions of *time*, of *truth* and *falsehood* can also vary from culture to culture and give rise to misunderstandings that put the asylum seekers' credibility in doubt. Women may not label as *torture* or *persecution* their experiences of gender-based violence, including rape, and they may claim that they have not been involved in any *political* activities just because they do not themselves consider non-conventional forms of politics being political. Consequently, the risk of persecution may be underestimated.

### **What can you do to overcome these barriers?**

- Be aware of your responsibilities at all times. Never forget that an unfair decision can have serious consequences for the applicant.
- Ensure that you receive adequate training focusing on torture, including sexual and other forms of gender-based violence, and possible social, psychological, legal and other consequences thereof in order to make a correct risk assessment and respond adequately on the needs of an applicant who is traumatised.
- Provide particular attention for those refugee claimants who may be victims of torture or sexual violence or, due to their age or disability, require special care when being interviewed.
- Be aware that an applicant may have a mental or emotional disturbance which impedes a normal examination of his or her case. If it is considered that an applicant may have such a condition you should seek medical advice concerning the health of the applicant.
- If you detect symptoms of trauma, try to avoid adding to the trauma by doing the following:
  - make sure the room does not resemble a court room;
  - avoid having persons in uniform;
  - if the applicant is agitated or nervous try to pose your questions in a relaxed manner.
  - Reassure the applicant that you are trying to help and can best do so if your questions are answered directly and truthfully;
  - Inform the applicant of the possibility to take pauses, to continue in his/her own tempo and to meet with a trauma counsellor during and after the interview.
- In order to support the information received during the interview, use whatever documentary evidence is available (documents received from the applicant, newspaper and human rights reports, medical reports, etc.);
- Reassure the applicant that any information provided will be kept strictly confidential. Clarify the role of the interpreter and inform the applicant that the interpreter is under oath to maintain the confidentiality of the interview proceedings.
- Always remain neutral. Refrain from posing questions that appear judgmental such as, for example: "How could you leave the country without your family?", "How could you leave your children with a stranger?"

- A number of additional factors which can affect the applicant-interviewer, and applicant-interpreter, relationships are as follows: compatibility of age, gender, social class, education, race, belief, political and social values or disability. Throughout the interview you should be aware of these factors and how they may affect or complicate communication with the applicant. You should also brief the interpreter concerning these issues.

If it is not possible to continue and finish the interview, schedule an appointment for a new interview.

**COUNTRY PROGRAMS, INCLUDING WOMEN-AT-RISK**

**All training materials needed:**

***Handout:***

No. 18 UNHCR Resettlement Handbook, Geneva November 2004 (last updated), Chapter 11 (excerpts), selected country programs: USA, Australia, Canada

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*Handout no. 18*

**UNHCR RESETTLEMENT HANDBOOK, GENEVA NOVEMBER 2004, (LAST UP-  
DATED), CHAPTER 11, (EXCERPTS), SELECTED COUNTRY PROGRAMMES:**

**USA  
AUSTRALIA  
CANADA**

UNHCR Resettlement Handbook, Geneva November 2004, (last updated), Chapter 11, (excerpts), selected country programs: USA, Australia, Canada

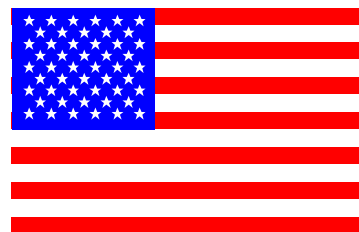
The documents are available at the UNHCR-website: [www.unhcr.ch/cgi-bin/teXis/vtx/home?page=PROTECTandid=3d4545984andID=3d4545984andPUBLISHER=TW](http://www.unhcr.ch/cgi-bin/teXis/vtx/home?page=PROTECTandid=3d4545984andID=3d4545984andPUBLISHER=TW)  
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**CHAPTER**  
**USA**

**The**  
**UNITED STATES**  
**OF AMERICA**

**BY THE GOVERNMENT OF**  
**THE UNITED STATES OF AMERICA**

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## **1. Resettlement Policy**

The United States has a long tradition of granting refuge to those fleeing persecution.

Since the Second World War, more refugees have found permanent homes in the United States than in any other country. Admission of refugees of special humanitarian concern to the United States as well as admission of those for the purpose of family reunification are important tenets of the U.S. refugee resettlement programme.

At the federal level, the Bureau of Population, Refugees and Migration (PRM) of the Department of State administers the U.S. refugee resettlement programme in conjunction with the Citizenship and Immigration Services (CISDHS) of the Department of Homeland Security and the Office of Refugee Resettlement (ORR) of the Department of Health and Human Services (HHS). Non-governmental organizations play a major role in domestic resettlement activities and, along with the International Organization for Migration (IOM), in overseas processing.

## **2. Criteria for Refugee Status Eligibility and Asylum**

A person must meet the U.S. definition of a refugee found in Section 101(a)(42) of the Immigration and Nationality Act (INA), which closely follows the definition in the 1951 UN Convention. The INA also defines as refugees, under certain circumstances specified by the President, certain persons who are within their country of nationality, or if they do not have a nationality, the country in which they are habitually residing (See Annex B).

## **3. Criteria for Resettlement**

Applicants for refugee admission into the United States must meet all of the following criteria:

1. Meet the definition of a refugee contained in Section 101(a)(42) of the INA (see Annex B);
2. Be among those refugees determined by the President to be of special humanitarian concern to the United States;
3. Be otherwise admissible under U.S. law; and
4. Not be firmly resettled in any third country



## 4. Resettlement Allocations / Processing Priorities

The Administration annually consults with the Congress on the U.S. refugee admissions programme. These consultations provide an opportunity for Congress and Administration representatives: The Department of State, the Department of Homeland Security, and The Department of Health and Human Services; to discuss the international and domestic implications of U.S. refugee policy. These consultations are the culmination of a many-faceted, consultative process that includes discussions with Congressional staff, representatives of state and local governments, public interest groups, international and non-governmental organizations such as the Refugee Council USA (RCUSA), the American Council for Voluntary International Action (InterAction), and others concerned with refugees. During the Congressional consultations, the President's proposed refugee admissions programme for the coming fiscal year is presented. This proposal includes information on refugee admissions levels, groups of refugees of special humanitarian interest to the United States, and processing priorities.

The processing priorities serve as guidelines to determine eligibility for access to the USG resettlement programme and as a tool to manage the refugee admissions process within the established annual regional ceiling. The following priorities are in effect for Fiscal Year 2004 (1 October 2003 - 30 September 2004):

### **Priority One**

UNHCR or U.S. Embassy identified cases: persons facing compelling security concerns in countries of first asylum; persons in need of legal protection because of the danger of refoulement; those in danger due to threats of armed attack in an area where they are located; or persons who have experienced recent persecution because of their political, religious, or human rights activities (prisoners of conscience); Women-at-risk; victims of torture or violence, physically or mentally disabled persons; persons in urgent need of medical treatment not available in the first asylum country; and persons for whom other durable solutions are not feasible and whose status in the place of asylum does not present a satisfactory long-term solution. As with all other priorities, Priority One referrals must still establish a creditable fear of persecution or history of persecution in the country from which they fled. All nationalities are eligible for processing under Priority One.

### **Priority Two:**

#### **Groups of Special Concern:**

–Includes specific groups (within certain nationalities) as identified by the Department of State in consultation with NGOs, UNHCR, DHS, and other area Experts as well as some in-country programs. Only those members of the specifically identified groups are eligible for processing.

Each group will be selected based on its individual circumstances. For example, a priority two designation was developed for the Mushunguli, nationals of Somalia.

**In-country Priority Two programs include:**

**Cuba –**

Emphasis given to former political prisoners, members of persecuted religious minorities, human rights activists, forced-labor conscripts, persons deprived of their professional credentials or subjected to other disproportionately harsh or discriminatory treatment resulting from their perceived or actual political or religious beliefs or activities, dissidents, and other refugees of compelling concern to the United States.

**Former Soviet Union (FSU) –**

Jews, Evangelical Christians, and certain members of the Ukrainian Catholic or Orthodox Churches. Preference among these groups is accorded to those with close family in the United States.

Note: Jews, Evangelical Christians, and Ukrainian Catholic and Orthodox religious activists may establish refugee status for U.S. admission by asserting a fear of persecution and asserting a credible basis of concern about the possibility of such persecution. (Lautenberg Amendment)

**Vietnam –**

McCain amendment programs as well as any new referrals, should they arise.

**Priority Three:**

Nationals of the following countries who are spouses, unmarried sons and daughters under 21 years of age, and parents of persons admitted to the United States as refugees or granted asylum, or persons who are lawful permanent residents or U.S. citizens and were initially admitted to the United States as refugees or granted asylum:

- **Burma**
- **Burundi**
- **Colombia**
- **Congo (Brazzaville)**
- **Democratic Republic of the Congo**
- **Iran**
- **Liberia**
- **Somalia**
- **Sudan**

## **5. Admissibility for Resettlement**

Section 212(a) of the INA lists grounds under which aliens may be excluded from the United States. Refugees may be excluded for the following reasons:

1. Health-related: Some communicable diseases, physical or mental disorders, and current drug abuse or addiction (Health-related denials may be overcome when the problem has been successfully treated, or upon waiver at the discretion of the Attorney General).
2. Criminal activity: Individuals who have committed crimes of moral turpitude, drug trafficking, multiple criminal convictions, prostitution, murder or acts involving persecution or torture.
3. Security grounds: Espionage, terrorist activity, membership in Communist or other totalitarian parties, Nazi persecution or genocide, or individuals who would present a serious security threat (A name check is required for all refugee applicants over the age of 16. In some cases, this requires administrative processing in Washington). Waivers of certain grounds of inadmissibility may be available in some cases for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Requests for waivers for refugees (Form I-602) should be sent to the Officer in-Charge of the overseas DHS Office with jurisdiction over the case. DHS has sole authority to determine whether or not to waive these ineligibilities for refugees.

## **6. Submissions and Processing via Dossier Selection**

The U.S. refugee resettlement programme does not admit refugees by dossier selection.

## **7. Submissions and Processing via In-Country Selection**

With respect to a person applying in a third country for admission to the United States as a refugee, an initial review is undertaken to evaluate cases based on the applicants' situation in temporary asylum, the conditions from which they have fled, U.S. national interest, and other humanitarian considerations. Applicants who claim persecution or a well-founded fear of persecution and who fall within the priorities established for the relevant nationality or region are presented to DHS for determination of eligibility for admission as a refugee under Section 101(a)(42) of the INA.

### **7.1 Case Documentation**

The situation of refugees often makes it difficult for the applicant to produce adequate documentation to verify a claim to a certain priority. Thus, while available documentation should be presented before a final decision is reached (including primary documents such as birth certificates, baptismal records or household registries or secondary evidence such as affidavits of relatives and friends), documents may not be required if the refugee's claim to processing in a certain priority appears credible.

## **7.2 Routing of Submissions**

All refugee applicants must ultimately be interviewed by an DHS Officer. USG-funded Overseas Processing Entities (OPEs), usually managed by voluntary agencies or IOM, prepare cases and schedule interviews within their regions. Some processing locations have DHS officers permanently assigned who may adjudicate refugee applications (including Rome, Nairobi, Accra, Vienna, Moscow, Athens, Bangkok, New Delhi, Havana, Mexico City, Frankfurt, Ho Chi Minh City, and Islamabad). In other locations, which do not have a regular DHS presence, the USG and the OPE work together to schedule visits from DHS officers on a circuit ride basis. The U.S. refugee admissions programme is committed to frequent circuit rides to posts where there are sufficient numbers of UNHCR- and Embassy-referred cases or others who are eligible. For those cases approved by DHS, the OPEs make preparation for onward movement to the United States by arranging medical examinations, security name checks and a resettlement agency sponsor. IOM makes travel arrangements once the final clearances have been obtained.

## **7.3 Decision-Making Process**

Section 207 of the INA grants the Attorney General the authority to determine who is inadmissible to the United States as a refugee. The Attorney General has delegated this authority to DHS. DHS makes the final determination as to admissibility and priority of a refugee applicant after the interview.

## **7.4 Recourse Processing**

There is no formal procedure for appealing the denial of refugee status, although an applicant may file a “request for reconsideration” of his case to DHS on the basis of additional evidence or information not available at the time of the interview.

## **7.5 Processing Times**

The time required to process a refugee claim varies considerably based on such factors as the availability of a DHS officer to adjudicate the claim, OPE processing capabilities, type of security name checks required, and whether an applicant is admissible to the United States. A very rough estimate of the time from DHS approval of a refugee’s admission to the United States until departure is generally 4 to 6 months. Emergency cases may be expedited and have occasionally been processed in a very short time, depending on the circumstances.

# **8. Emergency Cases**

## **8.1 Emergency Cases**

DHS and the Department of State have agreed to specific procedures for processing limited numbers of emergency cases each year. Emergency cases are defined as cases in which the risk to the refugee is so great that processing must be completed within 7 days.

All such cases must be referred by UNHCR offices in the field to the UNHCR Resettlement Office in Geneva, which refers the case to the designated USG authorities in Washington. Upon acceptance of the case, the USG will initiate processing on an emergency basis.

### **8.2 Urgent Cases**

The U.S. Program tries to be responsive to urgent cases. However, these cases must follow the same procedures outlined in Section 7 above. Processing may be expedited by the USG in appropriate situations.

## **9. Special Categories**

### **9.1 Refugees with Medical Needs**

Such cases may be processed under Priority One, following procedures outlined in Section 7. Refugees with medical needs who fall under other priorities are also eligible, except for limited instances where the medical condition is grounds for exclusion (see Section 5 above).

### **9.2 Survivors of Violence and Torture**

Such cases may be processed under Priority One, following procedures outlined in Section 7.

### **9.3 Women-at-risk**

Such cases may be processed under Priority One, following procedures outlined in Section 7.

### **9.4 Children**

Unmarried children under the age of 21 who are accompanying or following to join a refugee parent are eligible for derivative refugee status. Unaccompanied minors may also qualify as refugees if they satisfy all requirements for admission to the United States as refugees. The U.S. refugee admissions programme works with UNHCR to determine whether third-country resettlement is in the best interest of the child.

Unaccompanied minors may be placed in the priority for which their parents would have been eligible if the parents were prevented from applying because of imprisonment, death or other compelling reasons. Only certain authorized voluntary agencies can sponsor unaccompanied minors who are placed in foster care upon arrival in the United States.

### **9.5 Elderly**

Age is not a factor in U.S. refugee admissions.

## 10. Family Reunification of Refugees

Family unity is an important element of the U.S. refugee admissions programme. This is reflected in the processing priorities discussed in Section 4, as well as in other refugee and immigrant admissions programmes detailed below.

### 10.1 Policy concerning Family Reunification of Refugees

Certain family members may join relatives in the United States by one of the following means:

- A UNHCR referral for the purpose of family reunification (Such referrals follow the procedures outlined in Section 7).
- An Affidavit of Relationship (AOR): An AOR is a form filed with a voluntary agency by refugees, permanent residents, or American citizens to establish a relationship in order to qualify for consideration under the priority three, family reunification category.
- Visa 93: A resettlement authorization for the spouse and unmarried children under 21 of a refugee already resident in the United States.
- Visa 92: A resettlement authorization for the spouse and unmarried children under 21 of an asylee already resident in the United States.
- Regular immigration: Refugees may also qualify for admission under regular immigration categories if they have the requisite relatives in the United States.

### 10.2 Criteria for Family Reunification

Use of an AOR requires that the relative applying for U.S. resettlement establish refugee status in his own right and be otherwise admissible for entry into the United States, as determined by DHS. An acceptable AOR permits an applicant to be considered under Priority 3. A Visa 93 or Visa 92 petitioner must establish proof of relationship (spouse or unmarried child under 21). While immediate family members do not need to qualify as refugees in their own right in order to be eligible for Visas 92 or 93 and may still be situated in their countries of origin, they must demonstrate that they meet the required standards regarding admissibility to the U.S.

### 10.3 Allocations for Family Reunification

All family reunification cases, whether direct applicants, UNHCR referrals or Visas 93 beneficiaries, count against the annual regional refugee admissions ceiling. Visas 92 beneficiaries do not count against the annual admissions ceiling.

### 10.4 Routing of Applications

UNHCR referrals for the purpose of family reunification follow the procedures outlined in Section 7.

- **AOR:** A relative in the United States files an AOR with a local branch of one of ten voluntary agencies with a (resettlement) cooperative agreement with the Department of State. If determined to be eligible, routing then follows the procedures outlined in Section 7.

