

Chapter 4: UNHCR's Protection Response

Overview

Introduction

Protection is first and foremost the responsibility of States. Each State is responsible for respecting, protecting and fulfilling the rights of its citizens, including in situations of internal displacement and return.

International protection is only needed when this national protection is denied or is otherwise unavailable. All States have a general duty to provide international protection under international law, while the 1951 Refugee Convention and its 1967 Protocol set out specific obligations for States which are party to these instruments. At this point, primary responsibility for providing international protection lies with the country in which the individual has sought asylum.¹

At the same time, UNHCR also has a responsibility to provide international protection under its Statute, subsequent ECOSOC and General Assembly Resolutions, and ExCom Conclusions. These authorize UNHCR to carry out a wide range of activities to protect asylum-seekers, refugees, returnees, (re)integrating, stateless and internally displaced persons.²

Purpose

This Chapter:

- explains the vital importance of partnerships in ensuring the protection of persons of concern, including women and girls of concern;
 - outlines key elements of UNHCR's generic protection response, showing how they relate to the particular situation of women and girls;
 - describes a number of specific protection responses which are especially relevant to strengthening the protection of women and girls; and
 - sets out challenges to securing solutions for women and girls and suggests how to respond to them.
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¹ See generally chapter 6 of this Handbook and UNHCR, *An Introduction to International Protection: Protecting Persons of Concern to UNHCR*, Self-study module 1, August 2005, p. 12.

² For further details see chapter 2, section 1, International legal standards to protect women's and girls' rights

4.1 Partnerships and UNHCR's protection response

Overview

Protection is not an abstract concept. It is a dynamic and action-oriented function. It encompasses a range of activities, covering both policy and operational concerns and is carried out, in cooperation with States and other partners, with the goal of enhancing respect for the rights of women, men, boys, and girls and resolving their problems.

Adapted from the 2000 UNHCR Note on International Protection¹

Introduction

Establishing and sustaining partnerships and coordinating the various elements of our protection response and that of the different actors involved are critical to ensuring the protection of everyone of concern, including women and girls. They are overarching activities at all stages of UNHCR's protection response.



Chad/ A volunteer from the Chadian Red Cross escorts a Sudanese refugee woman and her daughter to a UNHCR tent allocated to them in Farachana camp / UNHCR / H. Caux / 2004

Purpose

Used on their own and/or in combination depending on the particular situation, these partnerships and protection responses can help to

- enhance our interventions to respond to violations of the rights of individual women and girls of concern, and
- change the wider protection environment to alleviate the risks to which women and girls are exposed and prevent further violations.

Together they combine to help establish a more effective protection system to ensure that the rights of individual women and girls are upheld.

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4.1.1 Partnerships

“Partnership is at the foundation of the way international protection is envisaged in the 1951 Convention and the 1967 Protocol, and in UNHCR’s Mandate. ... Accordingly, partnerships in various forms and with a wide range of actors have been a pivotal aspect of UNHCR’s modus operandi over the years, enhancing protection in all its dimensions.”

UNHCR, “Annual Theme: Strengthening Partnership to Ensure Protection, also in Relation to Security”, A/AC.96/923, 14 September 1999, para. 7

Introduction

UNHCR has always recognized the importance of protection partners. With the Reach-Out Consultations in 1997 and then the Global Consultations on International Protection in 2000–02, UNHCR has worked to engage a diverse range of actors in protection, as is also reflected in the Agenda for Protection.³

It is critical to build strong protection partnerships with a diverse range of actors, if we are to ensure protection to women and girls throughout the displacement cycle.

Partners

All our partners have a vital role to play in protection. They include:

- governments, including to share burdens and responsibilities;
 - United Nations and other international agencies;
 - civil society, including national and international non-governmental organizations (NGOs);
 - the displaced/returnee community, including particularly women and girls themselves,
 - the host/receiving community;
 - partners in the context of internal displacement; and
 - in the context of return.
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Three interlinked issues

Three interlinked issues influencing how we work with our partners have also emerged in recent years:

- the UN reform process and “delivering as one”;
- the Global Humanitarian Platform, which brings together NGOs, the Red Cross and Red Crescent Movement and UN agencies; and
- the humanitarian reform process initiated by the UN Emergency Relief Coordinator in December 2005, which links particularly also with the concept of “cluster leadership” and is especially relevant for UNHCR in internal displacement situations.

Note: Each of these partnerships and issues is discussed further below.

Partnerships with governments

Given States’ obligations to protect their own citizens and those within their jurisdiction who are in need of international protection, to promote gender equality, and to eliminate violence against women and girls, governments are critical partners in our efforts to protect women and girls.

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³ Goal 3, Objective 3 of the Agenda requires UNHCR to “continue to strengthen partnerships for protection and awareness raising, not only with host and donor governments ... but also NGOs, other actors of civil society, as well as refugee men, women and children”.

4.1.1 Partnerships, continued

Partnerships with governments (continued)

States are obliged to cooperate with UNHCR in carrying out its protection activities in situations of asylum, internal displacement, return, (re)integration and statelessness.⁴

Working together with governments involves engaging with national and local level actors, from ministries and the judiciary to education and health services. It includes advocating respect for international standards and providing governments with technical advice and operational assistance.

Where women and children may be stateless or at risk of it, it is essential for UNHCR to work in partnership with governments, which have primary responsibility for the governance of the acquisition, enjoyment and loss of nationality, to address the problems such women and children encounter.

Partnerships to share burdens and responsibilities

In asylum situations, international protection responsibilities do not lie only with the host government. As affirmed in the 2001 Declaration of States Parties and reflected in the Agenda for Protection, there must be committed international cooperation in a spirit of solidarity to ensure that burdens and responsibilities for refugee protection can be shared more equitably.⁵

A variety of mechanisms can be put in place to enhance the protection of women and girls through cooperation and burden- and responsibility-sharing arrangements, including through resettlement of refugee women and girls at risk. In addition, ExCom explicitly recognizes the importance of international solidarity, cooperation, and burden- and responsibility-sharing in order to prevent sexual abuse and exploitation.⁶

With UN and other international and regional agencies

UNHCR also works in cooperation with a wide variety of international and regional agencies to enhance protection. These include both UN agencies, which, like UNHCR, are required to mainstream gender equality into their policies, programmes and operations, and non-UN agencies.

These partnerships include UN Country Teams (UNCTs), for which the UN Development Group's (UNDG) "Guidance Note on Durable Solutions for Displaced Persons (Refugees, Internally Displaced Persons, and Returnees)" of October 2004 provides useful guidance. The Note is intended for UNCTs which identify forced population displacement (whether of refugees, internally displaced persons and/or returnees) as a key challenge facing the country. It sets out how strategic policies and programmes can be included, in line with the national priorities, into the UN Development Assistance Framework (UNDAF) and its results-based matrix.

Regional agencies, whether formal organizations or more informal regional networks, are also important protection partners.

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⁴ See UN Charter, Article 56; UNHCR Statute, para. 8; 1951 Refugee Convention, Article 35; and 1967 Protocol, Article II.

⁵ Declaration of States Parties adopted at the Ministerial Meeting in Geneva, December 2001, preambular para. 8 and operative para. 12; and the Agenda for Protection, Goal 3.

⁶ See ExCom Conclusions Nos. 22 (XXXII), 1981, section (IV), and 98 (LV), 2003, para. (g).

4.1.1 Partnerships, continued

“Delivering as one” The vital importance of more effective partnerships and enhanced coordination within the United Nations is recognized by the 2006 High Level Panel report to the Secretary-General.⁷ This makes wide-ranging recommendations as to how the UN can “deliver as one” in the areas of development, humanitarian assistance and the environment.

Among the cross-cutting issues affirmed by the Panel are gender equality and women’s empowerment. Indeed, it states that “the importance of achieving gender equality cannot be overstated”. Amongst its recommendations for greater UN coherence and effectiveness on the issue, is not only the creation of a new gender entity within the UN, but also that the promotion of gender-equality must remain the mandate of all UN entities.

Our approach to NGOs, the most invigorating and essential members of the [humanitarian] community, should be clear. We see you as strategic partners, not implementing ones. UNHCR wants to think, plan and act together with you, needs you to be involved in our policy reviews, and asks for your help in improving our accountability.”

António Guterres, High Commissioner for Refugees, opening statement, 58th session ExCom, October 2007

Partnerships with civil society and NGOs

Civil society, including national and international NGOs, ombudspersons, and religious organizations, plays a vital role in the protection of women and girls as affirmed in the Agenda for Protection.⁸ This can be both as advocates and as partners carrying out protection activities, such as running SGBV programmes, providing legal advice to women and girls, and offering rights-awareness training.

In industrialized countries of asylum, where government resources are generally greater and civil society is well developed and vocal, UNHCR’s presence is more limited. Thus, our contacts and networks with NGOs and civil society, including those with a special focus on women and girls, are all the more important. They enable us to be more aware of women’s and girls’ concerns, even where we do not have regular, direct contact with them. It is often these NGOs which can bring individual cases and issues to our attention.

In all operations, NGOs working specifically with women and girls in both displaced and host communities are especially important protection partners in our efforts to strengthen the protection of women and girls. Local women’s associations can be a source of guidance and support when seeking entry points on women’s and girls’ rights.

IOM/FOM on partnerships with NGOs

In this context, all staff should be familiar with IOM/FOM on “Partnerships for Protection – the importance of regular dialogue and cooperation with our NGO partners”.⁹ This stresses the importance of establishing mechanisms to facilitate regular dialogue and cooperation on protection issues with all NGO partners, including but not limited to implementing partners.

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⁷ See report of the High-Level Panel on United Nations System-wide Coherence contained in “Note by the Secretary-General”, A/61/583, 20 November 2006.

⁸ See Agenda for Protection, Goal 3, Item 3.

⁹ See IOM/57/2004 FOM/59/2004, 24 September 2004.

4.1.1 Partnerships, continued

Global Humanitarian Platform

Emphasizing the importance of such partnerships, a forum known as the Global Humanitarian Platform was launched in July 2006. This seeks to bring together on an equal footing the three main families of the wider humanitarian community: NGOs, the Red Cross and Red Crescent Movement, and the UN and related international organizations.¹⁰ The aim is to enhance the effectiveness of humanitarian action.

In July 2007, 40 leaders of these three humanitarian families agreed in a Statement of Commitment to base their partnerships on the principles of equality, transparency, a result-orientated approach, responsibility, and complementarity. The initiative has been strongly supported by the High Commissioner.

It views the diversity of the humanitarian community as an asset that can be harnessed to respond more effectively to protect the diverse members of the displaced/returnee community concerned. Establishing strong partnerships with local women's NGOs is, for instance, vital to our ability to protect women and girls.

Partnerships with displaced/ returnee community

Refugees and other persons of concern, including women and girls, are not merely passive recipients of humanitarian assistance. Through camp committees and groups such as women's and adolescent girls' associations, displaced and returnee communities can be actively involved in many initiatives promoting respect for their rights. For instance, women and girls:

- are key sources of information on protection problems and camp security;
 - provide valuable insights needed to design effective assistance and protection measures;
 - offer significant support in the delivery and distribution of humanitarian assistance;
 - play important roles in the delivery of protection and durable solutions, particularly in camp settings;
 - can help ensure protection concerns are properly addressed in the management of refugee camps and settlements;
 - play a key role in preventive measures designed to diminish the risk of violence and insecurity to which they are exposed;¹¹
 - are important partners in our efforts to monitor a given situation; and
 - have an essential role in evaluating project implementation, service delivery and the attitudes of humanitarian workers
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Partnerships with the host/receiving community

Partnerships with the host/receiving community have an important role to play in assuring the protection of women and girls. They are necessary in order to raise understanding of the situation of the displaced/returnee community. This in turn helps promote receptiveness to, and tolerance of, their situation and the design of comprehensive solutions which also benefit the host/receiving community.

