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## 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>1</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.**

<sup>1</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>1</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>2</sup>

<sup>1</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>2</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>1</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.

<sup>1</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>1</sup> which provides guidance on issues such as medical considerations, voluntary counseling and testing (VCT), and confidentiality of information.

<sup>1</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>1</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>2</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>3</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>4</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 obtained the informed consent of the concerned individual.<sup>5</sup>

<sup>1</sup> Please see the relevant country chapters for procedures on medical screening and waivers.

<sup>2</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 & appropriate use of HIV case-reporting*, (Geneva, November 2000). Available at: [http://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>3</sup> See Article 17 of the International Covenant on Civil and Political Rights. See also UNAIDS/OHCHR *HIV/AIDS and Human Rights: International Guidelines* (Geneva, 23-25 September 1996), available at: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.1997.37.En?Opendocument#guidelines](http://www.unhcr.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: <http://www.unhcr.ch/hiv/g6.pdf>

<sup>4</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>5</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>1</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.










<sup>1</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 & 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 traditional 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 at-Risk criteria is promoted.**





#### 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>1</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>2</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:

<sup>1</sup> *Local Integration*, Global Consultations on International Protection, EC/GC/02/6, 25 April 2002, para. 6.

<sup>2</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>1</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>2</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>3</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.

<sup>1</sup> Article 74 of Protocol I Additional to the Geneva Convention of 1949, reproduced in Annex 2.

<sup>2</sup> See Annex 1.

<sup>3</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>1</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)

<sup>1</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>1</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>2</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>3</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>4</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

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.

<sup>1</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>2</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>3</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>4</sup> See also Chapter 5.2 of this handbook as regards the possibility of resettling non-refugee stateless persons.

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 *dependant* 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>1</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>2</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.

**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.

<sup>1</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>2</sup> These definitions are taken from the *Inter-Agency Guiding Principles on Unaccompanied and Separated Children* of January 2004, p. 13.

### 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>1</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>2</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>3</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, 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:

<sup>1</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>2</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>3</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*.

- ❑ 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>1</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.

<sup>1</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>1</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 over-ride 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.

<sup>1</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-ordinated 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 family 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>1</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).





<sup>1</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 count 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>1</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.

<sup>1</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.*