- Visa 93: A refugee in the United States must file Form I-730 (Refugee/Asylee Relative Petition) with DHS on behalf of his/her spouse and minor, unmarried children, along with supporting documentation to verify the relationship. The I-730 must be filed within two years of the refugee's arrival in the U.S.
- Visa 92: An asylee in the United States must also file Form I-730 (Refugee/Asylee Relative Petition) with DHS on behalf of his/her spouse and minor, unmarried children, along with supporting documentation to verify the relationship.

### **10.5 Verification of Relationships**

When the refugee applicant seeks resettlement in the United States through UNHCR based on family ties, such ties may be supported by a marriage and/or birth certificates, certificates of adoption or approved Form I-130s (Petition for Alien Relative). If these documents are unavailable, a church record, school record or census record showing date and place of birth may be acceptable. If the above documentation is unavailable, the applicant may present a notarized voluntary agency Affidavit of Relationship (AOR), sworn statements of persons who are not related to the principal applicant attesting to the relationship claimed, or, if necessary, such affidavits from persons related to the principal applicant. UNHCR need not request that an AOR be filled out when referring a case under Priority One.

### **10.6 Processing and Decision-Making**

**AOR:** After initial screening of an AOR recipient by the OPE, processing and decision-making generally follows procedures outlined in Section 7.

**Visa 92 and Visa 93:** After the Department of State's National Visa Center receives an I-730 form approved by DHS, the file is sent to the U.S. Embassy having jurisdiction over the beneficiary's place of residence. Approved Visas 92 and 93 recipients must be interviewed by either a DHS or consular officer and meet other admissions standards (e.g. medical) before departure. Upon arrival in the United States, Visa 93 recipients are granted refugee status while Visa 92 beneficiaries are granted asylee status.

## **11. Medical Requirements**

Medical screening is mandatory for all refugees. Medical exams are performed by U.S. Embassy-contracted physicians or by IOM. The costs for medical exams are borne by the USG. Costs for medical treatment necessary to make an already approved refugee ready for travel are usually paid by the USG. Medical exams normally are valid for 1 year and must be valid at the time of departure for the U.S. Screening is generally coordinated by the processing OPE

## **12. Travel**

Refugees approved by DHS generally enter the United States within four to six months of final approval. Travel is coordinated by IOM. Refugees generally receive interest-free loans for the cost of their transportation through IOM. (A refugee is expected to begin incremental repayment of this loan 6 months after arrival in the United States, and the total amount is expected to be repaid within 3 1/2 years.) Refugees generally travel coach class and must pay for excess luggage. Refugees carry travel documents prepared by the OPE which they must present to DHS officials at the port of entry to the United States.

## **13. Status on Arrival**

At the U.S. port of entry, DHS admits a refugee to the United States and authorizes employment. After one year, a refugee is eligible for adjustment of status to lawful permanent resident. Five years after admission, a refugee is eligible to apply for U.S. citizenship. Refugees who have not yet adjusted to Lawful Permanent Resident Status who wish to travel abroad must obtain advance permission to re-enter from DHS in the form of a Refugee Travel Document. Voluntary return to the country of persecution or availing oneself of services of that country's Government (e.g. passports) may, under certain circumstances, be considered abandonment of refugee status. The USG does not impede voluntary repatriation, but USG funding is not generally available for refugees wanting to repatriate. Private organizations and UNHCR may be able to assist refugees who choose to repatriate.

## **14. Domestic Settlement and Community Services**

The U.S. resettlement programme recognizes the desirability for public and private nonprofit organizations to provide sponsorship, reception and placement services appropriate to refugees' personal circumstances and to assist refugees to achieve economic self-sufficiency as quickly as possible. Sponsoring agencies are required to ensure that refugees' basic needs are met: initial housing, essential furnishings, food or a food allowance, necessary clothing, and transportation to job interviews and job training for a minimum of 30 days after arrival in the United States. Further, sponsoring agencies also provide orientation and information about services available in the community (employment opportunities, vocational training, education, language classes, and health care) for a minimum of 90 days after arrival.



### **14.1 Actors**

Initial reception and placement of refugees is carried out by sponsoring agencies through cooperative agreements with the Department of State. Longer term resettlement resources are provided primarily through assistance programmes funded by HHS and local and national non-profit organizations. State, county, and local governments also assist in resettlement efforts. Private sponsors, such as relatives or friends of the refugee, may also assist with the refugee's resettlement.

### **14.2 Orientation**

The U.S. resettlement programme strives to ensure that refugees who are admitted to the United States are prepared for the significant changes they will experience during resettlement. Pre-departure cultural orientation programmes are available for refugees at many sites around the world. After arrival in the United States, the sponsoring agency provides refugees with community orientation, which includes information about public services and facilities, personal safety, public transportation, standards of personal hygiene, and information about legal status, citizenship and family reunification procedures. Refugees may also receive materials in their native language which provide information about life in the United States to ease the transition to a new society and culture.

### **14.3 Reception**

An IOM representative meets the refugee at his port of entry and when necessary, ensures he/she makes his onward travel connections. Sponsoring agencies meet the refugees at their final U.S. destination, transport them to their initial living quarters and assist them in obtaining initial housing, furnishings, food, clothing, and basic employment services for a minimum of 30 days.

### **14.4 Housing**

Under the guidelines established for reception services by the Department of State, the resettlement agencies ensure that decent, safe and sanitary accommodation is made available to the refugee upon arrival. Refugees reuniting with family may spend some time at their relative's accommodation.

### **14.5 Health**

Resettlement agencies refer refugees to local health services for a comprehensive health assessment upon arrival in order to identify and treat health problems which might impede employment and effective resettlement. This assessment is provided free of charge. Refugees are eligible to apply for Refugee Medical Assistance (RMA) or Medicaid to cover basic health care costs.

### **14.6 Language Training**

English language ability is critical to a refugee's successful transition in American society. English as a Second Language (ESL) training programmes vary among communities. The local resettlement agency is the best source of information about the availability of such programmes.

### 14.7 Education

Public schools in the United States are operated by local governments so curriculum and facilities vary. Public school education is free for grades Kindergarten to 12 (approximately ages 5 to 18) and is mandatory for children ages 6 to 16. The resettlement agency will be able to provide more information about school registration and other educational resources in the community.

### 14.8 Vocational Training

Refugees should be aware that job mobility in the United States is great and that refugees frequently change jobs as technical skills and English ability improve. Refugees should also be aware that foreign job certification is often not valid in the United States and that further training, testing and/or certification may be necessary for some jobs. Vocational and technical schools train people for special skilled occupations, such as auto mechanics, computer programming and medical and dental assistants. These programmes require varying levels of English language ability and often require payment. The local resettlement agency will be able to provide more information about the availability and cost of such programmes.

### 14.9 Employment

Achieving economic self-sufficiency is the cornerstone of the U.S. resettlement programme and getting a job is the first step toward that goal. Many jobs available to newly-arrived refugees are entry-level and refugees are encouraged to improve their language and job skills in order to move up the economic ladder. Refugees may receive assistance from the resettlement agency in finding a job, though it may not be in the same field in which the refugee was previously employed. Refugees must have documentation authorizing employment such as an Employment Authorization Document (EAD) and the I-94 form, which they receive from DHS upon arrival.

## 15. Reference Materials

The following materials are available from any U.S. Embassy that processes refugees or from the Bureau of Population, Refugees, and Migration at the U.S. Department of State.

📖 Center for Applied Linguistics (CAL). *Welcome to the United States: A Guidebook for Refugees*. 1996.

📖 Committee on the Judiciary of the House of Representatives. *Immigration and Nationality Act*, May 1995.

📖 U.S. Department of State, Department of Homeland Security, Department of Health and Human Services. *Report to the Congress: Proposed Refugee Admissions for Fiscal Year 2004, October 2003*.

## Annex A: Current Resettlement Allocations

The following are the FY 2004 projected arrivals by region:

<b>Region</b>	<b>Projected FY 2004 Arrivals</b>	<b>FY 2004 Ceiling</b>
<b>Africa</b>	29,000	25,000
<b>East Asia</b>	7,500	6,500
<b>Europe / Central Asia</b>	10,800	13,000
<b>Latin America/ Caribbean</b>	2,700	3,500
<b>Near East/ South Asia</b>	2,500	2,000
<b>Allocated from Reserve</b>		2,500
<b>TOTAL</b>	52,500	52,500

**\* Numbers will be drawn from the unallocated reserve of 20,000 total to augment regional ceilings where necessary.**

## Annex B

### Section 101(a)(42) of the Immigration and Nationality Act (INA)

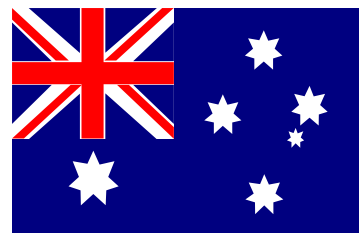
The term “refugee” means: (A) any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such circumstances as the President after appropriate consultation (as defined in Section 207 (e) of this Act) may specify, any person who is within the country of such person’s nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term “refugee” does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control programme, shall be deemed to have been persecuted on account of political opinion, and a person who has a well-founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well-founded fear of persecution on account of political opinion.

**CHAPTER**  
**AUL**

# **AUSTRALIA**

**BY THE GOVERNMENT OF AUSTRALIA**

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## 1. Resettlement Policy

Australia expresses its commitment to refugees and the system of international protection by supporting UNHCR and its programs. The annual Humanitarian Program complements this support in two ways. Firstly, with a practical solution for refugees already in Australia who engage Australia's protection obligations under the United Nations 1951 Convention and its 1967 Protocol. Secondly, through the offshore component of the program that goes beyond international obligations and reflects Australians' desire to assist refugees and other people of concern in greatest humanitarian need of resettlement.

**The offshore or resettlement component of the Humanitarian Program has two categories of permanent visa and two categories of temporary visa.**

### **Permanent offshore humanitarian visa categories**

**Refugee** for people who are subject to persecution in their home country and who are in need of resettlement. The majority of applicants who are considered under this category are identified by UNHCR and referred by UNHCR to Australia. The Refugee visas category includes Refugee (visa subclass 200), In-country Special Humanitarian (visa subclass 201), Emergency Rescue (visa subclass 203) and Woman at Risk (visa subclass 204).

**Special Humanitarian Program (SHP)** (visa subclass 202) for people outside their home country who are subject to substantial discrimination amounting to gross violation of human rights in their home country. A proposer who is an Australian citizen, permanent resident or eligible New Zealand citizen, or an organization that is based in Australia, must support applications for entry under the SHP.

### **Temporary offshore humanitarian visa categories:**

The offshore temporary humanitarian visas are for people who have bypassed or abandoned effective protection in another country and for whom humanitarian entry to Australia is appropriate. It comprises two sub-categories:

**Secondary Movement Relocation** (visa subclass 447) offers a temporary visa to people who have moved from a safe first country of asylum to another country before applying to enter Australia. This visa is valid for five years.

**Secondary Movement Offshore Entry** (visa subclass 451) offers a temporary visa to people who arrived unlawfully in Australia at offshore excised places and have moved from a safe first country of asylum. This visa is valid for three years.

## 2. Criteria for Refugee Status Eligibility and Asylum

**Applicants for asylum are assessed against the criteria for the grant of a protection visa, which are prescribed in the *Migration Act 1958* and the *Migration Regulations 1994*. These criteria incorporate the 1951 Convention and its 1967 Protocol.**

**Applicants for resettlement under the Refugee category also are assessed against criteria prescribed in legislation. These criteria differ from the definition of a refugee in the 1951 Convention. To satisfy the criteria for a Refugee visa, applicants must be subject to persecution in their home country. The criteria for subclass 200 (refugee) and 204 (woman at risk) visas require applicants to be outside their home country. Applicants for a subclass 201 (in-country special humanitarian) visa must be in their home country. Applicants for a subclass 204 (emergency rescue) visa may be in or outside their home country.**

**Members of an applicant's family unit who are included in the application are not required to satisfy the criteria above. *Members of the family unit* of a person are defined in regulations as the person's spouse; dependent children of the person or the spouse, or of a dependent child of either; and any relative of the person or of the person's spouse living in the person's household, financially dependent on the person, and without a spouse.**

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### **3. Criteria for Resettlement**

As well as meeting the threshold criteria described above, applicants for resettlement to Australia must satisfy the Department of Immigration and Multicultural Affairs (DIMIA) decision-maker that there are compelling reasons for giving special consideration to granting them a visa. The decision-maker must be satisfied that there is no other suitable durable solution available to the applicant, and that permanent settlement in Australia is the appropriate course for the individual and would not be contrary to the interests of Australia.

All applicants are required to meet the public interest criteria outlined in section 5 below.

### **4. Resettlement Allocations / Processing Priorities**

Decisions on the size, composition and regional focus of the Humanitarian Program are made by the Australian Government based on the UNHCR assessment of global resettlement needs, the views of individuals and organizations in Australia conveyed during community consultations, and Australia's capacity to assist.

For the seven years prior to 2004, Australia offered 12,000 new places each year under the Humanitarian Program. For 2004-05, this will increase to 13,000 places and will include a 50% increase in the Refugee category (from 4000 to 6000 places).

Priority caseloads for the offshore component of the Humanitarian Program are emergency cases, women-at-risk and cases referred by UNHCR. The regional priority for 2004-05 will be Africa, the Middle East and South West Asia to assist people in the greatest need of resettlement, as recommended by the UNHCR.

### **5. Admissibility for Resettlement**

All applicants for permanent visas must meet prescribed public interest criteria, which are intended to safeguard the Australian community's health and access to health services, safety and national security. In some circumstances health requirements may be waived (see section 11). Character requirements, however, cannot be waived. Applications may be refused on character grounds where there is evidence of criminal conduct on the applicant's part or the applicant represents a threat or danger to the Australian community.

Under the *one fails, all fail* rule, visas cannot be granted to an applicant or any member of the applicant's family unit included in the application if the applicant or any member of the family unit, whether included in the application or not, fails a prescribed public interest criterion.

## **6. Submissions and Processing via Dossier Selection**

Australia does not process applications for resettlement by dossier selection.

## **7. Submissions and Processing via In-Country Selection**

### **7.1 Case Documentation**

Applications must be made on the prescribed form (form 842, *Application for a permanent visa on refugee or humanitarian grounds*, available from Australian overseas missions and from the DIMIA Internet site at [www.immi.gov.au](http://www.immi.gov.au)).

Applications must be lodged outside Australia at an Australian diplomatic or trade mission. It is expected that there will be a legislation change in September 2004 that will require certain applications as identified in a Gazette notice to be lodged by posting or having delivered to a specified address in Australia. This is expected to apply to applications accompanied by a proposal (for consideration for visa subclass 202 Special Humanitarian Program), from the Africa region.

There is no application or processing fee for humanitarian applications.

Applications may be supported by a *proposal*, that is a statement proposing the applicant's entry from an Australian citizen or permanent resident, an eligible New Zealand citizen or an organization operating in Australia. The prescribed form is 681, *Refugee and special humanitarian proposal*, obtainable from Australian overseas missions or from [www.immi.gov.au](http://www.immi.gov.au). The proposal, which is optional for the Refugee category and mandatory for the SHP, helps the decision-maker to gauge the proposer's ability to assist the applicant to settle successfully in Australia.

Four passport-sized photographs of the applicant and immediate family members included in the application must be submitted with the application.

Applicants may submit supporting documents and information at any time before their application is decided.

## **7.2 Routing of Submissions**

Applications are received at Australian overseas missions either direct from applicants or via referral by UNHCR or non-government organisations. Processing of the majority of applications for resettlement takes place at 14 designated missions around the world.

For applications required by Gazettal notice to be lodged in Australia, initial processing will be done in Australia. The application will then be forwarded to overseas post for final consideration and decision.

## **7.3 Decision-Making Process**

Applications are considered on a case-by-case basis against the criteria set down in the *Migration Regulations 1994*. Applicants are assessed as a matter of course for all visas in the Refugee and Humanitarian class. Those who are prima facie eligible on the papers are interviewed to test their claims and check their bona fides. Decisions are made by Australian employees of DIMIA at Australian overseas missions. Applicants are advised of the decision by letter. Unsuccessful applicants also receive a copy of the decision record that indicates the criteria that were not met.

## **7.4 Recourse Processing**

There is no provision for administrative review of decisions to refuse applications for resettlement.

## **7.5 Processing Times**

Indicative processing times and visa grant times are variable. As a guide, during the period July 2003 to March 2004, 75% of cases were processed within 37 weeks of lodgement. During the same period, 75% of those granted Refugee visas were granted within 51 weeks and those granted SHP visas were granted within 60 weeks. Most emergency cases are processed within two days of formal referral by the UNHCR.

## **8. Emergency Cases**

The emergency rescue visa (subclass 203) is part of the Refugee category. It is used for applicants who are subject to persecution in their home country (whether living there or elsewhere) and have urgent and compelling reasons to travel to Australia.