For instance, where displaced women and girls are at risk of discrimination, harassment, abduction or attack by members of the surrounding community,

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¹⁰ Further information about the Global Humanitarian Platform can be found at <http://globalhumanitarianplatform.org>.

¹¹ See "Annual Theme: Strengthening Partnership to Ensure Protection, also in Relation to Security", UNHCR, A/AC.96/923, 14 September 1999, paras. 27–28.

4.1.1 Partnerships, continued

Partnerships with the host/receiving community (continued)

where they must search for firewood and water, or where they work as servants or farm hands and may be at risk of exploitation and abuse, the host community's involvement in, and commitment to, tackling these risks is critical.

"I cannot over-emphasize the need [in situations of internal displacement] to build effective partnerships with governments, with UN agencies, inter-governmental organizations, and especially with NGOs and affected populations... NGOs should be engaged at the strategic level and are partners who can significantly multiply response capacity and mobilize additional resources within the clusters. Relationships with agencies and NGOs working in the three UNHCR-led clusters require particular effort and attention. The new arrangements provide an opportunity to strengthen these partnerships and explore new ones. Our added value, in all cases, will be our strategic and operational leadership in the clusters we lead."

António Guterres, High Commissioner for Refugees, "UNHCR Involvement with New IDP Situations", IOM/FOM 035/06, 6 April 2006, para. 10

"The most important lesson learned by UNHCR Colombia has been that by strengthening various interlocutors involved in the response to displacement (all of whom have different mandates and different points of view) UNHCR can create and/or maintain a healthy equilibrium between the parties whereby they can operate as a self-regulating system. This allows UNHCR Colombia to maximize its impact with its limited resources, whilst respecting the primacy of national actors in responding to a national problem."

UNHCR Colombia, "Best Practices and Lessons Learned", 2007, p. 6.

Partnerships in internal displacement situations

Partnerships are important in all our work, but there are considerable differences in partnership arrangements in asylum and refugee situations and in internal displacement. In the former, UNHCR is the lead and coordinating humanitarian agency and has always worked with partners.¹²

In the context of internal displacement, partnership arrangements are different. Since no single UN agency has a mandate to protect and assist internally displaced persons, it is essential that agencies work in partnership in such situations to help ensure the protection of the internally displaced.

Inter-agency Standing Committee (IASC)

The Inter-Agency Standing Committee (IASC), which was established in 1992, is the primary mechanism for inter-agency coordination, policy development and decision-making in relation to humanitarian response. Under the leadership of the Emergency Relief Coordinator, the IASC develops humanitarian policies, agrees on a division of responsibilities for the various aspects of humanitarian assistance, identifies and addresses gaps in response, and promotes the effective application of humanitarian principles.

IASC members

The following agencies are members of the IASC: Food and Agriculture Organization (FAO), Office for the Coordination of Humanitarian Affairs (OCHA), UN Development Programmes (UNDP), UN Population Fund (UNFPA), UNHCR, UN Children's Fund (UNICEF), World Food Programme (WFP), and World Health Organization (WHO).

Standing invitees are the International Committee of the Red Cross (ICRC), International Council of Voluntary Agencies (ICVA), International Federation

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¹² For more detailed information see the forthcoming *Inter-Agency Handbook on the Protection of IDPs* and UNHCR, "The Protection of Internally Displaced Persons and the Role of UNHCR", 27 February 2007, at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opensslpdf.pdf?docid=45ddc5c04>.

4.1.1 Partnerships, continued

IASC members (continued)

of Red Cross and Red Crescent Societies (IFRC), American Council for Voluntary International Action (Inter-Action), International Organization for Migration (IOM), Office of the High Commissioner for Human Rights (OHCHR), the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, and the World Bank.

Gender and the IASC

This more complex framework for our work in internal displacement situations means that additional considerations relating to institutional collaboration arise, when we seek to mainstream age, gender and diversity and to protect internally displaced women and girls. IASC members have committed themselves to ensuring that gender issues are mainstreamed into their humanitarian activities since 1999.¹³

In December 2006, the IASC issued a Gender Handbook for Humanitarian Action entitled *Women, Girls, Boys & Men, Different Needs – Equal Opportunities*. This provides a sector-by-sector guide on how to ensure gender equality programming in humanitarian situations, practical tips on how to mainstream gender, and checklists to measure progress in meeting the needs and ensuring the equal participation of women, girls, boys and men in all aspects of humanitarian response.¹⁴

Cluster leadership

In 2005, the “collaborative approach”¹⁵ initially developed through the IASC was strengthened when the IASC adopted the concept of “cluster leadership” with the aim of achieving more predictable, timely and effective responses to humanitarian crises.

The cluster leadership approach aims to bridge identified gaps in response and enhance the quality of humanitarian action by strengthening partnerships among UN agencies, the Red Cross movement, international agencies and NGOs.

Clusters established are agriculture; camp coordination and camp management; early recovery; education; emergency telecommunications; health; emergency shelter; logistics; nutrition; protection; and water, sanitation and hygiene. Camp coordination and management and protection are considered to be cross-cutting clusters. Cluster leads are established at the global and country levels.

Gender is a cross-cutting issue in all cluster sectors. Gender mainstreaming guidelines are therefore being developed for each cluster.

UNHCR’s cluster leadership

During conflict-generated internal displacement, UNHCR has assumed the cluster lead in relation to internally displaced persons and affected populations for:

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¹³ IASC, “Policy Statement for the Integration of a Gender Perspective in Humanitarian Assistance”, 31 May 1999.

¹⁴ See <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opensslpdf.pdf?docid=46978c842>. For other IASC publications relating to gender-based violence, see below, chapter 5, section 3, on personal liberty and security.

¹⁵ The collaborative approach calls for all available agencies to contribute, within their means and according to their mandates and expertise, to the resolution of situations of internal displacement under the coordination of the Emergency Response Coordinator at the Headquarters level, and at the field level by the Humanitarian Coordinator (or, in the absence thereof, the UN Resident Coordinator). Implementation of the collaborative approach failed to match expectations. There were gaps in delivery of essential goods and services, some duplicated efforts, and, too often, an ad hoc approach. In addition, there were systematic gaps in protection.

4.1.1 Partnerships, continued

UNHCR's cluster leadership (continued)

- protection,¹⁶
- camp coordination and camp management (CCCM),¹⁷ and
- emergency shelter.¹⁸

Where UNHCR has the “cluster lead”, this requires us to place more emphasis on our responsibility to coordinate among UN and other humanitarian agencies. This is especially so where the Office, as cluster lead, becomes the “provider of last resort”.

Age, gender, and diversity must be mainstreamed in all the cluster activities which UNHCR leads.¹⁹ In particular, participatory assessment must be at the core of needs assessments and analyses.²⁰

As cluster lead for protection, UNHCR is in the process of finalizing an inter-agency *Handbook on the Protection of Internally Displaced Persons*, which provides more detailed guidance, including in relation to the protection of internally displaced women and girls.

Focal-point responsibilities within protection cluster

In the protection cluster, a responsibility-sharing arrangement has been established whereby different agencies in the cluster are designated as focal points for ensuring an effective response in specific areas, under the overall coordination of the cluster lead.

Focal-point responsibilities within the protection cluster include that of UNICEF for child protection, of UNFPA for SGBV, and of HABITAT for land, housing and property. This does not in any way diminish UNHCR's responsibility and accountability for ensuring that the work of the cluster promotes gender equality and prevents and responds to SGBV. It does, however, require close coordination and cooperation with UNICEF, UNFPA and HABITAT and joint capacity-building with all cluster members.

Partnerships with governments in IDP situations

In situations of internal displacement, partnerships with the government concerned are more complex than in refugee situations, particularly when the government may be responsible for the persecution, including grave human rights violations, and the displacement of the individuals and communities which they are responsible for protecting. Advocacy and capacity building are particularly important in these situations.

Building partnerships with governments in countries of internal displacement is often difficult. Factors such as the political climate, the impact our actions might have on our access to internally displaced persons, on their security

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¹⁶ In this respect, a distinction should be made between UNHCR's approach and that of other agencies. For other agencies, responsibilities under the cluster approach cover both conflict-related humanitarian emergencies and situations involving natural disasters. UNHCR has assumed cluster lead responsibilities for protection in conflict-generated situations of internal displacement. In natural disaster situations, the Office does, however, have an option to take the lead on the basis of agreements with other protection-mandated agencies, namely UNICEF and OHCHR, and should in any case participate in the Country Team's needs assessment, planning, and strategy formulation process in such situations. See the IASC Principals' Outcome Statement, discussed at the IASC Principals' meeting in September 2005 and endorsed in December 2005 and the subsequent IASC "Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response", 24 November 2006, available in English, French and Arabic at <http://www.humanitarianreform.org/Default.aspx?tabid=420>.

¹⁷ The CCCM cluster is co-chaired by UNHCR and the International Organization for Migration (IOM). UNHCR takes the lead in conflict-related humanitarian emergencies and IOM the lead in disaster situations.

¹⁸ UNHCR co-chairs the emergency shelter cluster with the International Federation of Red Cross and Red Crescent Societies (IFRC). UNHCR takes the lead in conflict-related humanitarian emergencies and IFRC the lead in disaster situations.

¹⁹ António Guterres, High Commissioner for Refugees, "UNHCR's Involvement with New IDP Situations", IOM/FOM 035/06, 6 April 2006, para. 6.

²⁰ See IASC Protection Cluster Working Group/Early Recovery Cluster Working Group, *Protection of Conflict-Induced IDPs: Assessment for Action*, November 2007, at <http://www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=159>.

4.1.1 Partnerships, continued

Partnerships with governments in IDP situations (continued)

and safety and on our own must be considered when determining how to best engage governments.

Donor governments and the diplomatic community can play an important advocacy role in promoting the rights of the displaced, particularly displaced women and girls. We must therefore also work to enhance such partnerships.

Partnerships in return situations

Partnership is critically important in return situations, whether these involve refugees or internally displaced persons. It requires the engagement of the UN Country Team and bilateral and multilateral donors, especially in the context of the transition from relief to development, with the government assuming ownership of the entire process.

Sections 3.1 and 3.2 of this chapter outline the protection challenges during returns and suggest actions to be taken with our partners to ensure that women and girls participate in peace processes and that their rights and needs are considered during repatriation and reintegration.

Partnerships with non-state actors in IDP and return

Partnerships with civil society, including NGOs, and with communities themselves are of course as important in situations of internal displacement and return as they are in refugee situations.

4.1.2 UNHCR's protection response

"Catalysing the doing of protection by others and actually undertaking protection interventions ourselves are complementary activities, both of which are inherent in our mandate. The proper balance needs to be struck, in a manner which does not exclude either."

Assistant High Commissioner – Protection, Erika Feller, mission to Colombia, 2006²¹

Introduction

Protection is, fundamentally, about rights. This is clearly reflected in the widely accepted definition of protection agreed upon by the Inter-Agency Standing Committee (IASC)²² in 2000.

This defines protection as encompassing "all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law and refugee law. Human rights and humanitarian organizations must conduct these activities in an impartial manner (not on the basis of race, national or ethnic origin, language or gender)."²³

Protection an objective, a legal responsibility, and an activity

Three different dimensions to protection can be distinguished. Protection is an **objective** because it aims to ensure that individuals enjoy full respect for their rights as provided for in national and international law. Protection therefore is ultimately about solutions, that is, their full enjoyment of rights.

Protection is a **legal responsibility**, principally of the government concerned but also of international human rights, humanitarian and development actors, as outlined at the start of this chapter and in more detail in the text blocks on "responsibility" in relation to specific rights throughout this Handbook.

Protection is an **activity**, which may be responsive – preventing or putting a stop to violations of rights; remedial – ensuring a remedy to violations, including through access to justice and reparations; and/or environmental building – promoting respect for rights and the rule of law.

No protection response is gender neutral

While protection responses and activities are often couched in gender-neutral terms, none is, in fact, gender neutral. We must ensure that, whatever we do, we consider the impact of our action on women, men, girls, and boys of diverse backgrounds.

We must also work to ensure that all individuals can benefit equally from our response without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status²⁴ and that gender inequality is not directly or indirectly perpetuated by our actions.

In other words, we must ensure that the impact of our activities on gender, age and diversity is analysed in each situation and that the protection of women and girls is an integral part of our protection response.

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²¹ UNHCR Colombia, "Best Practices and Lessons Learned", 2007, p. 32.

²² For further information on the IASC, see section 1.1 of this chapter.

²³ This definition was developed over a series of ICRC-sponsored workshops involving some 50 humanitarian and human rights agencies and is available at <http://www.humanitarianinfo.org/iasc/content/products/docs/FAQs.pdf>. See also A. Bonwick and H. Slim, *Protection: An ALNAP Guide for Humanitarian Agencies*, 2005, pp. 42–43; Sylvie Giossi Caverzasio (ed.), *Strengthening Protection in War – A Search for Professional Standards*, ICRC, Geneva, 2001. It was subsequently adopted by the IASC and specifically applied to the protection of internally displaced persons.

²⁴ These various categories are taken from ICCPR, Article 2(1) and ICESCR, Article 2(2).

4.1.2 UNHCR's protection response, continued

Types of protection response

Within the broad framework outlined above, the specific protection responses and activities UNHCR and its partners carry out normally consist of activities that can be defined as falling within the following broad types:

1. coordinating;
2. assessing, analysing and designing;
3. intervening to protect;
4. strengthening national protection capacity;
5. strengthening community capacity to support solutions; and
6. monitoring, reporting and evaluating.

Together these different elements of UNHCR's protection response form part of an inter-linked whole and are mutually reinforcing.

Note: These different types of responses and activities are outlined in more detail below with particular reference to their relevance to women and girls of concern. Suggested responses and actions in the "how to respond" blocks in chapters 3 and 5 also follow this framework.

1. Coordinating

Coordination between the different actors involved in a given situation is an overarching requirement for effective protection responses and is critical to their success. Mainstreaming age, gender and diversity into coordination activities means that all stakeholders are responsible for promoting adequate analysis and targeted action to achieve gender equality and uphold the rights of women and girls.

Coordination must be done in a participatory manner which facilitates the active participation of all members of a community, including women and girls of different ages and diverse backgrounds, and takes account of their views and perspectives. It also involves promoting gender balance on all coordinating bodies.

Coordination on gender equality

Coordination on gender equality and related issues is as essential as it is for other aspects of our protection and programming response.

In large-scale or complex emergencies, for instance, one way of improving coordination on gender issues in the Inter-Agency context can be to establish a Gender Support Network (GenNet), particularly where there are designated gender advisers and organizations that have specific expertise.

Like multi-functional teams²⁵ in the UNHCR context, its main purpose is to facilitate dialogue, making sure that people are informed of key issues and developments in terms of the changing roles, protection risks, and conditions for women, girls, boys and men in the affected community. It is a way to encourage greater integration of gender perspectives into all programmes.

A GenNet comprises representatives from the government, civil society, NGOs and UN agencies both at the national and local levels. Whenever possible, it should also include the displaced/returnee community and the

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²⁵ See chapter 2, section 3.

4.1.2 UNHCR's protection response, continued

Coordination on gender equality (continued)

host community. A GenNet is, however, only as effective as its members and if the participants are not at a senior enough level or do not have experience in gender-related issues they cannot be fully effective.²⁶

It is also important to ensure that the network does not function in isolation from other coordination bodies and that it focuses on mainstreaming in the work of these groups. Gender balance is important in any GenNet.

The appointment of a gender expert or adviser to the Humanitarian Coordinator can be another way to enhance coordination on gender-related issues.²⁷ Gender remains a cross-cutting theme integral to all aspects of UNHCR's and partners' protection and programming response.²⁸

2. Assessing, analysing and designing

Assessing and analysing protection risks faced by women and girls in a given situation are essential to the design of our protection activities and our programming response. This involves:

- conducting a situational analysis, including through participatory assessments, and
 - designing integrated, age-, gender- and diversity-sensitive protection strategies.
-

Situational analysis

A situational analysis should then be conducted to assess displacement situations in their wider social, economic, political, legal, and cultural context. An analysis of the age and gender dimensions of a particular situation must inform all aspects of such an analysis. Participatory assessments are an integral part of this process.²⁹

Situational analysis should include:

- participatory assessments (for more on which see chapter 2, section 3);
 - analysing the human rights/protection situations of women, men, girls and boys of concern, including an analysis of protection risks/rights violations and by whom, as well as the immediate and root causes of such protection risks/rights violations;
 - use of the Profile Global Registration System (proGres) of Project Profile to establish and analyse age- and sex-disaggregated data to inform this analysis;
 - use of standards and indicators to review how women's and girls' protection and assistance needs are being met, including as regards UNHCR's Five Commitments to Refugee Women;³⁰
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²⁶ For further details see IASC, *Women, Girls, Boys and Men, Different Needs – Equal Opportunities*, IASC, December 2006, at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=46978c842>, section on coordination on gender equality in emergencies, pp. 27–29, including a checklist to assess gender coordination efforts in emergencies and terms of reference for a gender network in humanitarian situations.

²⁷ Additional time-bound deployments of staff with a gender specialization are also available, for instance, through the UNHCR protection "Surge" capacity deployment scheme administered by the International Rescue Committee/UNHCR, see http://www.theirc.org/what/surge_protection_project.html, and through the IASC Gender Capacity Standby Project ("GenCap") established in late 2006 and administered by the Norwegian Refugee Council, see <http://www.nrc.no/?aid=9160724>.

²⁸ For more on coordination in situations on internal displacement, see section 1.1 of this chapter above.

²⁹ Participatory assessment is described in detail in chapter 2, section 3 under "mainstreaming age, gender and diversity".

³⁰ In this respect, UNHCR's *Practical Guide to the Systematic Use of Standards and Indicators in UNHCR Operations*, 2nd edn February 2006, provides an important tool, which is also critical for reporting on progress achieved.

4.1.2 UNHCR's protection response, continued

Situational analysis (continued)

- taking into account the views of persons of concern – the “rights holders” – in relation to the protection risks and rights violations, their analysis of the causes and recommended priority action; and
- analysing the responsibilities of the “duty bearers” for upholding rights and preventing violations, and the extent to which they have the resources and capacity to do so.

Adopting a rights- and community-based approach to situational analysis requires us to:

- use international legal standards as our framework for analysis and assessment, matching the information obtained during the participatory assessments with the relevant respective rights and standards; and
 - carry out this analysis and assessment with the full participation of women, men, girls and boys of concern.
-

SPCP framework

A useful and comprehensive framework for analysis to assist the process of determining protection gaps in the protection of refugees has been issued by UNHCR's Strengthening Protection Capacity Project (SPCP).³¹ A similar publication is being drafted to help identify protection gaps in situations of internal displacement.

This framework uses a collaborative approach involving all stakeholders concerned in a given situation to identify protection gaps and develop strategies and projects to remedy them. Its gaps analysis is intended to be used after participatory assessments with groups of refugees and asylum-seekers. The results of focussed discussions with different such groups (including women, girls, adolescents, older persons and groups with specific protection needs) are then included in the gaps analysis report to ensure full and complete coverage and the identification of appropriate solutions to remedy the gaps identified.

Designing protection strategies and programmes

The information obtained during the situational analysis and accompanying participatory assessments can then be used to develop integrated protection strategies that are sensitive to age, gender and diversity. These should then inform and guide the systematic planning and design of programmes to tackle risks arising in the wider protection environment and to respond to, and remedy, individual risks. This involves:

- developing a protection strategy at the local, national and regional levels, including by determining the appropriate balance between public advocacy and/or more discrete contacts with relevant actors in any given situation to maximize effectiveness;
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³¹ UNHCR, Strengthening Protection Capacity Project (SPCP), *Protection Gaps Framework for Analysis: Enhancing Protection of Refugees*, 2006, and accompanying CD-Rom.

4.1.2 UNHCR's protection response, continued

Designing protection strategies and programmes (continued)

- developing a long-term comprehensive plan of action, which mainstreams age, gender and diversity and includes empowerment and targeted actions as outlined in chapter 1, section 3 and chapter 2, section 3, aimed at achieving specific operational goals and objectives, taking into account internal and external capacity and constraints; and
 - ensuring the perspectives of women and girls and particular groups with specific needs are reflected in these strategies and programmes.
-

3. Intervening to protect

Action to protect persons of concern encompasses all activities aimed at ensuring the equal access to and enjoyment of the rights of women, men, girls and boys in accordance with the letter and the spirit of relevant bodies of law.

Each of the six types of actions outlined in this section can be seen as interventions to protect. The activities described under "intervening to protect" here and in the "how to respond" tables in chapters 3 and 5, therefore refer primarily to interventions to prevent and respond to protection risks faced by individual women and girls of concern. (For further information on establishing confidential individual case management systems, see chapter 3, section 3.)

Balanced presence a precondition

UNHCR and partners' proactive presence – including that of female personnel – in camps, towns or other areas where there are persons of concern is a precondition for an effective protection response. Recognising the value of female staff being present for the protection of women and girls, ExCom has called for gender balance in staff recruitment to be promoted, including through active measures to increase the number of female professionals working in the field.³²

Our and our partners' presence can in itself deter abuse, bear witness to it where it occurs and enable women and girls and their communities to develop and take protective measures themselves.³³

Assistance a component of protection

Protection interventions often include action with an assistance component, including providing food and non-food items, building infrastructure, schools and other facilities, and providing services such as education and healthcare, whether directly or by supporting relevant authorities or partners.

Such assistance is often essential to the reestablishment of community life in displaced communities and to respect for the rights of women and girls. Careful monitoring is required to ensure their access to, and enjoyment of, the benefits.

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³² ExCom Conclusion No. 105 (LVII), 2006, para. (i)(v).

³³ See also, Liam Mahony, *Proactive Presence: Field Strategies for Civilian Protection*, Centre for Humanitarian Dialogue, 2006, at <http://www.hdcentre.org/Proactive%20Presence>.

4.1.2 UNHCR's protection response, continued

Examples of protection interventions

Some examples of protection interventions include:

- making representations to ensure women and girls of concern are not refouled or returned to a threat to life or freedom or to ensure their release if illegally detained;
 - taking targeted action to empower them and contribute to ensuring their protection (chapter 2, sections 4 and 5), including by advocating for legislative changes to protect their rights;
 - adopting preventive strategies and approaches to tackle risks arising in the wider protection environment (see chapter 3, section 2);
 - intervening to prevent and respond to potential or actual abuse or violations of individual women's and girls' rights (see chapter 3, section 3);
 - ensuring women and girls have equal access to asylum procedures (see this chapter, section 2.6) and to assistance and services, thereby reducing the risk of sexual abuse and exploitation (see chapter 5, section 7.1);
 - providing counselling and legal advice, whether through legal or other expert clinics/centres or less formally, which can be both preventive and remedial, particularly when aimed at empowering women and girls;
 - referring women and girls to relevant agencies, institutions or partners for treatment, remedy and redress e.g. to health or legal clinics, police or other authorities, or to justice mechanisms;
 - advocating and intervening with the authorities to ensure female-to-female services, appropriate treatment of victims/survivors and redress; and
 - ensuring physical security and safety (see chapter 3, section 2 above).
-

4. Strengthening national protection capacity

Capacity building aims to strengthen the capacity of governments, including ministries responsible for gender issues and family welfare, NGOs and civil society, so as to enhance the protection of displaced/returnee communities and of stateless persons.³⁴ It seeks to reinforce human and institutional performance, strengthen skills and promote positive attitudes.