A small number of emergency cases are referred to Australia each year through UNHCR's regional office in Canberra. Before an application is accepted, each referral must be approved by Humanitarian Branch in DIMIA Central Office.

Emergency cases are given highest processing priority of all applications for resettlement. Most applications are decided in two days. Applicants who must be evacuated without delay may complete mandatory health checks on arrival in Australia. In June 2003, UNHCR and Australia agreed on a protocol for the processing of emergency cases.

## **9. Special Categories**

### **9.1 Refugees with Medical Needs**

There are no special provisions for the resettlement of refugees with medical needs.

Every applicant must meet health requirements unless the decision is made to waive them (see section 11).

### **9.2 Survivors of Violence and Torture**

Australia gives priority consideration to survivors of violence and torture referred by UNHCR for resettlement.

Specialized counseling and medical services and English classes for survivors of torture and trauma are among the settlement services available to Humanitarian Program entrants (see section 14).

### **9.3 Women-at-risk**

Another part of the Refugee category, the Woman at Risk program (subclass 204) is for female applicants who are subject to persecution or registered as being of concern to UNHCR; are living outside their home country; do not have the protection of a male relative; and are in danger of victimisation, harassment or serious abuse because of their sex. The annual target for the Woman at Risk program is 10.5 per cent of Refugee category visas.

### **9.4 Children**

Children applying under the Humanitarian Program for entry to Australia as unaccompanied minors are required to meet the same criteria as other applicants, including the criterion that permanent settlement in Australia is the most appropriate durable solution. Decision-makers must be satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

Unaccompanied minors without relatives over the age of 21 to care for them in Australia become wards of the Minister for Immigration and Multicultural and Indigenous Affairs under the provisions of the *Immigration (Guardianship of Children) Act 1946*. State government welfare agencies are responsible for their care and case management. Assistance is available until the child reaches 18 years of age, becomes an Australian citizen or otherwise ceases to be an unaccompanied minor.

Resettlement of an unaccompanied minor requires approval from Humanitarian Branch, DIMIA Central Office, so as to ensure that adequate care arrangements are in place.

## **9.5 Elderly**

There are no special provisions for the resettlement of elderly refugees.

# **10. Family Reunification of Refugees**

## **10.1 Policy concerning Family Reunification of Refugees**

To help families reunite, the family stream of the Migration Program allows holders of permanent visas to sponsor members of their immediate family for entry to Australia. This is the preferred route for family reunion for immediate family members who are not in imminent danger.

Family members facing human rights abuses can be considered for family reunion under the 'split family' provisions of the Humanitarian Program. The 'split family' provisions allow the grant of a visa to immediate family members of a permanent humanitarian visa holder if they can demonstrate a bona fide family relationship to the proposer and meet public interest criteria.

## **10.2 Criteria for Family Reunification**

Holders and former holders of permanent Humanitarian Program visas may, within five years of the grant of their visa, propose immediate family members for resettlement under the Humanitarian Program.

This concession is open to the visa holder's spouse, dependent children or, if the visa holder is under 18, parents. The visa granted would either be of the same subclass as the proposer's visa, or an SHP visa.

## **10.3 Allocations for Family Reunification**

There is no separate allocation in the Humanitarian Program for family reunification.

#### **10.4 Routing of Applications**

Routing of applications for family reunification is as for other applications for resettlement.

#### **10.5 Verification of Relationships**

To qualify for family reunification, immediate family members must have been declared by their proposer to DIMIA before the grant of the proposer's visa.

#### **10.6 Processing and Decision-Making**

Processing and decision-making in family reunification cases are as for other applications for resettlement.

### **11. Medical Requirements**

Applicants for resettlement, like all applicants for permanent visas, must meet health criteria. These criteria require applicants to be free from tuberculosis and any disease or condition that is a risk to public health and safety. Some applicants (those with active tuberculosis, for example) must undergo specialist treatment before their visa is granted. Applicants will not meet health criteria if they have a medical condition that is likely to result in a significant cost to health care and community services or prejudice Australians' access to health care or community services.

In the case of applicants for emergency resettlement, health assessment may, if necessary, be deferred until their arrival in Australia, unless it is suspected they have a health condition likely to result in their failing health criteria.

To meet health criteria, applicants for emergency resettlement who do not undergo health assessment before their travel to Australia, and applicants who have been requested by a medical officer of the Commonwealth to undergo further health assessment in Australia, must make a written undertaking to make contact with health authorities within a specified time and undergo treatment or medical investigation as directed.

Provision exists to waive health criteria in respect of certain visas, among them Humanitarian Program visas. If the grant of a visa to the applicant is not likely to result in undue cost to the Australian community or unduly prejudice Australians' access to health care or community services, the decision-maker may waive the health criteria. The decision to waive or not to waive is taken only after careful consideration of all relevant factors. The health criteria cannot be waived if the applicant has a disease or other medical condition that represents a threat to public health in Australia.

The Australian government meets the cost of health assessment of applicants for Refugee and SHP category visas.

## **12. Travel**

The Australian government organizes and pays for the passage to Australia of holders of Refugee visas. Individuals with more than A\$10,000 capital for transfer, and families with more than A\$20,000 are not entitled to paid passage, nor are holders of SHP visas. SHP visa holders or their proposers, are expected to fund their travel to Australia. The Australian government is establishing a community-based no-interest travel loans scheme that will assist proposers to meet SHP entrants' travel costs

## **13. Status on Arrival**

Successful applicants are granted a visa for entry to and permanent residence in Australia.

## **14. Domestic Settlement and Community Services**

The Australian government views the successful settlement of entrants as a key objective of the Humanitarian Program. In recognition of the challenging circumstances experienced by Humanitarian Program entrants before their resettlement, and the intensive support they often need to adjust to life in Australia, the Australian government is committed to ensuring they have settlement services appropriate to their particular needs.

Humanitarian Program entrants may use the full range of settlement services available to all migrants in, including the Adult Migrant English Program (AMEP), the Translating and Interpreting Service (TIS), programs funded through the Community Settlement Services Scheme (CSSS) and the services offered by twenty-four Migrant Resource Centres and four Migrant Service Agencies across the country. Unlike non-humanitarian migrants, who are subject to a two-year waiting period, they have immediate access to federal government health care (through Medicare) and social security (through Centrelink) (provided they meet other requirements).

In addition, Humanitarian Program entrants are eligible for settlement services designed to meet their particular and often complex needs. The Integrated Humanitarian Settlement Strategy (IHSS) is the framework for the integrated delivery of these services. The strategy also provides for support services to the individuals, agencies and community networks assisting in the settlement of Humanitarian Program entrants.

## **14.1 Actors**

DIMIA is the federal government agency with responsibility for settlement services. Federal, state and local government agencies, non-government organizations and community groups are all involved in the delivery and provision of services.

IHSS programs are delivered by service providers contracted by DIMIA and registered volunteer community groups. Entrants also receive assistance with accommodation, information and orientation from their proposers.

Workers employed under the Community Settlement Services Scheme help migrants and refugees, particularly those who are newly arrived and whose first language is not English, to take advantage of the community services, programs and opportunities available to all Australians.

Migrant Resource Centres and Migrant Service Agencies, which are funded federally and in some cases by state governments as well, serve as a base for information provision, referral to mainstream services and the development of appropriate services for migrants.

## **14.2 Orientation**

In 2003, DIMIA entered into a pilot contract arrangement with IOM for the provision of Pre-departure cultural orientation training for refugee and humanitarian entrants from Kenya and Cairo. This training provides humanitarian entrants with the necessary knowledge and skills to enhance their settlement prospects and create realistic expectations for life in Australia. Subject to evaluation, the Cultural Orientation Pilot may be extended to other regions.

On arrival in Australia, Humanitarian Program entrants have access to the Initial Information and Orientation Assistance program that equips them with the knowledge, skills and support for life in the Australian community. Entrants are given individually tailored information, assistance and referrals to ensure they understand how the local community operates and are introduced to social security, banking, educational, employment, transport, childcare and other important services.

Registered volunteers in the local area offer eligible entrants social support in the form of friendship; introductions to local ethnic, religious and other community groups; and information, guidance and practical assistance to help them adjust to life in Australia.



### **14.3 Reception**

As part of the Initial Information and Orientation Assistance program, entrants who hold Refugee category visas are met at the airport on arrival and taken to their accommodation. If travelling on to regional areas, entrants are met on their arrival in Australia and also at their destination.

### **14.4 Housing**

Entrants holding Refugee category visas, as well as those with SHP visas, whose proposer is unable to help them with accommodation, are entitled to Accommodation Support. They are provided with subsidized short-term accommodation on their arrival and are assisted to find affordable and stable longer-term accommodation as soon as possible. Household Formation Support equips entrants who hold permanent Humanitarian Program visas with the household goods and basic furnishings they need to set up their new home. Tenancy training is also provided to families who need support in adapting to a Western style of living in rented accommodation.

### **14.5 Health**

The Initial Information and Orientation Assistance (IIOA) provides emergency medical and clothing needs on arrival, settlement information and case manages entrants so that they are aware of their new environment and are linked to essential services such as income support, Medicare, education and training, employment and the other IHSS services.

The Early Health Assessment and Intervention program offers entrants information on health services; physical and psychological screening, with referral to appropriate health services; and counselling for survivors of torture and trauma. The program helps prevent existing physical or psychological health problems from impeding entrants' successful settlement.

The Program of Assistance for the Survivors of Torture and Trauma (PASTT) promotes the physical health and psycho-social recovery of people who have experienced torture and trauma in their countries of origin or while fleeing those countries, prior to their arrival in Australia. PASTT aims to improve clients' access to health, mental health and related mainstream services after they have received the specialist assistance they need. Services provided by the torture and trauma organizations include counselling, referral, advocacy, education and training and natural therapies. There are eight services in Australia; one in each State and Territory.

## **14.6 Language Training**

Adult Humanitarian Program entrants with less-than-functional English are entitled to English language tuition provided by DIMIA through the Adult Migrant English Program (AMEP). Eligible clients are entitled to up to 510 hours of tuition, or the number of hours it takes to reach functional English, whichever comes first.

Clients must register for their entitlement within three months of arrival or grant of permanent residence and start tuition within one year. There is no time limit to complete access to their entitlement. Provision exists to defer any of the legislated time limits.

Classes tailored to meet diverse needs, educational backgrounds and learning abilities are available full or part time in formal or community-based settings. Clients who are unable to attend classes may take advantage of a distance learning course backed by telephone contact with a teacher, or a volunteer tutor in their home through the Home Tutor Scheme.

Humanitarian entrants who have been assessed as having special needs following their pre-migration experiences are eligible for up to 100 hours' extra English tuition through the Special Preparatory Program (SPP). Tuition is delivered to small groups in settings where they feel at ease. Clients are offered first-language support where possible and may, if they elect, be assisted by a trained volunteer tutor.

From 1 July 2004, increased funding will enable humanitarian entrants aged 16-24 years with less than 8 years of schooling in their former country to be offered up to 400 hours of tuition under the SPP. The funding will also supplement existing hours offered to those over 24 years with less than 8 years of schooling in their former country to a maximum of 100 hours.

The English as a Second Language - New Arrivals (ESL-NA) Program provides Australian Government funding to State and Territory government and non-government education authorities to assist with the cost of delivering intensive English language tuition for eligible newly arrived migrant primary and secondary school students. The program addresses the special language needs of students from non-English speaking backgrounds and aims to improve their educational opportunities and outcomes by developing their English language competence and facilitating their participation in mainstream educational activities.

## **14.7 Education**

Humanitarian Program entrants have access to the same educational programs as Australian permanent residents in general.

Schooling is compulsory to the age of fifteen years. Free primary and secondary education is provided by the state.





## Vocational Training / Employment

Australian permanent residents who register with Centrelink for help in finding a job can be referred to the Job Network. The Job Network consists of private, community and government organizations that are contracted to the federal government to assist people seeking employment. The Job Network offers a variety of programs which match clients to jobs and apprenticeships; give them the skills to find a job; refer them for assessment and recognition of their occupational skills and qualifications, and help those who wish to start their own business.

Eligible jobseekers registered with Centrelink can be referred to the Language, Literacy and Numeracy program (LLNP), which is designed to help eligible new arrivals with functional English to find work and overcome individual barriers to participation in vocational education and training. Clients who already have occupational skills are helped to develop an adequate command of English for occupational purposes and to obtain recognition of their overseas qualifications. Other clients are helped to increase their English proficiency to enable them to undertake vocational courses.

If a young person should become homeless, the Job Placement, Employment and Training (JPET) program is aimed at assisting students and unemployed young people aged 15-21 years who are homeless or at risk of becoming homeless, to find work. To complement this, the Reconnect program is an early intervention program for young people who are homeless, at risk of homelessness, and their families. Many Migrant Resource Centres also run programs to assist migrants and Humanitarian Program entrants to find employment.

## 15. REFERENCE MATERIALS

-  Australian Migration Regulations 1994
-  Procedure Advice Manual 3 – Guidelines for officers administering Migration Legislation
-  *Refugee and Humanitarian Issues: Australia's Response*. Department of Immigration and Multicultural and Indigenous Affairs, Canberra, 2003.
-  Australia's Support for Humanitarian Entrants. Department of Immigration and Multicultural and Indigenous Affairs, Canberra, 2003

Further information on Australia's migration and humanitarian programs and comprehensive advice on settling in Australia can be found on the Internet site of the Australian Department of Immigration and Multicultural and Indigenous Affairs at [www.immi.gov.au](http://www.immi.gov.au).



# **CANADA**

## **BY THE GOVERNMENT OF CANADA**

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## 1. Resettlement Policy

Canada's resettlement program is administered by the Department of Citizenship and Immigration Canada (CIC). Canada has a long history of providing humanitarian assistance to people fleeing persecution in their homeland or displaced by conflicts. Since World War II Canada has resettled over 700,000 Convention refugees and persons in refugee-like situations. Canada has chosen to protect persons for humanitarian reasons, to meet our international commitments, and to respond to international crises. Canada's resettlement program places emphasis on the protection of refugees and people in refugee-like situations by providing a durable solution to persons in need of resettlement.

With the implementation of the Immigration and Refugee Protection Act in 2002, Canada has placed emphasis upon the following principles:

- A shift toward protection rather than ability to establish
- Rapid family reunification
- Accelerated processing of urgent and vulnerable protection cases
- Balancing inclusiveness with effective management through closer relationship with partners.

Within its overall immigration plan, Canada resettles both Convention refugees and members of Humanitarian-protected Persons Abroad Classes (HPC) - persons who are not Convention refugees but who are in refugee-like situations and require protection through resettlement. Canada allocates a target each year for the resettlement of refugees through its government-assisted program who are eligible to receive financial assistance from the government of Canada. In addition, Canada has the private sponsorship of refugees program, which enables organizations and private individuals to submit undertakings for refugees and persons in refugee-like situations (members of the HPC) for consideration for resettlement. Upon approval, the sponsor is responsible for providing financial assistance and assisting the refugee with integrating in Canada. All refugees selected by Canada must meet Canadian immigration admissibility requirements. Canada is committed to providing resettlement for cases which UNHCR identifies as being in need of a durable solution. UNHCR should refer resettlement cases directly to Canadian visa offices.

## 2. Criteria for Resettlement

### 2.1 Eligibility

Canada will only consider an applicant for resettlement if s/he is referred by:

- UNHCR
- Another (designated) "Referral Organization"
- A Private Sponsor (i.e. already has an approved private sponsorship)

Only in certain geographic areas are applicants able to apply directly to the Canadian visa office without a referral. For more information, please contact a Canadian visa office.

Upon being referred an applicant must meet the criteria of the 1951 UN Convention or meet the criteria for one of the two Humanitarian-protected Persons Abroad Classes - the Country of Asylum Class and the Source Country Class.

The Country of Asylum Class deals with persons who have fled their countries and who are the victims of war or massive violations of human rights. The Source Country Class deals with persons who remain in their country of citizenship and who are the victims of war or violations of fundamental civil rights or who would meet the Convention definition had they fled their country. The application of the Source Country Class is limited to those countries appearing on a regulated schedule. A Canadian visa officer makes the decision as to whether an applicant falls into one of the above categories.

Canada has specific guidelines for assessing gender-based persecution which are taken into account when an eligibility decision is made.

In addition, applicants must show potential to become self-sufficient in Canada within a 3 to 5 year time frame. Factors such as education, presence of a support network (family or sponsor) in Canada, work experience and qualifications, ability to learn to speak English or French and other personal suitability factors such as resourcefulness will be taken into account by visa officers. However, this criteria does not apply to refugees determined by a visa officer to be in urgent need of protection or vulnerable (see section 6).