As outlined under "identifying, analysing and designing" above, the SPCP framework provides a useful basis for working with governments and other partners to establish and agree strategies to strengthen national capacity.

Examples of activities to strengthen national protection capacity

Many activities are involved when seeking to strengthen national protection capacity, including:

- ongoing analysis and comparison of national laws and regulations, policies and procedures, institutional frameworks, and practices with international standards from a gender perspective, for instance, in relation to marriage or citizenship, property rights and criminal law;
 - reinforcing human, institutional and community performance, e.g. by providing technical support, training, advisory services, specialized expertise, and/or material and financial assistance to enable governments to assume their responsibilities (see, for example, chapter 4, section 2.5 for field example of best interests determinations and Ecuador field example in chapter 5, section 4.2);
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³⁴ For a good overview of capacity-building activities, see UNHCR, "Strengthening Protection Capacities in Host Countries", Global Consultations on International Protection, EC/GC/01/19, 19 April 2002.

4.1.2 UNHCR's protection response, continued

Examples of activities to strengthen national protection capacity (continued)

- contributing to the development of jurisprudence, e.g. by submitting legal and *amicus curiae* briefs which promote recognition that gender-related forms of persecution in the context of the refugee definition can constitute grounds for refugee status;³⁵
 - promoting legislative changes that enhance respect for the rights of women and girls of concern through a combination of direct contacts with ministries, parliaments and other UN agencies, and public information campaigns to support reform (see Austria field example in chapter 5, section 3.1.2);
 - ongoing initiatives to bring about change in abusive or discriminatory actions, law, policies and practices e.g. in relation to SGBV or statelessness;
 - sharing and promoting good practices with partners;
 - advocacy with governments, NGOs, civil society, host communities, and displaced and returnee communities for the enhanced protection of women, men, girls, and boys, which can take many forms from awareness raising and persuasion to denunciation;³⁶
 - mobilizing networks to promote change (see Sri Lanka field example in chapter 5, section 3.1.2); and
 - engaging human rights supervisory mechanisms, such as the Committee on the Rights of the Child or the Committee on the Elimination of Discrimination against Women, and regional supervisory mechanisms to ensure issues of concern are raised and incorporated in their concluding observations in country reports and in General Comments.
-

5. Strengthening community capacity to support solutions

A participatory process and community mobilization are necessary to empower displaced/returnee communities, including women and girls, and help them to identify, understand and express their own rights, needs and interests, to enable them to take collective action to ensure that these are met, and to work towards solutions. Chapter 2, especially section 2 on a rights- and community-based approach describes this process in greater detail.

Promoting and facilitating durable solutions include activities to enable refugees to repatriate voluntarily, integrate locally or be resettled in a third country, and to enable internally displaced persons to return to their places of origin or settle in another location. See section 3 of this chapter for more on durable solutions for women and girls of concern.

Examples of activities to strengthen community capacity to support solutions

Activities to mainstream a gender perspective in our work with targeted community groups and organizations, include:

- presenting, communicating and disseminating information on protection risks faced by women and girls, including, in particular, warnings regarding dangers such as abduction or trafficking, awareness raising messages or campaigns, and information about available services (see chapter 3, section 3 for field example on women's protection clinic in India);
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³⁵ ExCom Conclusions Nos. 77 (XLVI), 1995, para. (g) and 105 (LVII), 2006, para. (n)(iv).

³⁶ For further discussions on these types of advocacy, see A. Bonwick and H. Slim, *Protection: An ALNAP Guide for Humanitarian Agencies*, 2005, pp. 84–87.

4.1.2 UNHCR's protection response, continued

Examples of activities to strengthen community capacity to support solutions (continued)

- training, using diverse methods and means, to raise awareness of rights and UNHCR policies and introduce or promote existing confidential complaints mechanisms in the community (see chapter 2, section 4, field example of Liberia/Guinea on community video as an empowerment tool and chapter 5, section 1 for field example on refugee domestic workers in Nairobi, Kenya);
- mediation, reconciliation and sometimes even deciding or “adjudicating” disputes in line with international standards;
- identifying people who may support change and can have influence;
- working with traditional dispute-resolution mechanisms to strengthen their respect for the rights of women and girls (see chapter 5, section 4.3); and
- support for income-generating activities to strengthen self reliance, reduce dependence on assistance and thereby remove exposure to survival sex (see chapter 5, section 7.1).

Note: Section 3.4 of this chapter below outlines some of the particular protection challenges refugee women and girls may face when resettled. Chapter 5, section 1, outlines actions to be taken to ensure that women and girls have access to adequate information.

6. Monitoring, reporting and evaluating

Protection monitoring, reporting, and evaluation refer to the systematic and ongoing collection and analysis of information relating to the protection, rights, and well-being of women, men, girls, and boys of concern.

Monitoring, reporting and evaluation is necessary to:

- ensure follow-up to individual protection risks and rights violations or abuses during all phases of forced displacement and return;
- assess the impact of our activities and programmes using participatory methods; and
- to modify or change those activities or programmes in order to prevent and address protection risks and rights violations and their underlying causes more effectively.

Protection monitoring must be carried out with independence and neutrality, and with a comprehensive respect for the concept of “do no harm”. Monitors must respect the confidentiality of information, protect their sources, be sensitive to the feelings of victims/survivors and witnesses, and not make undue promises.³⁷

Examples of activities to monitor, report and evaluate

Examples of actions to monitor, report and evaluate our protection response include:

- establish a follow-up mechanism as part of standard operating procedures for reporting on and responding to SGBV to ensure effective implementation; and
 - work with the displaced/returnee community to monitor and evaluate staff attitudes towards women and girls and their response to SGBV and other concerns, so that staff training needs or gaps in protection responses can be identified and addressed.
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³⁷ For more on protection monitoring see *Inter-agency Handbook for the Protection of Internally Displaced Persons*, December 2007, part IV.

4.2 Tools to protect women and girls

Overview

Introduction

This section outlines a number of protection tools which are particularly important for addressing the individual protection concerns of women and girls of concern and for improving the wider protection environment.

Thailand / Refugees from Myanmar / Burmese refugee in Tham Hin camp signs her new ID card issued by the Thai government under a UNHCR-funded programme / UNHCR / S. Siritheerajed / April 2007



Purpose

The purpose of this section is to set out for each tool:

- the purpose of the tool,
- the key challenges,
- the applicable international legal standards and guidelines,
- who is responsible for using the tool effectively,
- what we and our partners should do to respond to these challenges and help strengthen the protection of women and girls, and
- how the tool has been used in specific operations.

Note: The applicable international standards use abbreviations to refer to key human rights treaties and conventions. These are listed in full in the List of Abbreviations at the start of the Handbook. Additional information on applicable legal standards and guidelines can be found in chapter 6.

Age assessments

A number of these tools may require an adolescent girl's age to be assessed. On this issue, ExCom has recommended that

- "States, UNHCR and other relevant agencies and partners work in close collaboration to ... ensure that age assessments are only carried out in cases when a child's age is in doubt, and take into account both the physical appearance and the psychological maturity of the individual; ...
- they are conducted in a scientific, safe, child- and gender-sensitive and fair manner with due respect for human dignity; and ...
- they consider the individual as a child in the event of uncertainty".³⁸

In this section

This section covers the following tools:

Tool	See Page
4.2.1 Registration and identity documentation	112
4.2.2 Birth registration and certification	118
4.2.3 Registration and certification of marriage	123
4.2.4 Family tracing and reunification	125
4.2.5 Best interests assessments and best interests determinations	130
4.2.6 Refugee status determination	137

³⁸ ExCom Conclusion No. 107 (LVIII), 2007, children at risk, para. (g)(ix).

4.2.1 Registration and identity documentation

“Sometimes I was beaten so badly I bled. My husband took a second wife. I didn’t agree ... He said, “If you don’t allow me to take a second wife, then the registration card is in my name, and I’ll take everything.” I have asked my husband for the health card and ration card and they don’t give it to me ... I have not gotten approval to get a second registration card.”

Refugee woman in Nepal³⁹

“UNHCR commits to the individual registration of all refugee men and women and to provide them with relevant documentation ensuring their individual security, freedom of movement and access to essential services.”

Second of UNHCR’s Five Commitments to Refugee Women

Introduction

Registration and the provision of documentation are critical tools for protecting everyone of concern to UNHCR. If women and girls, like men and boys, have identity documentation, it is much easier for them to access other rights. Even if they do not, this should not prevent them from enjoying those rights.

Registration (or profiling in situations of internal displacement as outlined in greater detail below) is also essential for determining resource allocations, planning programmes, and finding durable solutions.

Purpose

Registration and identification documentation function as important protection tools. Amongst other things, they help:

- ensure women, men, girls and boys can access and enjoy their human rights, including, for instance, their right to food, health care and education;
 - provide refugees and asylum-seekers with protection against *refoulement*;
 - foster freedom of movement and minimize dependence;
 - identify groups and individuals with specific needs;
 - maintain family unity and reunify families, including by assisting identification, tracing, and reunification of unaccompanied and separated children with their families, and
 - identify the protection problems and risks faced by individuals of concern, including those at heightened risk.⁴⁰
-

Summary of challenges

Challenges and obstacles related to ensuring women and girls have access to registration and identity documentation are discussed further below and include:

- practice of registering only the “head of the family”;
 - registering female asylum-seekers in urban areas;
 - risk of exclusion of refugee girls from the registration process;
 - difficulties refugee girls face obtaining birth registration documentation;
 - difficulties older women face obtaining identity documentation; and
 - internally displaced women and girls who encounter obstacles obtaining government-issued documentation in their own names.
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³⁹ Human Rights Watch, “Trapped by Inequality: Bhutanese Refugee Women in Nepal”, 2003, p. 8.

⁴⁰ See generally, *UNHCR Handbook for Registration*, provisional release, September 2003, pp. 6–7.

4.2.1 Registration and identity documentation, continued

Challenge:
Registering only the “head of the family”

For a long time, many UNHCR offices have only registered and documented the “head of the family” – usually the eldest male. This has meant that female family members have too often been interviewed for registration as part of a “case” and not individually heard. There is then no space for them to express their specific needs, especially when it comes to SGBV (including domestic violence), exploitation and abuse.

This creates a host of protection problems for women and girls. It means that refugee women, especially those separated from their husbands, who are not registered and/or have no individual identity documents, are either dependent on male family members for access to food, assistance or essential services or have no such access. They are therefore unable, for instance, to seek support for their children or to claim or inherit property when they return home.

Challenge:
Reaching female asylum-seekers in urban areas

In urban areas, asylum-seeking and refugee women and girls may be virtually imprisoned indoors by male family members or exploitative employers and so cannot come to UNHCR offices. If we do not find ways to reach, register, and document them, they are likely to be at risk of abuse and, where they are able to go out, to be arrested, detained, and/or deported because they do not have documentation.⁴¹

Challenge:
Girls’ exclusion from registration process

Asylum-seeking and refugee girls may be at risk of being excluded from the registration process because

- parents or caretakers do not want to register girls to avoid interference when marrying them at a young age for dowries;
- adults do not want to declare girls who are separated from their parents or normal caretakers and are living with them, working as unpaid servants;
- registration is organized in such a way that it is impossible to bring all children to the registration centre and parents leave girls (or older women) at home to take care of infants, cook or look after family belongings; and
- fear that registration may be linked with sexual exploitation.

Girls who are not registered are at greater risk of sexual exploitation, early and forced marriage, slavery, trafficking, permanent separation from their families, unauthorized and illicit adoption, and other human rights abuses.

Challenge: Birth registration

Children born in exile who are not registered as refugees may not be able to obtain birth registration documentation when they return to their countries of origin. Given the gender discrimination girls face, they are particularly likely not to be registered and/or not have birth certificates. Without birth registration and certification, many children face statelessness and an uncertain future.

Note: For more information on this issue, see section 2.2 of this chapter on birth registration and certification which follows and also chapter 5, section 2 on nationality, civil status and family relations.

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⁴¹ See also, chapter 1, section 2 above and chapter 5, section 3.3 below.

4.2.1 Registration and identity documentation, continued

Challenge: Older women

Older women may also face challenges gaining access to registration and documentation. They may never have had documents, male family members may have had charge of their documents, they may have lost them during flight, and/or may no longer be able to remember their date of birth or other relevant information.

Challenge: Documentation for IDP women and girls

Internally displaced women and girls often face obstacles obtaining government-issued documentation in their own names.⁴² These include fees, requirements to return to their places of origin, and lack of knowledge about their rights. In some cases, internally displaced women and girls may be among populations targeted by governments or other groups for ethnic, cultural or other reasons with the result that trying to obtain documentation would place them at risk.

International legal standards and guidelines

Refugees have a right to documentation, including identity papers and travel documents.⁴³ Returnee and internally displaced women have equal rights with men to obtain necessary documents as well as the right for these to be issued in their own names.⁴⁴ All children, including those who are displaced, have the right to be registered immediately after birth and to preserve their identity, including nationality, name and family relations.⁴⁵

ExCom Conclusion No. 91 (LII) of 2001 on registration reaffirms the importance of registration as a refugee protection tool and sets out certain basic guidelines for all registration processes. These include the principle of **individual** registration; respect for confidentiality and the safety and dignity of the refugee; accessibility of registration; and the inclusion of female staff in registration teams.

UNHCR's *Handbook for Registration* (provisional release of September 2003) reflects the new standards for registration established by ExCom Conclusion No. 91 and highlights the renewed importance of registration as a tool of legal and physical protection, including for the protection of individual women and children.

Responsibility

In situations of asylum and return, it is the State's responsibility to register individuals and provide them with identity documents.⁴⁶ In situations of asylum, this responsibility lies with the country of asylum. When refugees return, it lies with the country of origin.

In many countries, however, UNHCR has registered asylum-seekers and refugees. The commitment to ensure the individual registration and documentation of all refugee women and men is one of UNHCR's Five Commitments to Refugee Women and is emphasized in the Agenda for

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⁴² This paragraph is adapted from the Women's Commission for Refugee Women and Children, UN Commission on the Status of Women 48th Session, "Women's Equal Participation in Conflict Prevention, Management and Conflict Resolution and in Post-conflict Peace-building", 2004, at <http://www.womenscommission.org/archive/04/statements/CSW.shtml>.

⁴³ 1951 Refugee Convention, Articles 25, 27, 28.

⁴⁴ CEDAW Article 2(c); Guiding Principles on Internal Displacement, Principle 20(3).

⁴⁵ ICCPR, Article 24; CRC, Articles 7 and 8.

⁴⁶ ExCom Conclusion No. 35 (XXXV) of 1984 recognizes that States have the primary responsibility to register and document refugees.

4.2.1 Registration and identity documentation, continued

Responsibility (continued)

Protection, as outlined in chapter 1, section 3. The Office is now implementing these standards through Project Profile and the registration database application, proGres.

In situations of internal displacement, **profiling** rather than registration may be appropriate, as outlined below, but may be more difficult to undertake, for instance, where the situation is very volatile due to ongoing conflict.

Age and gender-sensitive registration

The *Handbook for Registration* provides detailed and accessible information on how to set up registration activities, what data should be collected, and how to manage the information gathered.

Registration must be conducted in an age- and gender-sensitive manner, which respects the rights of displaced women and girls at all times. The process must not directly or indirectly discriminate against women and girls. All women and girls, regardless of their age or background, must be able to participate. A proactive approach is required to register all women and girls who may be housebound, particularly if they are frail, older and/or have disabilities.

Profiling in internal displacement

In internal displacement situations, profiling refers to the collaborative process of identifying internally displaced groups or individuals, through data collection, including counting, and analysis, in order to determine interventions to advocate on their behalf, to protect and assist them and, eventually, to help bring about a solution to their displacement.⁴⁷

At a minimum, the core data includes the number of internally displaced persons, disaggregated by age and sex and their location(s). This helps minimize the risk of overlooking the specific needs related to age and sex. Wherever possible, additional information should include groups with specific protection concerns, so that planning can respond to those at risk.

How to respond

Actions to strengthen the protection of women and girls through registration or profiling include actions to:

- ensure registration and profiling data are disaggregated by sex and age;
 - ensure registration on an individual and ongoing basis for refugees, recognizing the need to protect the confidential nature of personal data;⁴⁸
 - ensure all adult members of a refugee household are registered and given documentation to avoid problems resulting from registration of only male heads of household;
 - ensure all groups with specific needs are registered and that individuals in these groups are given documentation, including
 - unaccompanied and separated refugee girls,
 - lone and/or older women,
-

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⁴⁷ Registration is one of several IDP profiling methodologies, but it should be remembered that IDPs are citizens and residents equal to others in their country. The potential benefits of registering an IDP population of concern therefore need to be weighed against various other factors, including the concern that profiling exercises should not result in the creation of a *de facto* IDP "status" which may create a perception that IDPs are being singled out through profiling for preferential treatment which may in turn create tensions and place IDPs at risk. See IASC, "Guidance on Profiling of Internally Displaced Persons", forthcoming 2008.

⁴⁸ See UNHCR, "Confidentiality Guidelines", IOM/71/2001, FOM/68/2001, 24 August 2001; UNHCR, *Handbook for Registration*, provisional release, September 2003, pp. 14–15.

4.2.1 Registration and identity documentation, continued

How to respond (continued)

- girl-headed and grandmother-headed households, and
- women and girls with disabilities;
- ensure that, in operations where proGres is used, the specific needs of every individual are registered to facilitate the identification of those at heightened risk and regular monitoring of their individual situation;
- build contacts with local displaced communities, including schools, religious organizations and IDP associations, to locate women, girls, men and boys living in urban environments as a first step to registering them;
- organize regular visits by registration teams in detention centres where persons of concern may otherwise risk deportation;
- establish protection monitoring systems to help identify refugees and internally displaced persons at risk, including women and girls;
- work through an individual case management system, as outlined in chapter 3, section 3, to review responses to the situation of all individuals at heightened risk; and
- strengthen protection monitoring of individuals, including by working with the community and monitoring of access to, and enjoyment of, protection, assistance and services by women and girls.⁴⁹

Field practice: Colombia

The UNHCR Office in Colombia initiated a project in 2000 in partnership with the National Registry Office to register and provide identity documents to the many Colombians, who were internally displaced or at risk of displacement and who did not have documents, whether because they had never had them or because they had lost them during flight. The initiative targeted in particular women, children, indigenous, afro-Colombians and those in remote rural areas.⁵⁰

Without documents, they face serious protection problems, including

- when armed groups demand their identity documents at check points, since these groups may presume that undocumented individuals belong to another armed group and may kill them; and
- because identity documents are required to access vital State services such as health and education.

Under the joint project with the National Registry Office, documentation campaigns are carried out in areas where many people are internally displaced and where they may be at risk of displacement. Mobile Registry Office units go to the areas concerned to issue the population with documentation. The unit is connected by satellite to the national Registry Office databases and is equipped to print identity documents on the spot.

The exercise has provided grandmothers with documentation for the first time in their lives, allowed mothers to access reproductive health care, and has meant that girls have been able to go to school.⁵¹

Although UNHCR initiated the project in 2000, it became fully operational only in 2002 following the creation of an office (the Unit for Attention to the Vulnerable Population) physically located in the State Registry Office. Later the Unit also increased the number of mobile units from one to three.

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⁴⁹ See, ExCom Conclusion No. 105 (LVII) of 2006, paras. (i)(i) and (j)iii).

⁵⁰ For further information, see UNHCR Colombia, "Best Practices and Lessons Learned", 2007, pp. 20–21; UNHCR, "Update on the Americas", No 5, fall 2003, p. 4. Registration of IDPs is required by law in Colombia, but in other internal displacement situations, this may not be the appropriate course of action, as explained above in the text at footnote 47.

⁵¹ UNHCR, "Emergency Campaign Brings Sense of Identity for Hundreds of Colombians Forced to Flee", 15 May 2006.

4.2.1 Registration and identity documentation, Continued

Field practice:
Colombia
(continued)

Among the achievements of the project so far were:

- internally displaced women, men, girls and boys have been empowered and enabled to secure respect for their rights and access services;
- the State has assumed responsibility for providing its citizens with identity documents and enabling individuals to obtain a copy of their birth certificate in locations other than their place of birth;
- even though the geographical coverage and the numbers being documented have increased from year to year, the cost of the project to UNHCR has decreased, because
 - of the National Registry Office's increased commitment in terms of both funding and personnel;
 - mayors and governors in areas where the campaigns were carried out have also contributed to the costs of the registration process;
 - use of equipment and materials has been optimized; and
 - support has been provided by international organizations such as UNICEF, the International Organization for Migration and Plan International.

By December 2007, almost 500,000 people had been registered and issued identity documents in over 300 municipalities since the start of the project. Some 30 per cent of those registered received birth certificates. Another 35 per cent were children aged 7 to 17 years, who received children's identification documentation, while the remaining 35 per cent were adults who received identity cards.

The project achieved equity in distributing registration and identification documentation to males and females, with slightly over 50 per cent of those registered in 2007 being female. In addition, the Office used proactive approaches, including for instance through schools, to identify and register individuals with disabilities. The exercise is continuing in 2008.

Field practice:
Malaysia

In Malaysia, UNHCR has adopted innovative approaches to registration that have resulted in improved protection for all asylum-seekers and refugees, but particularly for women and girls.

Mobile registration teams were deployed to detention centres and lock-ups in jungle areas and in the highlands in the northeast of the country to register persons of concern. In this way, individuals with urgent protection needs who were not able to reach UNHCR's office were identified and assisted. Survivors of sexual and gender-based violence, female heads-of-household, and unaccompanied women and children were identified early and targeted for refugee status determination and assistance.

As part of this initiative, all women received individual documentation and are re-interviewed when this documentation is reviewed so that protection concerns that arise can be urgently addressed.

4.2.2 Birth registration and certification

"I was raped. The problem is that the child is not registered in the camps because she doesn't have a father. She doesn't get clothes. I have submitted a number of applications to the camp management committees. I even went to Chandragadhi... The Chief District Officer said they would reply, but they haven't replied. It was last year that I visited."

Refugee woman in Nepal⁵²

Introduction

Birth registration is a fundamental right. It not only establishes a child's identity, but also confers rights and privileges. Individuals whose birth has not been registered and/or who cannot present a birth certificate may be denied access to education, food, and health care on the basis of their nationality and civil status. Without birth registration many children face an uncertain future and may become stateless.

Girls with a disability are less likely to have their birth registered, as the stigma of having a child with a disability remains high in many cultures. This limits their access to key rights, including nationality, and to care and services they may need.