## **2.2 Admissibility**

For a refugee to be accepted by Canada he/she must pass:

- 1) a medical examination - Successful applicants must not be suffering from a medical condition which is likely to be a danger to public health or safety;
- 2) criminal screening - Refugees are not required to submit police certificates from their country of origin;
- 3) security screening - Canada will not accept combatants who have participated in war crimes or crimes against humanity. Senior officials, including former or serving senior military officials, from certain regimes and individuals who belong to organizations that espouse violence are inadmissible under the Immigration and Refugee Protection Act. For more information, please contact a Canadian visa office.

## **3. Resettlement Allocations / Processing Priorities**

An annual resettlement target is established by the Minister of Citizenship and Immigration for government-assisted refugees following consultations within CIC, and with provincial governments, Canadian non-governmental organizations (NGOs) and the UNHCR. For 2004 the target is 7,500 persons. The annual target is then allocated among visa offices on the basis of estimated resettlement need.

Visa offices that have met their target and offices which do not have a target, and which identify refugees in need of resettlement can make a request to CIC, Resettlement Division, NHQ for additional places. Resettlement needs and visa office targets are monitored and adjustments are made to visa office targets on a quarterly basis as required.

The target number refers to individuals, not cases, and operates on the calendar year. Refugees must actually be granted permanent residence in Canada to be counted as part of that year's target. In addition to establishing a number of government-assisted refugees to take in a calendar year, a range is established for the number of persons expected to be resettled under the Private Sponsorship of Refugees program (refer to section 7.6). For 2004 the range established for privately sponsored refugees is 3 400 – 4 000 individuals.

#### **4. Submission and Processing via Dossier Selection**

Interviews are required in most cases. In cases where an urgent protection need has been identified or in other cases that are fully documented, the visa officer may waive the interview.

#### **5. Submissions and Processing via In Country Selection**

##### **5.1 Case Documentation**

The following documents should be included with a submission to Canada:

- completed UNHCR Resettlement Registration Form (RRF), ensuring all sections are completed (to be sent electronically where possible);
- other relevant documentation (e.g. medical certificates, birth certificates etc.);
- covering letter explaining why the refugee requires resettlement and whether he or she is at risk or falls into a vulnerable category.

For urgent protection cases, reasons for requesting urgent processing should be clearly stated. (See section 6.)

In order to begin processing an application for immigration to Canada an application for permanent residence (IMM0008) must be completed by the applicant. This form will be provided to an applicant by a Canadian visa office. It is very important that this form be completed completely and accurately. In locations where UNHCR RRF applications are submitted to Canada electronically, this step will not be necessary. This form will be automatically converted into an IMM0008.

## **5.2 Routing of Submissions**

Canada has a decentralized system in which cases are submitted, decisions made and applications processed in the field. Submissions should be made directly to the responsible Canadian visa office. For more information on Canadian visa offices and their area of responsibility please consult the following website: [www.cic.gc.ca](http://www.cic.gc.ca). For information about Canada's refugee resettlement program consult: [www.cic.gc.ca/refprotection](http://www.cic.gc.ca/refprotection).

## **5.3 Decision-Making Process**

Applicants will normally be interviewed by a visa officer who will determine whether the applicant meets Canadian eligibility and admissibility criteria (see sections 2.1 and 2.2).

Medical examinations are requested if a refugee has been accepted and must be carried out prior to issuance of an immigrant visa. The criminality and security screening also takes place at this time. The final decision as to whether to accept or reject an applicant will be made by the visa office based on the results of the medical, criminality and security checks. If an applicant is refused he/she will be informed of the negative decision and a letter outlining the reasons for the refusal will be sent to the applicant.

## **5.4 Recourse Processing**

In the case of a refusal where the UNHCR requests reconsideration, the Immigration Program Manager at the responsible visa office should be contacted. There is no formal appeal system at the visa office and there is no formal appeal system in Canada for resettlement cases refused by visa officers. Refused cases may, however, be brought before the Federal Court of Canada. In addition, if there are compelling reasons to believe that Canadian resettlement policy has not been interpreted properly, you can request further advice from UNHCR BO Ottawa.

## **5.5 Processing Times**

Processing times for applications vary greatly among visa offices depending on such factors as circumstances in a particular world area, caseload at the visa office, location of refugee populations, incidence of medical problems and resources available with which to process cases. In the event of an urgent case, the Canadian visa office should be clearly advised at the time of submission in order that processing may be expedited.

## **5.6 Immigrant loans and Contributions**

In the case of refugees, an immigrant loan may be authorized to cover the cost of transportation to Canada, immigration medical examinations (see Section 9), and where necessary transportation to the interview with the visa officer.



A refugee must demonstrate the need for and the potential to repay the loan. Refugees are required to begin repaying the loan (in monthly installments) shortly following arrival in Canada.

Under certain circumstances loan repayment may be deferred for up to two years. Special needs refugees may be granted financial assistance in the form of a contribution which does not have to be repaid.

## **6. Emergency Cases**

Canada's Urgent Protection Program (UPP) is intended to respond to requests from the UNHCR (emergency submissions) to provide urgent protection to persons who qualify for resettlement and who are in need of urgent protection because of immediate threats to their life, liberty or physical safety. Such cases are to be submitted directly to the appropriate visa office. The visa office will then inform the relevant UNHCR within 24 hours as to whether the visa office can respond to the emergency request. Wherever possible, Canada's policy is to try to have the person en route to Canada within three to five days of the referral from the UNHCR.

Canadian visa officers may also determine a refugee to be vulnerable - the person has a greater need of protection than other applicants because of the person's particular circumstances that give rise to a heightened risk to his/her physical safety or well being.

The vulnerability may result from circumstances such as lack of protection normally provided by a family or a medical condition. Canadian visa offices process vulnerable cases before regular refugee cases.

In urgent protection cases, Canada's policy is to try to complete the immigrant processing so that refugees may become permanent residents on arrival in Canada.

When this is not possible, a visa office may issue a Temporary Resident Permit instead of an immigrant visa. The Temporary Resident Permit document allows a refugee to travel to Canada before all the background (medical, security, criminality) checks have been completed. The refugee will subsequently apply for landing (permanent residence) in Canada and undergo or complete medical and background checks.

All urgent protection cases should be submitted directly to the Immigration Program Manager at the Canadian visa office, with supporting documentation as described in Section 5. An explanation as to why UNHCR believes the case to be an emergency or urgent should be included with the submission.

Both refugees admitted under the UPP program and those determined by a visa officer as vulnerable are not required to demonstrate an ability to successfully establish in Canada.

## **7. Refugees with Special Needs**

### **7.1 Refugees with Medical Needs**

Refugee cases involving special medical needs should, where possible, be flagged for the responsible Canadian visa office. If the medical condition presents a danger to public health or safety an applicant may fail Canada's medical examination.

In Canada, provincial governments are responsible for health care and social services.

Some health conditions may require frequent or costly medical treatment. As part of the annual target setting exercise, these types of cases are discussed during the consultations with the provinces to ensure adequate care is available. Depending on the circumstances of the case, refugees with medical conditions may need to be destined to particular areas where the required medical services are available. As a result, processing times for such cases may be lengthy. Other medical conditions may require substantial support from other persons. Thus, when recommending refugee cases with medical conditions it is worth considering the presence of accompanying or other family in Canada able to assist the refugee.

It is recommended that UNHCR consult with the responsible Canadian visa office if there are questions regarding referral of a specific case.

### **7.2 Survivors of Violence and Torture**

Persons who are survivors of violence and torture and who may need additional assistance establishing in Canada may be processed under the Joint Assistance Sponsorship Program (please refer to section 7.7 for details). Treatment for such cases is available in a number of Canadian cities. Cases should be submitted directly to the visa office with any need for follow-up treatment noted in the submission.

### **7.3 Women-at-risk**

The aim of the Canadian Women-at-risk program is to provide protection and assistance to refugee women who are in critical situations or in need of special attention.

The program recognizes that women in these circumstances require additional assistance to establish successfully in Canada.

Canada defines Women-at-risk as women without the normal protection of a family who find themselves in precarious situations and whose safety is in jeopardy in countries of first asylum. Urgent need of protection and vulnerable cases are given priority (see section 6). However, Women-at-risk may also be women who are not in immediate danger, but who are living in unstable conditions and for whom resettlement in a third country offers the only solution. To be eligible for this program, Women-at-risk must be Convention refugees or members of one of the Humanitarian-protected Persons Abroad Classes. The ability to successfully establish will be assessed by Canadian visa officers on a 'sliding scale',

That is, the greater the need for protection or the more immediate the danger the less weight will be placed on establishment considerations. In cases of refugees in urgent need of protection or vulnerable, ability to establish criteria will not be applied. In other words, Women-at-risk may be accepted despite having limited settlement prospects.

### **Routing of Submissions**

All Women-at-risk cases should be submitted directly to the responsible Canadian visa office. Please complete the UNHCR RRF and Social Assessment forms. Emergency or urgent cases should be clearly marked and accompanied with an outline of the reasons for urgency.

### **7.4 Children**

Depending on the circumstances of the case, if an unaccompanied minor is to be reunited with immediate family in Canada, he or she could be eligible for consideration under: the one year window of opportunity (see section 8.1), submitted as a refugee in his or her own right, be privately sponsored or be sponsored under Canada's Family Class program.

Canada currently does not accept for resettlement, minors who have no immediate family in Canada.

### **7.5 Elderly**

Elderly refugees with close family ties to Canada can be considered for resettlement in order to reunite families that have been separated. Canada's policy is to keep families together. Therefore, if an elderly refugee is dependent on another refugee being referred to Canada for resettlement, he or she may be considered under the resettlement program.

Elderly refugees without close family ties in Canada and who are not accompanied by family members can be considered for resettlement when there are compelling protection needs. Such cases would likely require additional settlement assistance and may be eligible for a Joint Assistance Sponsorship (JAS – see section 7.7).

### **7.6 Private Sponsorship**

Through the provisions of the Immigration and Refugee Protection Act and Regulations, the Government of Canada encourages Canadian public involvement in the resettlement from abroad of Convention refugees and members of the HPC. In some cases, these persons would not otherwise meet the eligibility requirements without the added support a private sponsor provides.

Under this category, NGOs, churches, communities, organizations and individuals agree to sponsor refugees by entering into an agreement with the Department of Citizenship and Immigration. In 2001, 3,560 privately sponsored refugees landed in Canada.

The sponsorship of refugees by Canadian citizens and permanent residents allows for the admission of refugees in addition to the number whose admission is financially assisted by the federal government. Sponsoring groups commit to providing the sponsored refugee with basic assistance in the form of accommodation, clothing, food and settlement assistance normally for one year from the refugee's date of arrival in Canada. The sponsorship period may be up to thirty-six months in exceptional circumstances.

The sponsoring group also assists the refugee to find employment and become self-supporting within the period of the sponsorship agreement.

Private sponsors may identify a refugee they wish to assist or may ask that a Canadian visa office refer an appropriate case to them. Private sponsorship may assist with UNHCR-identified cases which have been referred to a Canadian visa office but which appear to require greater levels of support in establishing in Canada.

### **Criteria**

Eligibility and admissibility criteria as described in Section 2 apply to privately sponsored cases.

### **7.7 Joint Assistance Sponsorship (JAS)**

A Joint Sponsorship provides for the Government and a private sponsorship group to share the responsibilities of sponsorship for refugees who are in need of assistance over and above that which is provided through either Government assistance or private sponsorship alone. The Canadian Government assumes financial responsibility while the group is committed to ensure the refugee's integration. The period of sponsorship may be extended for up to two years, during which time the refugee is expected to become self-sufficient. The numbers for this type of sponsorship have increased over the last several years but are considered on a case by case basis.

This program is intended for refugees with special needs, meaning that the person has greater need of settlement assistance than other resettled refugees. Those selected for the joint assistance include refugees whose personal circumstances may include, a large number of family members, trauma from violence or torture, medical disabilities or the effects of systemic discrimination.

Eligibility and admissibility criteria are applicable. There is, however, some flexibility on admissibility criteria because of the additional support available to the refugees.

In some situations, costs of transportation and medicals may be covered by a contribution.

## **8. Family Reunification of Refugees**

### **8.1 Policy concerning Family Reunification**

The concept of family unit for refugee resettlement purposes includes individuals who meet the definition of family members. Family members are spouses, common-law partners (including same sex partnerships) and dependent children. In addition, administrative guidelines exist to include individuals who do not meet the legal definition of family member, but who are emotionally or economically dependent on the family unit. These individuals, who are dependent on the family unit, are de facto dependants.

An example of the de facto dependant would be an elderly relative who has always lived with the family. By the use of flexibility and appropriate discretion in determining who is part of the family unit, Canadian visa officers are asked to make every effort to ensure that refugee families are not separated at the time of selection.

### **8.2 The One Year Window of Opportunity**

In cases where immediate family members have been separated from the principal applicant for reasons beyond their control, there is an administrative mechanism in place called the one year window of opportunity that allows immediate family members (spouses, common-law partners and dependent children of refugees resettled to Canada) to reunite with the principal applicant without the need to apply under one of Canada's other immigrant programs or be sponsored by the family. It also means the person does not have to meet the definition of refugee in their own right (refugee status is derived through the principal applicant) nor does the person have to be assessed on the ability to establish on their own.

To qualify the principal applicant must have identified immediate family members prior to departure for Canada. The immediate family members (spouse, common-law partners and dependant children) must submit an application at a visa office within one year from the date the principal applicant arrives in Canada. It is therefore very important that all immediate family members be identified on the principal applicant's (IMM0008) application even if their present location is unknown. Dependants of refugees who do not qualify under the "One Year Window of Opportunity" may qualify as refugees in their own right, may be sponsored under the Private Sponsorship of Refugees Program or be sponsored under the Family Class depending on the circumstances. Please contact the Canadian visa office if you have additional questions on other immigrant categories.

## **9. Medical Requirements**

Canada requires that all applicants must not be suffering from a medical condition which is likely to be a danger to public health or safety. As a result, all immigrants to Canada including refugees must pass a medical examination which is provided by a local physician (“designated medical practitioner” or panel physician) who is authorised by the Canadian Government. A Canadian physician employed by Citizenship and Immigration Canada then assesses the results of the medical examination. Canada does not provide counselling to persons found to have serious medical conditions during the course of the immigrant medical examination although counselling is provided to persons who test positive for HIV.

In the case of refugees and members of the Humanitarian-protected Persons Abroad classes who do not have money to pay for a medical examination, a loan may be issued under the provisions of the Immigrant Loan Program.

This program is available to both government-assisted and privately sponsored refugees. In countries where the International Organisation for Migration (IOM) is arranging travel for the refugees, IOM may also arrange and prepay medical examinations. Canada later reimburses IOM for cost incurred on behalf of refugees resettled to Canada. IOM absorbs the examination costs of unsuccessful refugee applicants.

## **10. Travel**

Arrangements for travel to Canada are generally made by the International Organisation for Migration (IOM) in co-ordination with the visa office. Immigrant loans are available to refugees and members of the HPC to cover the cost of travel to Canada. In exceptional circumstances, individuals identified as special needs refugees may be eligible for contributions to cover travel costs. The visa office must request authorisation from the Refugees Branch at CIC Headquarters for a travel contribution.

## **11. Status on Arrival in Canada**

Except for those who are issued a Temporary Resident Permit, all refugees processed overseas are granted permanent residence status upon arrival in Canada. Those who arrive with Temporary Resident Permits may apply for permanent residence once medical and background checks are passed or after a period of five years. Refugees who are permanent residents of Canada may seek employment immediately after arrival in Canada and are eligible to apply for Canadian citizenship after three years of continuous residence in Canada. Refugees in Canada for two years or less who wish to leave Canada to repatriate to their home country and who do not have the means to do so, may apply to Citizenship and Immigration for assistance.

However, it is only in rare cases that the Canadian Government pays for repatriation. Refugees in Canada for more than two years, who are on social assistance, should apply to UNHCR for repatriation.

## **12. Settlement and Community Services**

### **12.1 Overview of Integration**

Canada's settlement programs for newcomers help immigrants and refugees become participating and contributing members of Canadian society, and promote an acceptance of newcomers by Canadians.

A key element in Canada's strategy for integration of newcomers is a differentiation between the immigration stream and the refugee stream, thus creating two programming areas. Although the objectives of successful integration and permanent settlement are the same for immigrants and refugees, the special needs of refugees are recognized and efforts are made to meet these needs. Canada has the benefit of years of experience resettling refugees from all parts of the world and offers settlement services to meet the diverse needs of these newcomers to Canada.

### **12.2 Services to Refugees**

Most services are available to both immigrants and refugees. However, the Resettlement Assistance Program (RAP) offers income support and a range of immediate essential services that are available exclusively to government-assisted refugees. Refugees who are resettled under the Private Sponsorship of Refugees program receive financial and integration assistance from their sponsor. The goals of these programs are to support refugees in their efforts to become self-sufficient as quickly as possible.