Purpose

In situations of forced displacement, birth registration and certification are important tools for preventing human rights abuses, such as forced military recruitment, early/forced marriage and child labour, and for enabling access to education, health and other services. Birth registration and certification are essential for documenting the relationship between a child and her or his parents and her or his place of birth. This may be indispensable for establishing nationality by descent or birth on the territory (what is known as *jus sanguinis* or *jus soli*).

Birth registration and certification are also important for girls who:

- are claiming asylum e.g. to ensure proper care arrangements are put in place or in the context of the status determination procedure itself;
 - have been subjected to sexual and gender-based violence and it is necessary to prove they were minors at the time;
 - are seeking resettlement and need to prove parental links; and
 - upon return, need to prove parental links, for instance, for nationality, inheritance or property ownership.
-

Summary of challenges

Displaced and returnee women may face challenges registering the births of their children and securing certification, including because:⁵³

- they face gender discrimination;
 - they do not themselves have documents and may fear arrest or detention if they approach the authorities to register the births of their children;
 - they lack physical access to registration facilities, including as a result of long distances or a perilous journey and high transport costs involved;
 - they face linguistic, financial, legal and administrative barriers;
 - they lack awareness about the importance of birth registration among displaced communities;
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⁵² Human Rights Watch, "Trapped by Inequality: Bhutanese Refugee Women in Nepal", 2003, pp. 29–30.

⁵³ T. Thonhauser, "Birth Registration of Refugee Children", internal UNHCR paper, 2003, pp.15–25.

4.2.2 Birth registration and certification, continued

Summary of challenges (continued)

- many women deliver their babies at home and not in hospitals; and
 - governments are opposed to this, particularly governments in countries of asylum which fear that birth registration would provide additional rights to refugee children.
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Challenge: Gender discrimination

Because some nationality laws discriminate against women,⁵⁴ some women may not be able to pass on their nationality to their children and so may not be able to register the birth of their children.

Sometimes, women face other forms of gender discrimination that prevent them from registering the birth of their children. For example, some countries require women to produce a marriage certificate before permitting birth registration. In others, a birth must be registered by the child's father, regardless of any nationality issues or whether he is not known, as can be the case in rape cases.

Challenge: Conflict and displacement

Conflict, during which civil registers may be destroyed, and forced displacement exacerbate these challenges.

In Bosnia-Herzegovina, for instance, a Roma woman who had fled conflict in the region had no identity documents and was unable to obtain them due to difficulties in determining her origins. She was forced to use the health card of her neighbour in order to access health services and deliver her baby. As a result, the baby was registered in her neighbour's name and the mother is in danger of losing her child.

International legal standards and guidelines

Every child has the right to a name and an identity, a right to be registered and the right to acquire a nationality. All children should be registered at birth without discrimination of any kind.⁵⁵

Note: Other guidance can be found in

- UNHCR's *Registration Handbook* (provisional release, September 2003), especially pp. 61–63;
 - UNHCR, *Refugee Children: Guidelines on Protection and Care*, 1994, chapter 8;
 - UNICEF, *Birth Registration: Right from the Start*, Innocenti Digest No. 9, March 2002; and
 - Action for the Rights of Children (ARC) CD-Rom, International legal Standards, Topic 3 Legal Status – Birth Registration, Nationality and Refugee Status Determination.
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Responsibility

States are responsible for the timely registration of the births and deaths of people who have been forcibly displaced or have returned and for providing them with the appropriate certification.⁵⁶

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⁵⁴ See Chapter 5, section 2 on nationality, civil status and family relations.

⁵⁵ ICCPR, Article 24; CRC, Articles 7, 8; Committee on the Rights of the Child, General Comment No. 7, 2006, implementing child rights in early childhood, para. 25.

⁵⁶ ICCPR, Article 24; CRC, Articles 7 and 8; Committee on the Rights of the Child, General Comment No. 7, 2006, implementing child rights in early childhood, para. 25. See also, Agenda for Protection, Goal 1, Objective 11; ExCom Conclusion No. 105 (LVII) of 2006, para. (j)(iii).

4.2.2 Birth registration and certification, continued

Responsibility (continued)

In asylum situations, this is the responsibility of the host country.

In those of internal displacement, Principle 20 of the Guiding Principles on Internal Displacement requires State authorities in the country to issue new documents to the internally displaced or to replace existing documents that have been lost as a result of displacement, including identity documents and birth certificates. This principle emphasizes the equal rights of women and men to obtain such documents and to have them issued in their own names.

How to respond

While most, if not all, States' legislation respects the principle of equality between boys and girls regarding birth registration, in situations of forced displacement and return, births are often not registered or certified.

When it is not possible for this vital event to be recognized and recorded in the normal national registers, or when States fail to assume this responsibility, UNHCR should promote this, including by actions to

- work with the community, if necessary, to raise awareness about the importance of birth registration and certificates for girls and boys and to identify any logistical and financial problems parents may face securing registration and documentation for their children;
- work closely with UNICEF, which also has an important role to play in promoting birth registration and supporting governments in establishing birth registration programmes for the general population, as a way also to ensure the birth registration and thereby the protection of asylum-seekers, refugees, returnees, (re)integrating and stateless persons;
- provide funding, training, equipment, and other support for programmes to register the birth of refugee children and children at risk of statelessness in States without adequate resources, so as to enable authorities to assume their responsibilities in this respect and ensure refugee children at least have their births registered and have a certificate;
- support the despatch of mobile birth registration teams to isolated areas which register births in both the displaced and host community;
- work with governments, including local authorities, to help them understand the importance of facilitating late registration of births and of ensuring that children who have not been registered have equal access to health care, protection, education and other social services;⁵⁷ and
- to the extent possible, maintain a record of all births for refugees and asylum-seekers, and provide the individuals concerned with birth certificates, if the authorities are unable or unwilling to do so, since a UNHCR attestation can sometimes be essential to assuring protection and solutions.⁵⁸

Note: For more information on how discriminatory nationality laws can result in statelessness, including for the children of refugees, see Chapter 5 section 2.

⁵⁷ Committee on the Rights of the Child, General Comment No. 7, 2006, implementing child rights in early childhood, para. 25.

⁵⁸ UNHCR, *Handbook for Registration*, 2003, p. 61; Agenda for Protection, goal 1, Objective 11. UNHCR's *Practical Guide to the Systematic Use of Standards and Indicators in UNHCR Operations*, 2nd edition, February 2006, defines as birth certificates not only documents issued by the government, but also "documents issued by UNHCR or other organizations, when these have been given the authority by the host government to issue them through a legal or sub-legal act or when the UNHCR issued document bears the signature of the competent authority of the state. Hospital records and records from midwives or traditional birth attendants shall not be considered as birth certificates."

Field practice: Birth registration and certification campaign, Papua New Guinea

Introduction

This initiative involved a campaign to register the births of refugee children born in exile in the remote and inaccessible Western Province of Papua New Guinea. Their parents had fled Indonesia almost 20 years before and by 2003 more than half the refugee population had been born in Papua New Guinea. It involved working with government authorities to persuade them to assume their responsibilities and with the refugee community to help them understand what birth registration was about.⁵⁹

The campaign has so far succeeded in registering the births of nearly 3,000 refugee children born in exile in Papua New Guinea and in giving them birth certificates acknowledging their Papuan citizenship.

Rights promoted

Rights promoted include the right:

- to a name, legal identity and nationality;
- not to be discriminated against;
- to education; and
- to the highest attainable standard of health.

As the UNHCR representative in Papua New Guinea notes: "Registration of births is the first legal acknowledgement of a child's existence and a crucial first step in attaining rights – from enrolling in school to later opening a bank account, finding a job or obtaining credit. A birth certificate to prove a child's correct age is also an important tool for preventing child labour, under-age military service or conscription, and forced marriage for girls."

AGDM and empowerment

The campaign has mainstreamed age into UNHCR's protection interventions. It has helped ensure young refugees are able to enjoy their rights more fully, thus empowering and enabling them to go to school, continue their studies, get a job, and strengthen their local integration. Now that refugee girls have their own individual birth documentation this gives them greater independence.

Community involvement in implementation

UNHCR and the Diocese of Daru-Kiunga (see partners below) worked through community leaders to help people understand what the registration was about and reassure those who were concerned. They also worked with the local communities in the border area which helped improve relations between local communities and the refugees. Both sides now recognize the importance of having birth certificates.

Partners and their involvement

The campaign involved the Civil Registry Office of the Department for Community Development, the Departments of Provisional and Local Government Affairs and of Border Affairs in Papua New Guinea. This helped ensure their commitment to register these births and thereby comply with the country's obligations under the 1951 Refugee Convention and the 1989 Convention on the Rights of the Child.

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⁵⁹ For further details see, UNHCR news stories, "Papua New Guinea Grants Legal Identity to Young Refugees", 20 May 2004, at <http://www.unhcr.org/cgi-bin/texis/vtx/print?tbl=NEWS&id=409f81ae4> and "Birth Certificates Help Cement Rights for Young Refugees in Papua New Guinea", 2 December 2005, at <http://www.unhcr.org/cgi-bin/texis/vtx/print?tbl=NEWS&id=439457eb4>.

Field practice: Birth registration and certification campaign, Papua New Guinea, continued

Partners and their involvement (continued)

The exercise is part of a broader campaign by the UN Children's Fund (UNICEF) and the Civil Registry Office launched in March 2004 to have 100 per cent of all births in Papua New Guinea registered by December 2007. Staff of the Catholic Diocese of Daru-Kiunga, trained by government officials, acted as partners to implement the project.

Steps to implementation

When a November 2003 population census in East Awin established that over 50 per cent of the total refugee population had been born in Papua New Guinea, UNHCR facilitated a mission by the Department for Community Development, the Department of Provincial and Local Government Affairs and UNHCR to the area to initiate a procedure to enable birth certificates to be issued to all children registered there and born in the country. Birth information forms were completed and sent to the Civil Registry Office Department in Port Moresby, the capital, for analysis and recording in a central database.

As part of a second phase of the campaign, staff of the Diocese of Daru-Kiunga went to 17 refugee settlements along the border with Indonesia. They explained to each community the importance of birth registration and certification, gathered the data needed and later delivered the certificates which had been issued in Port Moresby.

In early 2006, UNHCR funded the training by the Civil Registry of adults from the refugee settlements to ensure they are able to continue registering newly born refugee children. UNHCR also funded the full cost of issuing and distributing birth certificates to all the refugee children.

Constraints

The inaccessibility of the refugee settlements along the border with Indonesia made it a logistical challenge to reach the refugees. Diocese staff sometimes had to walk for a full day, take a long dinghy ride or scramble up steep escarpments to reach them.

Impact

By April 2005, certificates had been distributed to 1,217 refugee girls and boys born in Papua New Guinea and living in East Awin. By the end of that year, a further 1,736 birth certificates had also been issued and distributed to the refugee children born in Papua New Guinea and living in 17 settlements along the border with Indonesia.

The campaign marked the first time that birth certificates were issued to refugees born in Papua New Guinea. It will help the integration of these children and adolescents.

"It is a good thing that the children are receiving birth certificates from the PNG government. This will help them with their future life in this country. They can continue their studies here." (Matias Korodi, the grandfather and guardian of Doris Korodi, a 14-year-old refugee girl who now has her own birth certificate.)

4.2.3 Registration and certification of marriage and divorce

Introduction

Registration and certification of marriages, particularly traditional and customary marriages, and of divorces, are important tools for ensuring the protection of women and girls and for their enjoyment of their rights during displacement and in the context of durable solutions.

Note: See section 3.4 of this chapter below, for more information on marriage/divorce and resettlement, as well as Chapter 5, section 2.2 for more on challenges arising in relation to marriage and divorce, applicable legal standards, guidelines and responsibilities, and how to respond to them.