### **12.3 Refugee Reception**

Upon arrival at a port of entry, refugees in transit are assisted with inland transportation. Arrangements are also made for overnight accommodation and meals, if required. Arrangements are normally made for refugees who need additional reception assistance to be greeted at their final destination. Refugees who arrive in Canada between mid-October and mid-April are provided with any necessary winter clothing.

## **12.4 Beginning Settlement**

### **Housing**

Temporary accommodation is provided to government-assisted refugees until permanent housing is secured. In some cases, this accommodation is purchased commercially from hotels and motels. In other cases, accommodation is purchased from organizations that provide reception house services. These reception houses offer a more holistic and communal environment than do hotels and motels, and help alleviate feelings of abandonment and isolation felt by many refugees upon their arrival in Canada.

### **Basic Needs of Life**

Assistance for the basic needs of life (food, clothing, shelter) is available for up to 12 months after arrival, or until the refugee becomes self-supporting, whichever comes first. Assistance may be extended for an additional 12 months for special needs JAS cases. Essential household furnishings and sundries are also provided.

### **Referral to Settlement Services**

Refugees are assisted with applications for medical insurance, social insurance numbers and family allowance and with transfer and translation of employment records. They are also referred to language training and other services provided through the settlement programs.

## **12.5 Settlement Services for Immigrants and Refugees**

In Canada, settlement services are not delivered directly by the federal government. Rather, the department of Citizenship and Immigration Canada funds eligible individuals, non-profit organizations, agencies serving immigrants, community groups, businesses, provincial and municipal governments, and educational institutions (called Service Provider Organizations, or SPOs) to provide needed services. Some SPOs may have individuals on staff from the refugee's country of origin able to speak the refugee's language and share the refugee's culture.

## **12.6 Orientation Materials**

Orientation materials have been developed to facilitate newcomers' understanding of the Canadian way of life and society. Both written and audio-visual materials are being used overseas in cultural orientation sessions at Canadian visa offices' waiting rooms, in local offices and in immigrant serving agencies across Canada.



## **12.7 Referral**

Refugees are referred to various resources in the community which provide assistance with aspects of daily life such as: public transportation, banking, day-care and baby-sitting, school registration, shopping for food and clothing, budgeting, nutrition and food preparation, household management, safety, and housing, especially dealing with landlords and utility companies, etc.

## **12.8 Community Information/Orientation**

Refugees are introduced to the local community to provide them with a sense of belonging to the new community, and information concerning their rights and obligations.

## **12.9 Interpretation and Translation**

Interpreters are available to assist refugees in their day-to-day activities and in accessing services prior to their becoming functional in English or French. Translation services are available for documents relating to employment, health, education and legal matters.

## **12.10 Para-Professional Counselling**

Non-therapeutic services (identifying needs, determining how to meet those needs and helping the newcomer get help) are available to refugees having difficulties adjusting to life in Canada.

## **12.11 Employment-Related Services**

These services include assistance in obtaining required certification of education and/or trade documents, and job finding clubs which hold sessions on job search techniques, including résumé writing, interview skills and use of the telephone. Canada has also a "buddy system" to assist refugees overcome the stress of moving to a new country by having a friend familiar with Canadian ways available to guide them. Through the Host Program newcomers are matched with volunteer individuals and groups (the hosts) who help them find out about available services and how to use them, practice English or French, make contacts in their employment fields and participate in community activities. In return, host volunteers acquire new friends, learn about other cultures and strengthen community life.

## **12.12 Health**

Refugees are eligible for provincial health coverage no later than 90 days after arrival in the province in which they intend to reside. The federal government provides essential and emergency health care coverage to refugees in need of assistance as an interim measure pending eligibility for provincial health benefits.

### **12.13 Language Training**

Canada understands that by developing language skills, refugees are assisted in the integration process and are better able to function in and contribute to Canadian society. Therefore, instruction in one of Canada's two official languages is available to adult immigrants and refugees through federal and/or provincially funded programs. Children generally develop their language skills through regular attendance at school, with supplementary instruction as required.

### **12.14 Education**

Elementary and secondary schools fall under provincial jurisdiction. All across Canada, immigrant and refugee children are welcome to attend provincially funded public schools. Post-secondary education is not free in Canada, but neither is it restricted to the wealthy. Entrance to colleges and universities is based on a person's educational abilities, as demonstrated through high-school grades, and sometimes through equivalent work experience.

### **12.15 Employment and Vocational Training**

Employment and training programs are administered by Human Resources and Skills Development Canada (HRSDC). While many of HRSDC's programs are available only to clients who are eligible for Employment Insurance (EI), all residents of Canada, including newly arrived immigrants and refugees, have access to the National Employment Service, which includes labour market information, the Electronic Labour Exchange, and the National Job Bank.

Furthermore, all unemployed Canadians have access to the services offered through community organizations that have been contracted under the Employment Assistance Services (EAS) support measure. Through the local planning process, local Human Resource Centers of Canada will work with provinces, other federal departments, and other partners to identify gaps in service, collaborate on alternative means of serving immigrants and refugees, and encourage the community to share in providing support to those individuals who are not eligible for employment benefits.

## **13. Reference materials**

### **13.1 Other Useful Reference Material**

The following document may be obtained through Canadian Visa Offices or visiting the CIC website: Overseas

Processing Manual Chapter OP 5 Refugees – Protected Persons.

Immigration and Refugee Board Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution

### **13.2 Website:**

Refugee Resettlement Partners Web Site:

[www.cic.gc.ca/ref-protection](http://www.cic.gc.ca/ref-protection)

Citizenship and Immigration Canada:

[www.cic.gc.ca](http://www.cic.gc.ca)

Immigration and Refugee Board:

[www.irb.gc.ca](http://www.irb.gc.ca)

Ministère des Relations avec les citoyens et de l'immigration (Québec)

[www.immq.gouv.qc.ca](http://www.immq.gouv.qc.ca)

## GENDER AND RESETTLEMENT – ANALYZING CLAIMS

### All training materials needed:

**PowerPoint slide:**

**No. 10** Case study exercise on gender and resettlement – instructions.

**Handout:**

**No. 20** Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees.

**Exercises:**

**No. 1** Resettlement Registration Form (RRF);

**No. 2** Case study exercise on gender and resettlement – RRF and a case of a woman at risk;

**No. 3** Case study exercise on gender and resettlement – case of a woman trafficked for sexual exploitation.

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### Case study exercise on gender and resettlement – instructions



- Discuss and analyse the case and fill in the RRF – with special focus on paras. 9-15;
- Choose a group rapporteur

PowerPoint-slide no. 10

Handout no. 20



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**GUIDELINES ON INTERNATIONAL PROTECTION:  
Gender-Related Persecution within the context of Article 1A(2)  
of the 1951 Convention and/or its 1967 Protocol  
relating to the Status of Refugees**

UNHCR issues these Guidelines pursuant to its mandate, as contained in the Statute of the Office of the United Nations High Commissioner for Refugees, in conjunction with Article 35 of the 1951 Convention relating to the Status of Refugees and Article II of its 1967 Protocol. These Guidelines complement the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Reedited, Geneva, January 1992). They further replace UNHCR's Position Paper on Gender-Related Persecution (Geneva, January 2000) and result from the Second Track of the Global Consultations on International Protection process which examined this subject at its expert meeting in San Remo in September 2001.

These Guidelines are intended to provide legal interpretative guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff carrying out refugee status determination in the field.

## Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees

### **I. INTRODUCTION**

1. “*Gender-related persecution*” is a term that has no legal meaning *per se*. Rather, it is used to encompass the range of different claims in which gender is a relevant consideration in the determination of refugee status. These Guidelines specifically focus on the interpretation of the refugee definition contained in Article 1A(2) of the 1951 Convention relating to the Status of Refugees (hereinafter “1951 Convention”) from a gender perspective, as well as propose some procedural practices in order to ensure that proper consideration is given to women claimants in refugee status determination procedures and that the range of gender-related claims are recognised as such.
2. It is an established principle that the refugee definition as a whole should be interpreted with an awareness of possible gender dimensions in order to determine accurately claims to refugee status. This approach has been endorsed by the General Assembly, as well as the Executive Committee of UNHCR’s Programme.<sup>89</sup>
3. In order to understand the nature of gender-related persecution, it is essential to define and distinguish between the terms “gender” and “sex”. Gender refers to the relationship between women and men based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another, while sex is a biological determination. Gender is not static or innate but acquires socially and culturally constructed meaning over time. Gender-related claims may be brought by either women or men, although due to particular types of persecution, they are more commonly brought by women. In some cases, the claimant’s sex may bear on the claim in significant ways to which the decision-maker will need to be attentive. In other cases, however, the refugee claim of a female asylum seeker will have nothing to do with her sex. Gender-related claims have typically encompassed, although are by no means limited to, acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and discrimination against homosexuals.
4. Adopting a gender-sensitive interpretation of the 1951 Convention does not mean that all women are automatically entitled to refugee status. The refugee claimant must establish that he or she has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

### **II. SUBSTANTIVE ANALYSIS**

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<sup>89</sup> In its Conclusions of October 1999, No. 87 (n), the Executive Committee “not[ed] with appreciation special efforts by States to incorporate gender perspectives into asylum policies, regulations and practices; encourage[d] States, UNHCR and other concerned actors to promote wider acceptance, and inclusion in their protection criteria of the notion that persecution may be gender-related or effected through sexual violence; further encourage[d] UNHCR and other concerned actors to develop, promote and implement guidelines, codes of conduct and training programmes on gender-related refugee issues, in order to support the mainstreaming of a gender perspective and enhance accountability for the implementation of gender policies.” See also Executive Committee Conclusions: No.39, Refugee Women and International Protection, 1985; No.73, Refugee Protection and Sexual Violence, 1993; No.77(g), General Conclusion on International Protection, 1995; No.79(o), General Conclusion on International Protection, 1996; and No.81(t), General Conclusion on International Protection, 1997.

## A. BACKGROUND

5. Historically, the refugee definition has been interpreted through a framework of male experiences, which has meant that many claims of women and of homosexuals, have gone unrecognised. In the past decade, however, the analysis and understanding of sex and gender in the refugee context have advanced substantially in case law, in State practice generally and in academic writing. These developments have run parallel to, and have been assisted by, developments in international human rights law and standards,<sup>90</sup> as well as in related areas of international law, including through jurisprudence of the International Criminal Tribunals for the former Yugoslavia and Rwanda, and the Rome Statute of the International Criminal Court. In this regard, for instance, it should be noted that harmful practices in breach of international human rights law and standards cannot be justified on the basis of historical, traditional, religious or cultural grounds.
6. Even though gender is not specifically referenced in the refugee definition, it is widely accepted that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims. As such, there is no need to add an additional ground to the 1951 Convention definition.<sup>91</sup>
7. In attempting to apply the criteria of the refugee definition in the course of refugee status determination procedures, it is important to approach the assessment holistically, and have regard to all the relevant circumstances of the case. It is essential to have both a full picture of the asylum seeker's personality, background and personal experiences, as well as an analysis and up-to-date knowledge of historically, geographically and culturally specific circumstances in the country of origin. Making generalisations about women or men is not helpful and in doing so, critical differences, which may be relevant to a particular case, can be overlooked.
8. The elements of the definition discussed below are those that require a gender-sensitive interpretation. Other criteria (e.g. being outside the country of origin) remain, of course, also directly relevant to the holistic assessment of any claim. Throughout this document, the use of the term "women" includes the girl-child.

## B. WELL-FOUNDED FEAR OF PERSECUTION

9. What amounts to a well-founded fear of persecution will depend on the particular circumstances of each individual case. While female and male applicants may be subjected to the same forms of harm, they may also face forms of persecution specific to their sex. International human rights law and international criminal law clearly identify certain acts as violations of these laws, such as sexual violence, and support their characterisation as serious abuses, amounting to persecution.<sup>92</sup> In this sense, international law can assist decision-makers to determine the persecutory nature of a particular act. There is no doubt that rape and other forms of gender-related violence, such as dowry-related violence, female genital mutilation, domestic violence, and trafficking,<sup>93</sup> are acts which inflict severe pain and suffering – both mental and physical – and which have been used as forms of persecution, whether perpetrated by State or private actors.

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<sup>90</sup> Useful texts include the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966, the Convention on the Political Rights of Women 1953, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, the Convention on the Rights of the Child 1989, and in particular, the Convention on the Elimination of All Forms of Discrimination Against Women 1979 and the Declaration on the Elimination of Violence against Women 1993. Relevant regional instruments include the European Convention on Human Rights and Fundamental Freedoms 1950, the American Convention on Human Rights 1969, and the African Charter on Human and Peoples' Rights 1981.

<sup>91</sup> See Summary Conclusions – Gender-Related Persecution, Global Consultations on International Protection, San Remo Expert Roundtable, 6-8 September 2001, nos.1 and 3 (Summary Conclusions – Gender-Related Persecution).

<sup>92</sup> See UNHCR's Handbook, paragraph 51.

<sup>93</sup> See below at paragraph 18.

10. Assessing a law to be persecutory in and of itself has proven to be material to determining some gender-related claims. This is especially so given the fact that relevant laws may emanate from traditional or cultural norms and practices not necessarily in conformity with international human rights standards. However, as in all cases, a claimant must still establish that he or she has a well-founded fear of being persecuted as a result of that law. This would not be the case, for instance, where a persecutory law continues to exist but is no longer enforced.
11. Even though a particular State may have prohibited a persecutory practice (e.g. female genital mutilation), the State may nevertheless continue to condone or tolerate the practice, or may not be able to stop the practice effectively. In such cases, the practice would still amount to persecution. The fact that a law has been enacted to prohibit or denounce certain persecutory practices will therefore not in itself be sufficient to determine that the individual's claim to refugee status is not valid.
12. Where the penalty or punishment for non-compliance with, or breach of, a policy or law is disproportionately severe and has a gender dimension, it would amount to persecution.<sup>94</sup> Even if the law is one of general applicability, circumstances of punishment or treatment cannot be so severe as to be disproportionate to the objective of the law. Severe punishment for women who, by breaching a law, transgress social mores in a society could, therefore, amount to persecution.
13. Even where laws or policies have justifiable objectives, methods of implementation that lead to consequences of a substantially prejudicial nature for the persons concerned, would amount to persecution. For example, it is widely accepted that family planning constitutes an appropriate response to population pressures. However, implementation of such policies, through the use of forced abortions and sterilisations, would breach fundamental human rights law. Such practices, despite the fact that they may be implemented in the context of a legitimate law, are recognised as serious abuses and considered persecution.

#### **Discrimination amounting to persecution**

14. While it is generally agreed that 'mere' discrimination may not, in the normal course, amount to persecution in and of itself, a pattern of discrimination or less favourable treatment could, on cumulative grounds, amount to persecution and warrant international protection. It would, for instance, amount to persecution if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on the right to earn one's livelihood, the right to practice one's religion, or access to available educational facilities.<sup>95</sup>
15. Significant to gender-related claims is also an analysis of forms of discrimination by the State in failing to extend protection to individuals against certain types of harm. If the State, as a matter of policy or practice, does not accord certain rights or protection from serious abuse, then the discrimination in extending protection, which results in serious harm inflicted with impunity, could amount to persecution. Particular cases of domestic violence, or of abuse for reasons of one's differing sexual orientation, could, for example, be analysed in this context.

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<sup>94</sup> Persons fleeing from prosecution or punishment for a common law offence are not normally refugees, however, the distinction may be obscured, in particular, in circumstances of excessive punishment for breach of a legitimate law. See UNHCR's Handbook, paragraphs 56 and 57.

<sup>95</sup> See UNHCR's Handbook, paragraph 54.



### Persecution on account of one's sexual orientation

16. Refugee claims based on differing sexual orientation contain a gender element. A claimant's sexuality or sexual practices may be relevant to a refugee claim where he or she has been subject to persecutory (including discriminatory) action on account of his or her sexuality or sexual practices. In many such cases, the claimant has refused to adhere to socially or culturally defined roles or expectations of behaviour attributed to his or her sex. The most common claims involve homosexuals, transsexuals or transvestites, who have faced extreme public hostility, violence, abuse, or severe or cumulative discrimination.
17. Where homosexuality is illegal in a particular society, the imposition of severe criminal penalties for homosexual conduct could amount to persecution, just as it would for refusing to wear the veil by women in some societies. Even where homosexual practices are not criminalised, a claimant could still establish a valid claim where the State condones or tolerates discriminatory practices or harm perpetrated against him or her, or where the State is unable to protect effectively the claimant against such harm.

Trafficking for the purposes of forced prostitution or sexual exploitation as a form of persecution<sup>96</sup>

18. Some trafficked women or minors may have valid claims to refugee status under the 1951 Convention. The forcible or deceptive recruitment of women or minors for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence or abuse that can even lead to death. It can be considered a form of torture and cruel, inhuman or degrading treatment. It can also impose serious restrictions on a woman's freedom of movement, caused by abduction, incarceration, and/or confiscation of passports or other identity documents. In addition, trafficked women and minors may face serious repercussions after their escape and/or upon return, such as reprisals or retaliation from trafficking rings or individuals, real possibilities of being re-trafficked, severe community or family ostracism, or severe discrimination. In individual cases, being trafficked for the purposes of forced prostitution or sexual exploitation could therefore be the basis for a refugee claim where the State has been unable or unwilling to provide protection against such harm or threats of harm.<sup>97</sup>

#### Agents of Persecution

19. There is scope within the refugee definition to recognise both State and non-State actors of persecution. While persecution is most often perpetrated by the authorities of a country, serious discriminatory or other offensive acts committed by the local populace, or by individuals, can also be considered persecution if such acts are knowingly tolerated by the authorities, or if the authorities refuse, or are unable, to offer effective protection.<sup>98</sup>

#### C. THE CAUSAL LINK ("for reasons of")

20. The well-founded fear of being persecuted must be related to one or more of the Convention grounds. That is, it must be "for reasons of" race, religion, nationality, membership of a particular social group, or political opinion. The Convention ground must be a relevant contributing factor, though it need not be shown to be the sole, or dominant, cause. In many jurisdictions the causal link ("for reasons of") must be explicitly established (e.g.

<sup>96</sup> For the purposes of these Guidelines, "trafficking" is defined as per article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, 2000. Article 3(1) provides that trafficking in persons means "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

<sup>97</sup> Trafficking for other purposes could also amount to persecution in a particular case, depending on the circumstances.

<sup>98</sup> See UNHCR's *Handbook*, paragraph 65.

some Common Law States) while in other States causation is not treated as a separate question for analysis, but is subsumed within the holistic analysis of the refugee definition. In many gender-related claims, the difficult issue for a decision-maker may not be deciding upon the applicable ground, so much as the causal link: that the well-founded fear of being persecuted was for reasons of that ground. Attribution of the Convention ground to the claimant by the State or non-State actor of persecution is sufficient to establish the required causal connection.

21. In cases where there is a risk of being persecuted at the hands of a non-State actor (e.g. husband, partner or other non-State actor) for reasons which are related to one of the Convention grounds, the causal link is established, whether or not the absence of State protection is Convention related. Alternatively, where the risk of being persecuted at the hands of a non-State actor is unrelated to a Convention ground, but the inability or unwillingness of the State to offer protection is for reasons of a Convention ground, the causal link is also established.<sup>99</sup>

#### D. CONVENTION GROUNDS

22. Ensuring that a gender-sensitive interpretation is given to each of the Convention grounds is important in determining whether a particular claimant has fulfilled the criteria of the refugee definition. In many cases, claimants may face persecution because of a Convention ground which is attributed or imputed to them. In many societies a woman's political views, race, nationality, religion or social affiliations, for example, are often seen as aligned with relatives or associates or with those of her community.
23. It is also important to be aware that in many gender-related claims, the persecution feared could be for one, or more, of the Convention grounds. For example, a claim for refugee status based on transgression of social or religious norms may be analysed in terms of religion, political opinion or membership of a particular social group. The claimant is not required to identify accurately the reason why he or she has a well-founded fear of being persecuted.

#### Race

24. Race for the purposes of the refugee definition has been defined to include all kinds of ethnic groups that are referred to as "races" in common usage.<sup>100</sup> Persecution for reasons of race may be expressed in different ways against men and women. For example, the persecutor may choose to destroy the ethnic identity and/or prosperity of a racial group by killing, maiming or incarcerating the men, while the women may be viewed as propagating the ethnic or racial identity and persecuted in a different way, such as through sexual violence or control of reproduction.

#### Religion

25. In certain States, the religion assigns particular roles or behavioural codes to women and men respectively. Where a woman does not fulfil her assigned role or refuses to abide by the codes, and is punished as a consequence, she may have a well-founded fear of being persecuted for reasons of religion. Failure to abide by such codes may be perceived as evidence that a woman holds unacceptable Religions regardless of what she actually believes. A woman may face harm for her particular religious beliefs or practices, or those attributed to her, including her refusal to hold particular beliefs, to practise a prescribed

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<sup>99</sup> See Summary Conclusions – Gender-Related Persecution, no.6.

<sup>100</sup> See UNHCR's *Handbook*, paragraph 68.

religion or to conform her behaviour in accordance with the teachings of a prescribed religion.

26. There is some overlap between the grounds of religion and political opinion in gender-related claims, especially in the realm of imputed political opinion. While religious tenets require certain kinds of behaviour from a woman, contrary behaviour may be perceived as evidence of an unacceptable political opinion. For example, in certain societies, the role ascribed to women may be attributable to the requirements of the State or official religion. The authorities or other actors of persecution may perceive the failure of a woman to conform to this role as the failure to practice or to hold certain religious beliefs. At the same time, the failure to conform could be interpreted as holding an unacceptable political opinion that threatens the basic structure from which certain political power flows. This is particularly true in societies where there is little separation between religious and State institutions, laws and doctrines.

### **Nationality**

27. Nationality is not to be understood only as “citizenship”. It also refers to membership of an ethnic or linguistic group and may occasionally overlap with the term “race”.<sup>101</sup> Although persecution on the grounds of nationality (as with race) is not specific to women or men, in many instances the nature of the persecution takes a gender-specific form, most commonly that of sexual violence directed against women and girls.

### **Membership of a Particular Social Group<sup>102</sup>**

28. Gender-related claims have often been analysed within the parameters of this ground, making a proper understanding of this term of paramount importance. However, in some cases, the emphasis given to the social group ground has meant that other applicable grounds, such as religion or political opinion, have been over-looked. Therefore, the interpretation given to this ground cannot render the other four Convention grounds superfluous.
29. Thus, a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.
30. It follows that sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently than men.<sup>103</sup> Their characteristics also identify them as a group in society, subjecting them to different treatment and standards in some countries.<sup>104</sup> Equally, this definition would encompass homosexuals, transsexuals, or transvestites.
31. The size of the group has sometimes been used as a basis for refusing to recognise ‘women’ generally as a particular social group. This argument has no basis in fact or reason, as the other grounds are not bound by this question of size. There should equally be no requirement that the particular social group be cohesive or that members of it voluntar-

<sup>101</sup> See UNHCR’s *Handbook*, paragraph 74.

<sup>102</sup> For more information, see UNHCR’s *Guidelines on International Protection: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (HCR/GIP/02/02, 7 May 2002).

<sup>103</sup> See Summary Conclusions – Gender-Related Persecution, no.5.

<sup>104</sup> See also Executive Committee Conclusion No.39, Refugee Women and International Protection, 1985: “States ... are free to adopt the interpretation that women asylum seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as ‘a particular social group’ within the meaning of Article 1A(2) of the 1951 United Nations Refugee Convention”.

ily associate,<sup>105</sup> or that every member of the group is at risk of persecution.<sup>106</sup> It is well-accepted that it should be possible to identify the group independently of the persecution, however, discrimination or persecution may be a relevant factor in determining the visibility of the group in a particular context.<sup>107</sup>

### Political Opinion

32. Under this ground, a claimant must show that he or she has a well-founded fear of being persecuted for holding certain political opinions (usually different from those of the Government or parts of the society), or because the holding of such opinions has been attributed to him or her. Political opinion should be understood in the broad sense, to incorporate any opinion on any matter in which the machinery of State, government, society, or policy may be engaged. This may include an opinion as to gender roles. It would also include non-conformist behaviour which leads the persecutor to impute a political opinion to him or her. In this sense, there is not as such an inherently political or an inherently non-political activity, but the context of the case should determine its nature. A claim on the basis of political opinion does, however, presuppose that the claimant holds or is assumed to hold opinions not tolerated by the authorities or society, which are critical of their policies, traditions or methods. It also presupposes that such opinions have come or could come to the notice of the authorities or relevant parts of the society, or are attributed by them to the claimant. It is not always necessary to have expressed such an opinion, or to have already suffered any form of discrimination or persecution. In such cases the test of well-founded fear would be based on an assessment of the consequences that a claimant having certain dispositions would have to face if he or she returned.
33. The image of a political refugee as someone who is fleeing persecution for his or her direct involvement in political activity does not always correspond to the reality of the experiences of women in some societies. Women are less likely than their male counterparts to engage in high profile political activity and are more often involved in 'low level' political activities that reflect dominant gender roles. For example, a woman may work in nursing sick rebel soldiers, in the recruitment of sympathisers, or in the preparation and dissemination of leaflets. Women are also frequently attributed with political opinions of their family or male relatives, and subjected to persecution because of the activities of their male relatives. While this may be analysed in the context of an imputed political opinion, it may also be analysed as being persecution for reasons of her membership of a particular social group, being her "family". These factors need to be taken into account in gender-related claims.
34. Equally important for gender-related claims is to recognise that a woman may not wish to engage in certain activities, such as providing meals to government soldiers, which may be interpreted by the persecutor(s) as holding a contrary political opinion.

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<sup>105</sup> See Summary Conclusions - Membership of a Particular Social Group, Global Consultations on International Protection, San Remo Expert Roundtable, 6-8 September 2001, no.4 ("Summary Conclusions – Membership of a Particular Social Group").

<sup>106</sup> See Summary Conclusions – Membership of a Particular Social Group, *ibid.*, no.7.

<sup>107</sup> See Summary Conclusions - Membership of a Particular Social Group, *ibid.*, no.6.

### III. PROCEDURAL ISSUES<sup>108</sup>

35. Persons raising gender-related refugee claims, and survivors of torture or trauma in particular, require a supportive environment where they can be reassured of the confidentiality of their claim. Some claimants, because of the shame they feel over what has happened to them, or due to trauma, may be reluctant to identify the true extent of the persecution suffered or feared. They may continue to fear persons in authority, or they may fear rejection and/or reprisals from their family and/or community.<sup>109</sup>
36. Against this background, in order to ensure that gender-related claims, of women in particular, are properly considered in the refugee status determination process, the following measures should be borne in mind:
- i. Women asylum seekers should be interviewed separately, without the presence of male family members, in order to ensure that they have an opportunity to present their case. It should be explained to them that they may have a valid claim in their own right.
  - ii. It is essential that women are given information about the status determination process, access to it, as well as legal advice, in a manner and language that she understands.
  - iii. Claimants should be informed of the choice to have interviewers and interpreters of the same sex as themselves,<sup>110</sup> and they should be provided automatically for women claimants. Interviewers and interpreters should also be aware of and responsive to any cultural or religious sensitivities or personal factors such as age and level of education.
  - iv. An open and reassuring environment is often crucial to establishing trust between the interviewer and the claimant, and should help the full disclosure of sometimes sensitive and personal information. The interview room should be arranged in such a way as to encourage discussion, promote confidentiality and to lessen any possibility of perceived power imbalances.
  - v. The interviewer should take the time to introduce him/herself and the interpreter to the claimant, explain clearly the roles of each person, and the exact purpose of the interview. The claimant should be assured that his/her claim will be treated in the strictest confidence, and information provided by the claimant will not be provided to members of his/her family. Importantly, the interviewer should explain that he/she is not a trauma counsellor.
  - vi. The interviewer should remain neutral, compassionate and objective during the interview, and should avoid body language or gestures that may be perceived as intimidating or culturally insensitive or inappropriate. The interviewer should allow the claimant to present his/her claim with minimal interruption.

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<sup>108</sup> This Part has benefited from the valuable guidance provided by various States and other actors, including the following guidelines: *Considerations for Asylum Officers Adjudicating Asylum Claims from Women* (Immigration and Naturalization Service, United States, 26 May 1995); *Refugee and Humanitarian Visa Applicants: Guidelines on Gender Issues for Decision Makers* (Department of Immigration and Humanitarian Affairs, Australia, July 1996); *Guideline 4 on Women Refugee Claimants Fearing Gender-Related Persecution: Update* (Immigration and Refugee Board, Canada, 13 November 1996); *Position on Asylum Seeking and Refugee Women*, (European Council on Refugees and Exiles, December 1997); *Gender Guidelines for the Determination of Asylum Claims in the UK* (Refugee Women's Legal Group, July 1998); *Gender Guidelines for Asylum Determination* (National Consortium on Refugee Affairs, South Africa, 1999); *Asylum Gender Guidelines* (Immigration Appellate Authority, United Kingdom, November 2000); and *Gender-Based Persecution: Guidelines for the investigation and evaluation of the needs of women for protection* (Migration Board, Legal Practice Division, Sweden, 28 March 2001).

<sup>109</sup> See also *Sexual Violence Against Refugees: Guidelines on Prevention and Response* (UNHCR, Geneva, 1995) and *Prevention and Response to Sexual and Gender-Based Violence in Refugee Situations* (Report of Inter-Agency Lessons Learned Conference Proceedings, 27-29 March 2001, Geneva).

<sup>110</sup> See also Executive Committee Conclusion No.64, *Refugee Women and International Protection*, 1990, (a) (iii): Provide, wherever necessary, skilled female interviewers in procedures for the determination of refugee status and ensure appropriate access by women asylum seekers to such procedures, even when accompanied by male family members.

- vii. Both 'open-ended' and specific questions which may help to reveal gender issues relevant to a refugee claim should be incorporated into all asylum interviews. Women who have been involved in indirect political activity or to whom political opinion has been attributed, for example, often do not provide relevant information in interviews due to the male-oriented nature of the questioning. Female claimants may also fail to relate questions that are about 'torture' to the types of harm which they fear (such as rape, sexual abuse, female genital mutilation, 'honour killings', forced marriage, etc.).
- viii. Particularly for victims of sexual violence or other forms of trauma, second and subsequent interviews may be needed in order to establish trust and to obtain all necessary information. In this regard, interviewers should be responsive to the trauma and emotion of claimants and should stop an interview where the claimant is becoming emotionally distressed.
- ix. Where it is envisaged that a particular case may give rise to a gender-related claim, adequate preparation is needed, which will also allow a relationship of confidence and trust with the claimant to be developed, as well as allowing the interviewer to ask the right questions and deal with any problems that may arise during an interview.
- x. Country of origin information should be collected that has relevance in women's claims, such as the position of women before the law, the political rights of women, the social and economic rights of women, the cultural and social mores of the country and consequences for non-adherence, the prevalence of such harmful traditional practices, the incidence and forms of reported violence against women, the protection available to them, any penalties imposed on those who perpetrate the violence, and the risks that a woman might face on her return to her country of origin after making a claim for refugee status.
- xi. The type and level of emotion displayed during the recounting of her experiences should not affect a woman's credibility. Interviewers and decision-makers should understand that cultural differences and trauma play an important and complex role in determining behaviour. For some cases, it may be appropriate to seek objective psychological or medical evidence. It is unnecessary to establish the precise details of the act of rape or sexual assault itself, but events leading up to, and after, the act, the surrounding circumstances and details (such as, use of guns, any words or phrases spoken by the perpetrators, type of assault, where it occurred and how, details of the perpetrators (e.g. soldiers, civilians) etc.) as well as the motivation of the perpetrator may be required. In some circumstances it should be noted that a woman may not be aware of the reasons for her abuse.
- xii. Mechanisms for referral to psycho-social counselling and other support services should be made available where necessary. Best practice recommends that trained psycho-social counsellors be available to assist the claimant before and after the interview.

#### Evidentiary Matters

- 37. No documentary proof as such is required in order for the authorities to recognise a refugee claim, however, information on practices in the country of origin may support a particular case. It is important to recognise that in relation to gender-related claims, the usual types of evidence used in other refugee claims may not be as readily available. Statistical data or reports on the incidence of sexual violence may not be available, due to under-reporting of cases, or lack of prosecution. Alternative forms of information might assist, such as the testimonies of other women similarly situated in written reports or oral testimony, of non-governmental or international organisations or other independent research.