Purpose

Marriage registration and certification ensure that family unity can be legally respected and preserved and that property and other rights can be properly transferred. In cases of couples of mixed nationality, registration of the marriage is necessary for naturalization of a spouse who is not a national of the country of residence (or eventual voluntary repatriation). Depending on the domestic nationality law, registration of marriage may also affect whether a spouse may confer nationality on her or his children. In many countries, children born out of wedlock may, for example, be unable to acquire the nationality of the father.

Certification of divorce and custody arrangements can be vital both for spouses and children, particularly if the durable solutions for husband and wife are different.

For stateless persons, a marriage certificate or other official documents may be used at a later date to prove residence for the purpose of naturalization.

Summary of challenges

Women often face challenges and obstacles obtaining registration and certification for marriage and/or divorce. In many cases, women may not even have the option of divorcing or may be denied custody of their children, because of the traditions or laws in their countries.

These challenges may, for instance, be because of practical obstacles, such as cost, as a result of exile (where, for example, divorce is only possible in the country of origin), lack of awareness of their rights, or because records have been destroyed in conflict.

Lack of marriage registration and certification and of divorce, can interfere with the legal rights accorded under national law through marriage, including those related to:

- nationality and civil status of both spouses and their children;
 - lawful residence;
 - inheritance and property rights; and
 - the legal status of, and custody of, children born during the marriage.
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4.2.3 Registration and certification of marriage and divorce, continued

International legal standards and guidelines

Under international law, women have equal rights to men during marriage and at its dissolution.⁶⁰ Women and men have equal rights to obtain registration and certification of both marriage and divorce and to have it issued in their own names.

Responsibility

States are responsible for the timely registration of marriages and divorces of everyone within their jurisdiction, including displaced and returnee persons and for providing them with the appropriate certification.⁶¹

In asylum situations, this is the responsibility of the host country. In those of internal displacement, it is that of the country concerned and the State authorities are obliged to issue new documents to those who are internally displaced or replace existing ones that have been lost as a result of displacement, including identity documents and birth certificates.⁶² State responsibility extends to protecting individuals from interference by third persons, including husbands and fathers, which would inhibit the ability of women to register such civil acts.

When States fail to assume this responsibility, UNHCR should to the extent possible record such events for refugees, asylum-seekers, returnees and stateless persons. A UNHCR attestation can sometimes be essential to assuring protection and solutions.

How to respond

Ensuring that all marriages are registered and that the names of all spouses are included in the registration certificate when UNHCR is registering asylum-seekers and refugees, can help prevent statelessness and assists voluntary repatriation and resettlement.

Information campaigns can be used to encourage registration of marriages and divorces.

UNHCR can work with other UN agencies, such as UNICEF and UNFPA, and with development actors to assist States in developing more effective civil registration systems.

We must ensure that a lack of documentation does not hinder decisions on durable solutions that respect the rights of the women concerned and the best interests of their children.

Note: For more on international legal standards, responsibilities, and how to respond see chapter 5, section 2.2.

⁶⁰ CEDAW, Article 16(1).

⁶¹ 1951 Refugee Convention, Articles 12 and 25; CEDAW, Article 16(2); Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Article 3; Agenda for Protection, Goal 1, Objective 11; ExCom Conclusion No. 105 (LVII), 2006, para. (j)(iii).

⁶² Guiding Principles on Internal Displacement, Principle 20.

4.2.4 Family tracing and reunification

"I don't know if my parents and my four brothers are even alive. This makes me sad. I worry about where my family is and what happened to them."

14-year-old separated girl in Chad, living with her grandmother and great grandmother⁶³

"Growing up in the camp changed me a lot. For a 10-year-old child to be without her parents is a lot to cope with. But then, one day, when we had been in the camp for four years, my father appeared out of nowhere. He had been released from prison and had searched on foot for two years to find us. Having a father again was just wonderful."

Adut Dau Atem, a Sudanese girl who fled conflict at the age of eight. After seven years in Kakuma camp, Kenya, she was resettled with her father in Australia, where, at the age of 18, she was reunited with her mother and brother. She is now studying medical science.⁶⁴

Introduction

Family separation, caused by the chaos of conflict and flight, as well as pressures in displacement, increases the protection risks faced by women and girls.

Being part of an intact family is particularly important during displacement, when all other aspects of a normal life have disappeared. When a family is under stress or split apart, girls often shoulder significant additional burdens, as they assume additional household responsibilities. This, in turn, makes it more difficult for them to attend school. Under these stressful living conditions, girls are at greater risk of domestic violence and exploitation, whether within their own depleted family or within a foster family.

Purpose

Family tracing and reunification represents a vital tool to assist the reestablishment of normal life, not only for children who are separated from their parents and/or have to assume additional responsibilities, but also for mothers and fathers seeking their children. It is also important for grandparents, especially widows, who may otherwise risk isolation, neglect and other protection problems.

Challenges: As a result of separation

Women and girls who face particular challenges as a result of separation from their families include:

- single women and girls, including those who head families, who are at increased risk of exploitation and abuse, such as abduction, trafficking, forced labour, and SGBV, including early and/or forced marriage and polygamy;
 - older women without family support who have difficulty accessing many of their basic rights, including food, shelter and health care; and
 - women and girls exposed to domestic violence and/or those with disabilities, who have left or become separated from their immediate family and/or who have lost the support of their extended families.
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⁶³ Refugees International, "Inadequate Response to Child Protection for Refugees", 14 April 2005, at www.refugeesinternational.org.

⁶⁴ Adut Dau Atem, interview in Australian magazine, *Dolly*, 2006. See also the Australian field practice in chapter 2, section 5, for more on Adut Dau Atem's story.

4.2.4 Family tracing and reunification, continued

**Challenge:
When family
reunification is not
appropriate**

While family unity and family reunification should generally be upheld and promoted, it is not always appropriate. For example, some women and girls may not want to be reunited with their family members if they face violence or are at risk of violence, including domestic violence and harmful practices, such as forced marriage or female genital mutilation, at the hands of family members. (For more information on how to respond in such situations, see section 2.5 below on best interests assessments and determinations.)

**International legal
standards and
guidelines**

The right to family unity and family life is inherent in the universal recognition of the family as the fundamental unit of society entitled to protection and assistance.⁶⁵ The equal rights and responsibilities of women and men to care for and raise their children⁶⁶ are essential components of the principle of family unity.

Key standards applicable to family tracing and reunification are set out in the *Inter-Agency Guiding Principles on Unaccompanied and Separated Children* of 2004 and General Comment No. 6 of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin (2005), especially paras. 79–94.⁶⁷

**Responsibility:
States**

During the UNHCR Global Consultations on International Protection, an expert roundtable on family unity agreed: “Protection of the right to family unity requires not only that States take action to prevent family separations, but also that they take positive steps to maintain the unity of the family, including by reuniting family members. Refusal to allow family reunification may be considered as an interference with the right to family life or to family unity, especially where the family has no realistic possibilities for enjoying that right elsewhere. Equally, deportation or expulsion could constitute an interference with the right to family unity unless justified in accordance with international standards.”⁶⁸

In order to ensure that a child is not separated from her or his parents against her or his will, States have a responsibility to make all efforts to return an unaccompanied or separated child to her or his parents except where further separation is necessary for the best interests of the child, taking full account of the right of the child to express her or his views.⁶⁹

**Responsibility:
UNHCR**

UNHCR, working in partnership with other organizations, including particularly UNICEF, ICRC, and NGOs, should support efforts to maintain family unity and reunify families.

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⁶⁵ For a discussion of the relevant legal principles as provided for in international refugee law, international human rights law, and international humanitarian law, see UNHCR, “Summary Conclusions on Family Unity”, Global Consultations on International Protection, Geneva Expert Roundtable, 8–9 November 2001. Various ExCom Conclusions provide guidance on family unity and reunification, including Conclusions Nos. 9 (XXVIII), 1977; 24 (XXXII), 1981; 88 (L), 1999; and, most recently, 107 (LVIII), 2007, para. (h)(iii).

⁶⁶ CEDAW, Article 5; CRC, Articles 5, 7, 8 and 9.

⁶⁷ Marie de la Soudière, Jan Williamson and Jaqueline Botte, *The Lost Ones: Emergency Care And Family Tracing for Children from Birth to Five Years*, 2005, at <http://www.crin.org/bcn/details.asp?id=9250&themeID=1005&topicID=1031>, describes both how to care for the youngest children, newborns to five years old, who are separated from their families in emergencies and to trace their families.

⁶⁸ See “Summary Conclusions on Family Unity”, Global Consultations on International Protection, Geneva Expert Roundtable, 8–9 November 2001, para. 5. Article 22 of the CRC provides that in asylum situations, host governments must cooperate with the United Nations and other competent organizations in family-tracing and -reunification activities.

⁶⁹ Committee on the Rights of the Child, General Comment No. 6, 2005, on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin, para. 80.

4.2.4 Family tracing and reunification, continued

**Responsibility:
UNHCR (continued)**

UNHCR Offices have a responsibility, as part of their mandate to protect refugees,⁷⁰ to promote and facilitate the reunification of refugee families.

This means they should assist family members of someone who has been recognized as a refugee, to join her or him in the country of asylum. This applies whether or not the family members are still in their country of origin. UNHCR's assistance and support may be requested by the family member(s), by the refugee her- or himself, and/or by the UNHCR Office where the refugee or her or his family is living. This may involve:

- helping refugees or their family members to submit applications for family reunification and/or for entry or exit permission, through official procedures and in accordance with UNHCR guidelines to protect the integrity of the process, and/or
- assisting the refugee in applying for resettlement based upon family reunification.

In this context, the concept of family is to be interpreted broadly and includes “non-traditional” family members who are economically or emotionally dependent upon the refugee.

**How to respond:
Securing
reunification**

We should work in partnership with other relevant organizations, including notably the International Committee of the Red Cross (ICRC), and initiate actions to maintain family unity and reunify families as early as possible after displacement. We must also ensure that our own actions do not result in the unintentional separation of family members.

Upholding the principle of family unity and ensuring family reunification requires a process of assessment, identification, registration, documentation, tracing, verification, reunification and follow-up to assure reintegration.⁷¹

As part of this process, tracing is an essential component of any search for a durable solution and should be prioritized except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or jeopardize fundamental rights of those being traced. For asylum-seeking and refugee women and girls, family reunification in the country of origin should not be pursued where there is a reasonable risk that such a return would lead to the violation of their fundamental human rights.⁷²

**How to respond:
When reunification
is not appropriate**

In situations where family reunification is not appropriate, whether because domestic violence or abuse is involved or because reunification would involve return to the violation of their fundamental rights in the country of origin as outlined above, we should work to ensure the immediate safety and security of the women and girls involved, and find a solution that respects their rights.

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⁷⁰ Various ExCom Conclusions affirm the principle of family unity and urge UNHCR and partners to continue their efforts to seek prompt family tracing and reunion, including Conclusions No. 24 (XXXII), 1981; No. 74 (XLV), 1994, para. (gg); and No. 107 (LVIII), 2007, para. (h)(iii).

⁷¹ For more information, see Inter-Agency Guiding Principles on Unaccompanied and Separated Children, January 2004, chapter 2.

⁷² Committee on the Rights of the Child, General Comment No. 6, 2005, Treatment of Unaccompanied and Separated Children Outside their Country of Origin, paras. 80–81.

4.2.4 Family tracing and reunification, Continued

**How to respond:
When reunification
is not appropriate
(continued)**

In such cases, where women are involved, the individual rights of the woman, including her right to life, liberty and security, the highest attainable standard of health, and freedom from torture, cruel or inhuman or degrading treatment take precedence over family unity – subject always to the wishes of the woman concerned.