#### IV. METHODS OF IMPLEMENTATION

Depending on the respective legal traditions, there have been two general approaches taken by States to ensure a gender-sensitive application of refugee law and in particular of the refugee definition. Some States have incorporated legal interpretative guidance and/or procedural safeguards within legislation itself, while others have preferred to develop policy and legal guidelines on the same for decision-makers. UNHCR encourages States who have not already done so to ensure a gender-sensitive application of refugee law and procedures, and stands ready to assist States in this regard

Exercise no. 1

## RESETTLEMENT REGISTRATION FORM (RRF)

The Resettlement Registration Form (RRF) can be found at UNHCR's website:  
[www.unhcr.ch/cgi-bin/texis/vtx/home/+\\_wwBme6DPG8nwwwFqA72ZR0gRfZNtFgrpGdBnqBAFqA72ZR0gRfZncFq-Gn5nBBcnMnDBaGnto5BGwBodDahdGMaDzmxwww1FqmRbZ/opendoc.pdf](http://www.unhcr.ch/cgi-bin/texis/vtx/home/+_wwBme6DPG8nwwwFqA72ZR0gRfZNtFgrpGdBnqBAFqA72ZR0gRfZncFq-Gn5nBBcnMnDBaGnto5BGwBodDahdGMaDzmxwww1FqmRbZ/opendoc.pdf)

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## 2. Case-related Data

UNHCR case number: \_\_\_\_\_

Submission Priority:

Case size:

Resettlement Criteria:

Arrival:		Country of Asylum:		Cross referenced cases:	
Registration:		Refugee Status:			
Address:					

Embassy file number: \_\_\_\_\_

HQ Reference number: \_\_\_\_\_

## 2. Individual Bio Data

(If NOT currently living with Principal Applicant, explain under Section 7 - Additional Remarks)

Relationship to PRA

Alias Names:

Sex: DOB: est. Age:

Principal Applicant

Marital Status:

Country of Origin:

Citizenship:

Place and Country of Birth:

Religion:

Name of Father:

Ethnic Origin:

Name of Mother:

Education:

Occupation/Skill:

Languages:

Special Needs:

Alias Names:

Sex: DOB: est. Age:

Marital Status:

Country of Origin:

Citizenship:

Place and Country of Birth:

Religion:

Name of Father:

Ethnic Origin:

Name of Mother:

Education:

Occupation/Skill:

Languages:

Special Needs:

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### 3. Relatives of principal applicant and spouse not included in this submission

ALL OTHER CLOSE RELATIVES OF PRA AND SPOUSE in the country of origin, the country of refuge or any other country. Include at least all immediate biological and legal relatives, including step and half relationships. In particular, parents, spouses, children and siblings of each person listed in the individual should be mentioned. In addition, distant relatives including friends in resettlement countries should be included who can provide assistance in case of resettlement, if there are no other close relatives in those countries.

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	Sex: DOB:	Age:
Place and Country of Birth:	Legal Status:	Marital Status:
Relationship to PRA:	Religion:	Ethnicity:
Country of residence:	Address in country of residence:	
Comments:		

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	Sex: DOB:	Age:
Place and Country of Birth:	Legal Status:	Marital Status:
Relationship to PRA:	Religion:	Ethnicity:
Country of residence:	Address in country of residence:	
Comments:		

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	Sex: DOB:	Age:
Place and Country of Birth:	Legal Status:	Marital Status:
Relationship to PRA:	Religion:	Ethnicity:
Country of residence:	Address in country of residence:	
Comments:		

#### **4. REFUGEE CLAIM**

(Including: events and reasons leading to the granting of refugee status/reasons for a continued need for international protection. If relevant, an exclusion analysis should be included and indicate activities/events e.g., involvement in armed struggle, previous convictions, military service. The claim(s) of other family member(s) which maybe different from the PRA's should likewise be included that could enhance the resettlement selection requirements. Also, countries and dates of transit in other countries should be included, if applicable, as well as information on detention. - see Resettlement Handbook, Chapter 3 and Handbook on Procedures and Criteria for Determining Refugee Status)

#### **5. NEED FOR RESETTLEMENT**

(see Resettlement Handbook, Chapter 4)

#### **6. SPECIAL NEEDS ASSESSMENT** (see Resettlement Handbook, Chapter 5)

#### **7. ADDITIONAL REMARKS**

(e.g. particular family relationships, residence of family members in locations different from PRA, changes in marital status including dates and supporting documentation available and any other information for resettlement authorities).

## 8. DECLARATION

I/We, the undersigned, authorize UNHCR to share all information and any documents pertaining to me/us and my/our family/dependants in the context of a resettlement submission with officials of Governments other than my/our own. At the same time, UNHCR is authorized to receive any information relating to a resettlement submission on my/our behalf from such Governments. This includes, in particular, my/our agreement that reasons for a decision relating to a resettlement submission are shared with UNHCR. All persons affirm that the information provided to UNHCR for the purpose of this submission is correct and truthful to the best of their knowledge.

\_\_\_\_\_

Place and Date

\_\_\_\_\_  
Signature of Principal Applicant and certification of correctness of all information provided by the applicants (signed copy to be retained at initiating UNHCR Office)

\_\_\_\_\_

\_\_\_\_\_  
Place and Date                      Signature of spouse and certification of correctness of all information provided by the applicants (signed copy to be retained at initiating UNHCR Office)

\_\_\_\_\_

Place and Date

\_\_\_\_\_  
Signature of UNHCR interviewer

Name:

Title:

\_\_\_\_\_

Place and Date

\_\_\_\_\_  
Signature of Interpreter (if applicable)

Name:

Person to be contacted for any possible clarification or further information (if not same as interviewer)

Name:

Title:

\_\_\_\_\_

**9. ATTACHMENTS** (please specify any attachments; if not sent as an attachment under the same e-mail message: provide reference number and date of dispatch)

a)

b)

c)

d)

e)

f)

g)

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**GENDER AND RESETTLEMENT  
RRF OF A WOMAN AT RISK**

**CASE STUDY #1**

**Reasons for fleeing Country A**

The Applicant lived alone with her two children and ran a fruit stall at the town market. The Applicant was widowed in 2000, when her husband died in a bomb attack on a bus. It is still not clear whether the incident was perpetrated by guerrilla forces present in the area or by a criminal group.

The Applicant took over the fruit stand after her husband's death. Her eldest son assisted her with the stand as the Applicant was too afraid to send him to school because of the strong guerrilla presence in the area and throughout the entire country. Her other child remained at home and a woman looked after him while the Applicant was working at the market.

Around mid-March 2003, the Applicant received a note at her house from the guerrilla front operating in the area. It was just a greeting note with no specific request or question. The Applicant did not give it much importance.

However, a month and a half later, the Applicant received a second note from the same group. This time, the group stated that they wanted to recruit her eldest son, who was about to turn 16, and that he had to present himself at the encampment. The Applicant was terrified and did not know what to do. She knew that she would be in great danger if she reported the letter to the relevant authorities as the guerrillas could easily find out. In June (approximately), the Applicant received a third note from the group. This time, they warned that if the Applicant's son didn't present himself at their camps in the following 24 hours, the family would have to face the consequences.

The Applicant realized that such threats were serious and felt extremely afraid. That same evening, at around 6 to 7pm, she and her children packed a few things and took a taxi to the nearest major city. The first thing that crossed her mind was to come to Country B as her sister had been living here for a few years. As soon as they arrived in the major city, they took a bus and crossed the nearest border.

**Situation in Country B**

The Applicant and her children entered Country B on June 15<sup>th</sup> 2003. They proceeded to join her sister. However, her sister was in a very difficult situation because her husband was an alcoholic. The Applicant therefore only remained with her for a few days and then moved cities, as she had been told that it would be easier for her to find work.

The Applicant had very little savings and only had some jewellery to sell in order to survive. She and her children lived in a hotel for a few days and could only afford one meal a day. A few days after arriving in the new city, the Applicant met a person who worked as a vendor on buses and offered to help the Applicant do the same. The Applicant agreed and began selling sweets and pencils on buses. A few days later, the Applicant moved into a small house

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free of charge- in exchange, she looked after the home. The Applicant is still living in that house and has been paying USD \$ 20 monthly rent for the past couple of months. She still works as a vendor on buses and makes around USD \$ 5 to 6 dollars a day. She works every single day, including weekends, from early in the morning until 4 to 5pm in the afternoon.

Because she lacks money, the Applicant has not been able to send her children to school. Her two children remain at home all the time and have nothing to do other than watch TV. A neighbor regularly goes to the house at noon time to prepare their lunch.

According to the social worker who visited them at the house, both children are apparently healthy but look lethargic, unenergetic and very depressed because they are not doing anything in particular and their mother is away all day. The Applicant would like to find another job and send her children to school but is struggling to get by day-by-day.

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## **Gender and Resettlement Case of a woman trafficked for sexual exploitation**

### **CASE STUDY #2**

The Applicant is a national of Country X. She was born in the city of A where she lived with her spouse and children. The Applicant was a housewife for many years while her husband supported their family until his untimely death. Following loss of the husband, she lived with her sister and children in A. She states that she was employed at local agricultural farm as a labourer and also worked for a road maintenance company. She indicates that in 1999 she responded to an advertisement for employment/work abroad published in the newspaper. By doing so, she was hoping she might improve the living conditions of her family. The Applicant indicates that in early 2000 she left Country X travelling by bus with a group of her compatriots to a city in country Y. According to the Applicant, she was the youngest passenger in the bus. Once the bus arrived in early morning hours, there was a person waiting for her who took her to Country Z. She indicates that this man (whom she identifies as Paul) took over her passport and she never saw her documents again. The Applicant states that they crossed the border legally, but indicates that she witnessed Paul paying for something for which she believed was an entry visa.

Until January 2001 she worked for Paul and his friend as a waitress in a café bar in a town in country Z. She indicates that she was never paid for her work, but was told by the café owner that once she completed her work for him, he would pay the entire sum. Instead, in early 2001, he sold her to another man who kept her locked in an apartment for the next three months. In the spring of 2002, the IC was transferred to Country W, where the new trafficker owned a night club and subjected her to sexual abuse. If the Applicant failed to obey the demands of the trafficker, he would severely beat her up. This resulted in multiple severe injuries and broken bones for which she had to be hospitalised for a month. She indicates that the trafficker visited her in the hospital and threatened her not to disclose how and who injured her. Meanwhile, a man who used to come to the night club visited her and he promised he would help her to escape and return to her home in Country X. In despair, the Applicant trusted him and fled from the hospital after a month. She contacted the man who promised to help her. Unfortunately, he was also in the trafficking network and he took her back to Country Z where her ordeal continued. She was trafficked a number of times, usually for about 7-10 days, before being transferred again. During a two and a half-year period she was subjected to severe forms of sexual abuse and violence, frequent physical assaults and was often drugged. She indicates that she attempted to escape several times but was always caught and returned back to the traffickers.

As of 7-8 months ago the Applicant was located in yet another town in Country Z. In September 2004, she managed to get the police and requested assistance in repatriation to Country X. Due to the visible bruises on her face, the female police officer immediately sent her to the women's safe house where the Applicant is presently being sheltered. One of the policemen escorting her to the safe house was the brother of one of the traffickers she claims subjected her to her enslavement. The Applicant is now the key witness in the investigation procedure against four persons who are arrested in Country Z for trafficking. One of them is the town Deputy State Prosecutor. The case has been highly publicised and high-profile due to its sensitive political connotations. The Applicant is under enormous psychological pressure. She has been receiving threats by telephone in the shelter where she is presently residing. Meanwhile, her family in Country X (her sister and children) have also been receiving anonymous telephone threats and have advised the Applicant to stop testifying for her own safety and for the safety of her family.

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## CONCLUSIONS AND CLOSURE OF THE WORKSHOP

### All training materials needed:

#### *Handouts:*

**No. 21** Background readings;

**No. 22** UNHCR Code of Conduct;

**No. 23** Secretary General's bulletin - Special measures for protection from sexual exploitation and sexual abuse.

## **BACKGROUND READINGS**

### **UNHCR documents on resettlement**

UNHCR Resettlement Handbook (November 2004 edition)  
Available at: [www.unhcr.ch](http://www.unhcr.ch)

### **UNHCR documents of special relevance for gender-sensitive RSD**

Procedural Standards for Refugee Status Determination under UNHCR's Mandate – Available in various languages from the Department of International Protection, UNHCR, Geneva.

Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees HCR/ IP/ 4/ Eng/ REV. 1 Reedited, Geneva, January 1992, UNHCR 1979. Available at: [www.unhcr.ch](http://www.unhcr.ch).

Sexual and gender-based violence against refugees, returnees, internally displaced persons - Guidelines for prevention and response, UNHCR May 2003. Available at: [www.unhcr.ch](http://www.unhcr.ch).

Global Consultations on International Protection/General: Agenda for Protection, UNHCR, June 2002. Available at: [www.unhcr.ch](http://www.unhcr.ch).

Summary Conclusions – Gender-Related Persecution, UNHCR Global Consultations on International Protection, San Remo Expert Roundtable, 6-8 September 2001, nos. 1 and 3. Available at: [www.unhcr.ch](http://www.unhcr.ch).

Global Consultation on International Protection/Third Track: Refugee Women (April 2002). Available at: [www.unhcr.ch](http://www.unhcr.ch).

Global Consultations on International Protection/Third Track: The Search for Protection-Based Solutions; Protection of Refugee Women and Children, Chairman's Summary (22-24 May 2002). Available at: [www.unhcr.ch](http://www.unhcr.ch).

Global Consultations on International Protection/Third Track: Refugee Children (April 2002.) Available at: [www.unhcr.ch](http://www.unhcr.ch).

Articles and summary conclusions from the UNHCR's global consultations, appearing in the book: Refugee Protection in International Law: UNHCR's global consultations on international protection"/ Feller, E. (ed.); Türk, V. (ed.); Nicholson, F. - Cambridge (United Kingdom); New York (NY); Geneva: Cambridge University Press; UNHCR, 2003. Available at: [www.unhcr.ch](http://www.unhcr.ch).

Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees (April 2004) Available at: [www.unhcr.ch](http://www.unhcr.ch).

Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees (September 2003) Available at: [www.unhcr.ch](http://www.unhcr.ch).

Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A (2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees (July 2003) Available at: [www.unhcr.ch](http://www.unhcr.ch).

Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C (5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses) (October 2003) Available at: [www.unhcr.ch](http://www.unhcr.ch).

Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees (May 2002) Available at: [www.unhcr.ch](http://www.unhcr.ch).

Guidelines on International Protection No. 1: Gender-Related Persecution within the Context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees (May 2002) Available at: [www.unhcr.ch](http://www.unhcr.ch).

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Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (February 1997)  
Available at: [www.unhcr.ch](http://www.unhcr.ch).

Comparative analysis of gender-related persecution in national asylum legislation and practice in Europe, by Heaven Crawley and Trine Lester, UNHCR EPAU/2004/05, May 2004  
Available at: [www.unhcr.ch](http://www.unhcr.ch).

**UNHCR training materials of special relevance for gender-sensitive RSD**

UNHCR Gender Training Kit on Refugee Protection and Resource Handbook - Chapter 2: Gender Concepts and Strategies, December 2002.

UNHCR Gender Training Kit on Refugee Protection and Resource Handbook – Chapter 3: Women's Human rights, December 2002.

UNHCR Gender Training Kit on Refugee Protection and Resource Handbook - Chapter 4: Sexual and Gender-Based Violence, December 2002.

UNHCR Gender Training Kit on Refugee Protection and Resource Handbook - Chapter 5: Refugee Status Determination, December 2002.

UNHCR Gender Training Kit on Refugee Protection and Resource Handbook - Chapter 6: Interviewing and Interpreting, December 2002.

**Literature/academic research:**

Crawley, Heaven. Refugees and Gender: Law and Process, Jordan Publications, London 2001.  
Available at: (to order): [www.jordanpublishing.co.uk/Publications/catDetails.aspx?productID=289](http://www.jordanpublishing.co.uk/Publications/catDetails.aspx?productID=289)

Spijkerboer, Thomas. Gender and Refugee Status, Kluwer Academic Publishers, 2001.  
Available at: (to order): [www.powells.com/cgi-bin/biblio?inkey=17-0754620344-0](http://www.powells.com/cgi-bin/biblio?inkey=17-0754620344-0)

**Gender Guidelines in various countries**

**Australia**

Australian Department for Immigration and Multicultural Affairs (ADIMA) (1996) Guidelines on Gender Issues for Decision-Makers (Refugee and Humanitarian Visa applications),  
Available at: [sierra.uchastings.edu/cgrs/law/guidelines/aust.pdf](http://sierra.uchastings.edu/cgrs/law/guidelines/aust.pdf)

Report of the Australian Law Reform Commission, Part IV Section 11: Violence and Women's Refugee Status  
[www.austlii.edu.au/au/other/alrc/publications/reports/69/vol1/ALRC69Ch11.html#ALRC69Ch11](http://www.austlii.edu.au/au/other/alrc/publications/reports/69/vol1/ALRC69Ch11.html#ALRC69Ch11)

**Canada**

Immigration and Refugee Board of Canada (1996), Women Refugee Claimants Fearing Gender-Related Persecution Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act.  
Available at: [www.cisr.gc.ca/en/about/guidelines/index\\_e.htm](http://www.cisr.gc.ca/en/about/guidelines/index_e.htm)

**Ireland**

Suggested guidelines by the Irish Council for Civil Liberties Women's Committee, Gender Guidelines for Female Refugees and Asylum Seekers (2000) Available at:  
[www.iccl.ie/women/refasyl/guidelines00.html](http://www.iccl.ie/women/refasyl/guidelines00.html)

**South Africa**

Suggested guidelines by NGO called the National Consortium on Refugee Affairs, Gender Guidelines for Asylum Determination (1999). Available at: [www.web.net/~ccr/safr.PDF](http://www.web.net/~ccr/safr.PDF)

**Sweden**

Swedish Migration Board (2001) Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection. Available at: [www.migrationsverket.se/english.html](http://www.migrationsverket.se/english.html)

Swedish Migration Board (2002) Guidelines for the Investigation and Evaluation of Asylum Cases in which Persecution based on Given Sexual Orientation is cited as Ground.  
Available at: [www.migrationsverket.se/english.html](http://www.migrationsverket.se/english.html)

**UK**

Home Office (2004) Asylum Policy Instructions (APIs) 'Gender Issues in the Asylum Claim'  
Available at: [www.ind.homeoffice.gov.uk/default.asp?PageId=4790](http://www.ind.homeoffice.gov.uk/default.asp?PageId=4790)

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Immigration Appellate Authority, Asylum Gender Guidelines, London 2000  
Available at: [www.asylumsupport.info/publications/iaa/gender.pdf](http://www.asylumsupport.info/publications/iaa/gender.pdf)

Refugee Women's Legal Group (1998) Gender Guidelines for the Determination of Asylum Claims in the UK London: RWLG. Available at: [www.rwlg.org.uk](http://www.rwlg.org.uk)

**United States (US)**

US Immigration and Nationality Service (1995) Considerations for Asylum Officers Adjudicating Asylum Claims from Women. Available at: [sierra.uchastings.edu/cgrs/law/guidelines/us.pdf](http://sierra.uchastings.edu/cgrs/law/guidelines/us.pdf) US Department of State, Gender Guidelines for Overseas Refugee Processing (2000).

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## **OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)**

### **CODE OF CONDUCT**

#### **INTRODUCTION**

UNHCR's capacity to ensure the protection of and assistance to refugees and other persons of concern depends on the ability of its staff to uphold and promote the highest standards of ethical and professional conduct. We, the staff members of UNHCR, are personally and collectively responsible for maintaining these standards. Managers have a particular responsibility to uphold these standards, to set a good example, and to create a working environment that supports and empowers staff. It is recognised that UNHCR's work often puts its staff in positions of power in relation to its beneficiaries. Staff have an obligation not to abuse this power.

This Code of Conduct is intended to serve as an illustrative guide for staff to make ethical decisions in their professional lives, and at times in their private lives. It is a moral code that does not have the force of law. It is designed to assist staff to better understand the obligations placed upon their conduct by the Charter of the United Nations and the Staff Regulations and Rules, which remain the only legal instruments that determine acceptable conduct in UNHCR. Signing the Code does not take away any acquired rights of UNHCR Staff.

While acknowledging that local laws and customs may differ from one country to another, the Code of Conduct is based on international legal standards. For example, children are defined as those under the age of 18. Guidance on appropriate interpretation can be found in the Notes to the Code of Conduct.

The Code applies to all UNHCR staff members, who will be requested to sign it. Persons holding a UNHCR consultant contract and interns will also receive the Code and be requested to confirm that they uphold its standards as far as applicable to their status. Governmental and non-governmental organisations and companies which, through their employees, work for UNHCR, will be requested to make the principles contained in the Code known to those persons in an appropriate manner.

All UNHCR staff are responsible for encouraging, advocating and promoting the dissemination of the Code of Conduct. They also have a role in implementing, monitoring and enforcing its standards. Staff are also urged to encourage partners to adhere to these standards and to join UNHCR staff in upholding them.

#### **CORE VALUES AND GUIDING PRINCIPLES**

UNHCR staff are committed to the following fundamental values and principles:

- As staff working within the United Nations system, we will ensure that our conduct is consistent with and reflects the values enshrined in the Charter of the United Nations: respect for fundamental human rights, social justice and human dignity, and respect for the equal rights of men and women. We will assist UNHCR to actively promote adherence to the principles of international refugee law, international human rights law and international humanitarian law. We will be guided by the core values of the United Nations system, including professionalism, integrity and respect for diversity, and will maintain an international perspective at all times.
  - As UNHCR staff, our primary commitment is to ensure the protection of and assistance to refugees and other persons of concern, in accordance with the mandate of the Office. We are committed to supporting the fullest possible participation of refugees and other persons of concern – as individuals, families and communities – in decisions that affect
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their lives.

- We will respect the dignity and worth of every individual, will promote and practise understanding, respect, compassion and tolerance, and will demonstrate discretion and maintain confidentiality as required. We will aim to build constructive and respectful working relations with our humanitarian partners, will continuously seek to improve our performance, and will foster a climate that encourages learning, supports positive change, and applies the lessons learned from our experience.
- We will show respect for all persons equally without distinction whatsoever of race, gender, religion, colour, national or ethnic origin, language, marital status, sexual orientation, age, socio-economic status, disability, political conviction, or any other distinguishing feature. We will strive to remove all barriers to equality.
- We will respect the cultures, customs and traditions of all peoples, and will strive to avoid behaving in ways that are not acceptable in a particular cultural context. However, when the tradition or practice is considered by the relevant organ of the United Nations to be directly contrary to an international human rights instrument or standard, we will be guided by the applicable human rights instrument or standard.

## **COMMITMENT TO UNHCR CODE OF CONDUCT**

As a staff member of UNHCR, I commit myself to:

### **1. Treat all refugees and other persons of concern fairly, and with respect and dignity.**

I will always seek to understand the difficult experiences that refugees and other persons of concern to UNHCR have faced and survived, as well as the disadvantaged position in which they – particularly on the basis of gender, age or disability – may find themselves in relation to those who hold power or influence over aspects of their lives.

I will always seek to care for and protect the rights of children, and act in a manner that ensures that their best interests shall be the paramount consideration.

If my job involves direct work with refugees or other persons of concern, I will meet with them regularly, in order to fully understand their experiences and needs, and to explain the role of UNHCR and the scope of its work.

I will keep myself informed about UNHCR's policies, objectives and activities and about refugee concerns, and will do my utmost to support the Office's protection and assistance work.

### **2. Uphold the integrity of UNHCR, by ensuring that my personal and professional conduct is, and is seen to be, of the highest standard.**

I will demonstrate integrity, truthfulness, dedication and honesty in my actions. I will be patient, respectful and courteous to all persons with whom I deal in an official capacity, including refugees and other persons of concern, representatives of operational and implementing partners, governments and donors.

I will observe local laws, will meet all my private legal and financial obligations, and will not seek to take personal advantage of any privileges or immunities that have been conferred on me in the interest of the United Nations. I will do my utmost to ensure that the conduct of members of my household does not reflect unfavourably on the integrity of UNHCR.

### **3. Perform my official duties and conduct my private affairs in a manner that avoids conflicts of interest, thereby preserving and enhancing public confidence in UNHCR.**

My actions will be free of any consideration of personal gain, and I will resist any undue political pressure in decision-making. I will neither seek nor accept instructions regarding the performance of my duties from any government, including my national authorities, or from any authority external to the United Nations.

In accordance with Staff Regulations and Rules, I will not accept any honour, decoration, favour gift, remuneration, from any government; nor will I accept these from any other source external to the United Nations without prior authorisation. I will not engage in any outside occupation or employment without prior authorisation. I will not accept supplementary payments or subsidies from a government or any other source, or participate in certain political activities such as standing for or holding public office.

I will avoid assisting private persons or companies in their undertakings with UNHCR where

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this might lead to actual or perceived preferential treatment. I will never participate in activities related to procurement of goods or services, or in human resource activities, where a conflict of interests may arise.

**4. Contribute to building a harmonious workplace based on team spirit, mutual respect and understanding.**

I will show respect to all colleagues, regardless of status or position, and will allow all colleagues the opportunity to have their views heard, and to contribute from their knowledge and experience to team efforts. I will communicate openly and share relevant information (subject to confidentiality requirements) with other colleagues, and will endeavour to respond in a timely manner to queries.

I will respect my colleagues' privacy, and avoid misinformation. I will seek to resolve differences and solve problems when they arise. I will contribute to building constructive dialogue, guided by mutual respect and an open, positive approach, between management and staff representatives.

As a manager/supervisor I will be open to the views of all team members. I will provide timely feedback on the performance of each team member through guidance, motivation and full recognition of their merits.

**5. Promote the safety, health and welfare of all UNHCR staff as a necessary condition for effective and consistent performance.**

I will remain aware of and comply with all instructions designed to protect my health, welfare and safety. I will always consider the safety of staff in operational decisions. If I have doubts regarding an instruction that I consider threatening to my safety or the safety of other persons, I will bring this immediately to the attention of my supervisor.

As a manager/supervisor, I will endeavour to ensure that the health and well-being of staff and their families are not subjected to undue risk. I will promote a healthy work-life balance for staff, and will respect staff entitlements.

**6. Safeguard and make responsible use of the information and resources to which I have access by reason of my employment with UNHCR.**

I will exercise due care in all matters of official business, and not divulge any confidential information about refugees, colleagues and other work-related matters in accordance with the staff regulations and rules and current guidelines.

I will protect, manage and utilise UNHCR human, financial and material resources efficiently and effectively, bearing in mind that these resources have been placed at UNHCR's disposal for the benefit of refugees and other persons of concern.

**7. Prevent, oppose and combat all exploitation and abuse of refugees and other persons of concern.**

I undertake not to abuse the power and influence that I have by virtue of my position over the lives and well-being of refugees and other persons of concern.

I will never request any service or favour from refugees or other persons of concern in return for protection or assistance. I will never engage in any exploitative relationships – sexual, emotional, financial or employment-related – with refugees or other persons of concern.

Should I find myself in such a relationship with a beneficiary that I consider non-exploitative and consensual, I will report this to my supervisor for appropriate guidance in the knowledge that this matter will be treated with due discretion. I understand that both my supervisor and I have available to us normal consultative and recourse mechanisms on these issues.

I will act responsibly when hiring or otherwise engaging refugees or other persons of concern for private services. I will report in writing on the nature and conditions of this employment to my supervisor.

**8. Refrain from any involvement in criminal or unethical activities, activities that contravene human rights, or activities that compromise the image and interests of UNHCR.**

I will neither support nor take part in any form of illegal, exploitative or abusive activities, including, for example, child labour, and trafficking of human beings and commodities.

As UNHCR is committed to the highest standards of protection and care for children, I am aware that I am expected not to engage in sexual activities with any person under the age

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of 18. (Further guidance is given in the Notes to this Code of Conduct).

**9. Refrain from any form of harassment, discrimination, physical or verbal abuse, intimidation or favouritism in the workplace.**

I will not engage in or tolerate any form of harassment in the workplace, including sexual harassment and abuse of power.

As a manager/supervisor, I will not solicit favours, loans or gifts from staff, nor will I accept unsolicited ones that are of more than token value.

I recognise that there is an inherent conflict of interest and potential abuse of power in having sexual relations with staff under my supervision. Should I find myself in such a relationship, I will resolve this conflict of interest without delay.



## Secretary-General's Bulletin

### Special measures for protection from sexual exploitation and sexual abuse

The Secretary-General, for the purpose of preventing and addressing cases of sexual exploitation and sexual abuse, and taking into consideration General Assembly resolution 57/306 of 15 April 2003, "Investigation into sexual exploitation of refugees by aid workers in West Africa", promulgates the following in consultation with Executive Heads of separately administered organs and programmes of the United Nations:

#### Section 1 Definitions

For the purposes of the present bulletin, the term "sexual exploitation" means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Similarly, the term "sexual abuse" means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

#### Section 2 Scope of application

2.1 The present bulletin shall apply to all staff of the United Nations, including staff of separately administered organs and programmes of the United Nations.

2.2 United Nations forces conducting operations under United Nations command and control are prohibited from committing acts of sexual exploitation and sexual abuse, and have a particular duty of care towards women and children, pursuant to section 7 of Secretary-General's bulletin ST/SGB/1999/13, entitled "Observance by United Nations forces of international humanitarian law".

2.3 Secretary-General's bulletin ST/SGB/253, entitled "Promotion of equal treatment of men and women in the Secretariat and prevention of sexual harassment", and the related administrative instruction<sup>111</sup> set forth policies and procedures for handling cases of sexual harassment in the Secretariat of the United Nations. Separately administered organs and programmes of the United Nations have promulgated similar policies and procedures.

#### Section 3 Prohibition of sexual exploitation and sexual abuse

3.1 Sexual exploitation and sexual abuse violate universally recognized international legal norms and standards and have always been unacceptable behaviour and prohibited conduct for United Nations staff. Such conduct is prohibited by the United Nations Staff Regulations and Rules.

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<sup>111</sup> Currently ST/AI/379, entitled "Procedures for dealing with sexual harassment".

3.2 In order to further protect the most vulnerable populations, especially women and children, the following specific standards which reiterate existing general obligations under the United Nations Staff Regulations and Rules, are promulgated:

(a) Sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including summary dismissal;

(b) Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defence;

(c) Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited. This includes any exchange of assistance that is due to beneficiaries of assistance;

(d) Sexual relationships between United Nations staff and beneficiaries of assistance, since they are based on inherently unequal power dynamics, undermine the credibility and integrity of the work of the United Nations and are strongly discouraged;

(e) Where a United Nations staff member develops concerns or suspicions regarding sexual exploitation or sexual abuse by a fellow worker, whether in the same agency or not and whether or not within the United Nations system, he or she must report such concerns via established reporting mechanisms;

(f) United Nations staff are obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse. Managers at all levels have a particular responsibility to support and develop systems that maintain this environment.

3.3 The standards set out above are not intended to be an exhaustive list. Other types of sexually exploitive or sexually abusive behaviour may be grounds for administrative action or disciplinary measures, including summary dismissal, pursuant to the United Nations Staff Regulations and Rules.

#### **Section 4**

##### **Duties of Heads of Departments, Offices and Missions**

4.1 The Head of Department, Office or Mission, as appropriate, shall be responsible for creating and maintaining an environment that prevents sexual exploitation and sexual abuse, and shall take appropriate measures for this purpose. In particular, the Head of Department, Office or Mission shall inform his or her staff of the contents of the present bulletin and ascertain that each staff member receives a copy thereof.

4.2 The Head of Department, Office or Mission shall be responsible for taking appropriate action in cases where there is reason to believe that any of the standards listed in section 3.2 above have been violated or any behaviour referred to in section 3.3 above has occurred. This action shall be taken in accordance with established rules and procedures for dealing with cases of staff misconduct.

4.3 The Head of Department, Office or Mission shall appoint an official, at a sufficiently high level, to serve as a focal point for

receiving reports on cases of sexual exploitation and sexual abuse. With respect to Missions, the staff of the Mission and the local population shall be properly informed of the existence and role of the focal point and of how to contact him or her. All reports of sexual exploitation and sexual abuse shall be handled in a confidential manner in order to protect the rights of all involved. However, such reports may be used, where necessary, for action taken pursuant to section 4.2 above.

4.4 The Head of Department, Office or Mission shall not apply the standard prescribed in section 3.2 (b), where a staff member is legally married to someone under the age of 18 but over the age of majority or consent in their country of citizenship.

4.5 The Head of Department, Office or Mission may use his or her discretion in applying the standard prescribed in section 3.2 (d), where beneficiaries of assistance are over the age of 18 and the circumstances of the case justify an exception.

4.6 The Head of Department, Office or Mission shall promptly inform the Department of Management of its investigations into cases of sexual exploitation and sexual abuse, and the actions it has taken as a result of such investigations.

#### **Section 5** **Referral to national authorities**

If, after proper investigation, there is evidence to support allegations of sexual exploitation or sexual abuse, these cases may, upon consultation with the Office of Legal Affairs, be referred to national authorities for criminal prosecution.

#### **Section 6** **Cooperative arrangements with non-United Nations entities or individuals**

6.1 When entering into cooperative arrangements with non-United Nations entities or individuals, relevant United Nations officials shall inform those entities or individuals of the standards of conduct listed in section 3, and shall receive a written undertaking from those entities or individuals that they accept these standards.

6.2 The failure of those entities or individuals to take preventive measures against sexual exploitation or sexual abuse, to investigate allegations thereof, or to take corrective action when sexual exploitation or sexual abuse has occurred, shall constitute grounds for termination of any cooperative arrangement with the United Nations.

#### **Section 7** **Entry into force**

The present bulletin shall enter into force on 15 October 2003.

*(Signed)* Kofi A. Annan  
Secretary-General