Where girls are involved, a best interests determination must be made immediately to decide on the appropriate solution for the girl concerned (see section 2.5 of this chapter which follows chapter 4, section 3).

**Field practice:
Various countries**

A number of examples of State practice permitting family members to join refugees in the country of asylum that can be promoted by UNHCR in other operations are listed below.

Family reunification of cohabiting partners: In *Ecuador*, legislation recognizes for the purposes of family reunification a common law marriage of a man and a woman in a stable relationship of at least two years, as well as common law partnerships of shorter duration where the couple has children. In *Finland*, unmarried partners must demonstrate that they have lived together for two years in order to obtain family reunification, while same sex partners can be granted family reunification on the same basis as unmarried partners. *Sweden* extends family reunification to the cohabiting partner, including same-sex partner, of an individual who has been granted permanent residence, as long as the partner is over 18 years of age.

Family reunification with refugee children: *Finland* permits a resident refugee child to reunify not only with her or his parents but also with individuals who acted as guardians in the country of origin, as well as with unmarried siblings if the latter are under 18 years of age.

Reunification with children: In *Ecuador*, applications for family reunification with refugees already in Ecuador can be made not only by children whose biological parents are refugees, but also by step-children and adopted children.

Family reunification with adult children: In *Ecuador*, family reunification with adult children is accepted where there is emotional, psychological, physical or economic dependence on the parent and there are strong ties between the respective family members. In such cases, persecution and other factors causing the separation of the family and the customs of family life in the country of origin are taken into account. *The Netherlands* permits adult children to reunify with parents who have asylum, if they can demonstrate they have the same nationality as the asylum holder and are dependent upon her or him.

Reunification of parents: In *Bulgaria*, elderly parents of recognized refugees, who are not able to take care of themselves and need to live in the same household with their children may benefit from family reunification. In *Ecuador*, parents, who are over 65 years old and come to Ecuador seeking to stay with their refugee children, are themselves recognized as refugees on the basis of family unity. Where one or both parents have not yet reached

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4.2.4 Family tracing and reunification, continued

**Field practice:
Various countries
(continued)**

that age, reunification is granted if there is emotional and/or economic dependence. In the *United Kingdom*, elderly parents of refugees may be allowed to come to the UK if there are compelling compassionate circumstances.

Family reunification beyond nuclear family in cases of dependency: In *Brazil*, family reunification is extended not only to the spouse and unmarried offspring under the age of 21, whether natural or adopted, of the refugee, but also to children with disabilities who are over 21 years of age who depend economically on the refugee; to elderly parents; and to brothers, sisters, grandchildren, great-grandchildren, nephews and nieces who are orphans, unmarried, under the age of 21 or have disabilities and depend economically on the refugee. In *Ecuador*, there have been a few cases of children over 18 or elderly parents and other relatives who are financially or emotionally dependent on the recognized refugee on the basis of an extensive interview and only if the dependency can be established. In *Sweden*, family members of aliens who have obtained a residence permit in Sweden may also be granted a residence permit, where they are dependent on that person and were previously sharing the same household. Exceptions can be made on strong humanitarian grounds.

Family reunification in complementary protection contexts: In *Sweden*, the right to family reunification applies to individuals who have been permitted to stay because they are “in need of protection” or on grounds of exceptionally distressing circumstances. *Switzerland* extends family reunification to other dependent family members of individuals with complementary forms of protection on an exceptional basis. In the *United Kingdom*, family members of individuals granted humanitarian protection after August 2005 have the same rights to family reunification as recognized refugees.

4.2.5 Best interests assessments and best interests determinations

"I don't want to go live with my aunt [her caretaker], because [she] said if I try to leave she will beat me. She doesn't want me to leave because I do the domestic work ... what I really want is to stay with my sister. I'm afraid that man [the caretaker's husband] will try to touch me again if I stay with the caretaker."

10-year-old refugee girl in Massakundou camp, Guinea⁷³

Best interests assessments and determinations

An individual best interests assessment and a more formal best interests determination both involve considering what is best for the individual child in all decisions and actions that affect her or him.⁷⁴ Both can be important for ensuring that girls and boys are protected and able to enjoy their rights.

Purpose

The purpose of a best interests assessment, which is a continuous process and has particular relevance for unaccompanied and separated children, is to ensure that all decisions and actions affecting a child are based on an assessment of what option is in her or his best interest.

The purpose of a best interests determination (BID) is to ensure that decisions fundamentally impacting on a child's life are assessed and documented in a formal procedure and that sufficient attention is given to determining what is in her or his best interests in each individual case.

Summary of challenges

UNHCR has thus far primarily undertaken individual BIDs before decisions on durable solutions for refugee children, including in particular resettlement to a third country. Particular challenges arise where:

- UNHCR has to become involved in separating children from their parents;
- UNHCR must make custody decisions before resettlement;
- unaccompanied and separated refugee children face return to their country of origin; and
- girls at risk are difficult to identify, for instance because they are in foster families and/or are at risk of domestic abuse.

Each of these issues is discussed further below.

Challenge: Separation from parents

Separating a child from her or his parents is a complex and delicate task. UNHCR staff should normally approach competent authorities, which have primary responsibility for decisions concerning separation. UNHCR has, however, been required to intervene where national authorities have been non-existent or lacked the required competence in extremely serious child abuse or neglect, and where the child's physical security or survival has been threatened by the conduct of her or his parents.

Challenge: Custody and resettlement

Sensitive decisions regarding custody before resettlement may arise where a refugee child and only one of her or his parents qualify for resettlement (for instance, due to domestic violence under the women-at-risk resettlement criterion or following a divorce) and a decision on legal custody of the child is required before resettlement. Often there are legal or practical

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⁷³ Human Rights Watch, "Forgotten Children of War: Sierra Leonean Refugee Children in Guinea", 1999, p. 31.

⁷⁴ For more detailed information on best interests assessments and formal best interests determination, see UNHCR, "UNHCR Guidelines on Formal Determination of the Best Interests of the Child", provisional release, May 2006, pp. 7 and 8.

4.2.5 Best interests assessments and best interests determinations, continued

Custody and resettlement (continued)

obstacles to obtaining a custody decision by the competent judicial or administrative authorities of the host country, which may prevent the child and parent from enjoying international protection in a resettlement country.

Challenge: Unaccompanied and separated children

Challenges can also arise where unaccompanied or separated girls or boys are at the border seeking asylum and may otherwise face return to their country of origin or to another country. This may, for instance, be under “safe third country” provisions or if they are rejected asylum-seekers. In the European context, this dilemma also arises among European States under the “Dublin II” Regulation,⁷⁵ which allocates responsibility to different European States for determining asylum claims.

Challenge: Girls at risk

Identifying girls at risk, especially those in foster families, presents particular challenges. Families may view them as an asset exchangeable for goods or money through a dowry paid for their early marriage or may be forced to do so by harsh circumstances.⁷⁶ They may be kept at home for domestic tasks and not be allowed to go to school, even where sons do attend.

Such girls may thus be virtually invisible to us. One sign that we are not reaching them may be if best interests assessments or determinations are primarily being undertaken for boys.

International legal standards and guidelines

The principle of best interests of the child⁷⁷ is a fundamental principle of protection. It applies to children and adolescents up to the age of 18.

It should guide all actions concerning children and, in the case of displaced children, must be respected during all stages of the displacement cycle. “At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child’s life.”⁷⁸

The provisional edition of UNHCR’s *Guidelines on Formal Determination of the Best Interests of the Child* of May 2006 should guide the process.⁷⁹ A new edition of the Guidelines is expected in 2008.

Responsibility: States

States have a responsibility in all actions concerning children within their jurisdiction to have the best interest of the child as a primary consideration. This includes action undertaken by public or private social welfare institutions, courts of law, administrative authorities and legislative bodies.

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⁷⁵ Council Regulation (EC) NO. 343/2003, 18 February 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national. See also, UNHCR, “The Dublin II Regulation: A UNHCR Discussion Paper”, April 2006, especially pp. 57–58.

⁷⁶ See, for instance, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Yakin Ertürk, “Integration of the Human Rights of Women and a Gender Perspective: Violence Against Women: Addendum, Mission to Afghanistan (9 to 19 July 2005)”, E/CN.4/2006/61/Add.5, 15 February 2006, especially paras. 23–27.

⁷⁷ The principle of the best interests of the child is contained in Article 3 of the CRC. For more information, see Chapter 6 of this Handbook.

⁷⁸ CRC Committee General Comment No. 6 (2005), Treatment of Unaccompanied and Separated Children Outside their Country of Origin, para. 19. See also generally, the *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, January 2004.

⁷⁹ A two-page overview and introduction to these Guidelines was also issued in June 2007 and is available on the UNHCR intranet.

4.2.5 Best interests assessments and best interests determinations, continued

**Responsibility:
Parents and
guardians**

Parents have responsibilities, rights and duties to provide children with appropriate direction and guidance in the exercise of their rights. Where applicable, this also applies to extended family members or community, legal guardians and other others legally responsible for the child.⁸⁰

**Responsibility:
UNHCR**

The best interests principle requires not only that UNHCR assess what is best for each child during every phase of displacement, but also that it conduct formal best interests determinations for some children. The best interest principle should be applied systematically by UNHCR in all its planning and policy-making that affects children of concern to the Office.⁸¹ This principle applies to decisions affecting individual children and to broader policies and activities that affect children generally.

ExCom has recognized UNHCR's responsibility to conduct best interest determinations "respecting child protection systems of States in cooperation with other relevant agencies and partners" and its "role in the determination of the best interests of the child which should inform resettlement decisions including in situations where only one parent is being resettled and custody disputes remain unresolved ...".⁸²

Best interests assessments and formal best interests determinations must be conducted by staff with appropriate knowledge, skills, and expertise. Although not every UNHCR staff member will be involved in such assessments and procedures, all should have a general understanding of these procedures, be able to identify when they may be required and know how to make the necessary referrals.

How to respond:

Identifying women and girls at risk may require specific strategies including, for instance, involving:

- discreet home visits and interviews in the home or in health clinics, as outlined in the India field practice example in chapter 3, section 3;
 - discreet and systematic interviews, as in the field example about the Sudanese "lost girls" in Kenya in chapter 4, section 3.4, which enabled the identification of girls in foster families in Kakuma refugee camp who were at risk, so that responses in their best interests could be determined; and
 - other approaches as listed in chapter 3, section 3 under "Identify women and girls at risk".
-

**How to respond:
Best interests
assessment**

Best interests assessment involves ongoing consideration and monitoring of what is best for the individual child in all decisions and actions that affect her or him. It is particularly important when working with separated or unaccompanied children and is appropriate including in situations involving:

- identification and registration;
 - family tracing;
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⁸⁰ See Convention on the Rights of the Child, Articles 2–5.

⁸¹ UNHCR, "UNHCR Guidelines on Formal Determination of the Best Interests of the Child", provisional release, May 2006.

⁸² ExCom Conclusion, No. 107 (LVIII), 2007, paras. (g)(ii), (h)(xviii).

4.2.5 Best interests assessments and best interests determinations, continued

Best interests assessment (continued)

- deciding on the most appropriate temporary care arrangements, including interim foster care;
 - appointing a guardian;
 - monitoring temporary care arrangements; and
 - family reunification.⁸³
-

How to respond: Best interests determination

In some cases, a best interests assessment is not sufficient, and so a formal best interests determination must be carried out for individual girls and boys of concern to:

- identify durable solutions for unaccompanied and separated refugee or internally displaced children;
- decide on temporary-care arrangements for unaccompanied and separated children in particularly complex situations; and
- decide whether or not to separate a child from her or his parents against the parents' will.

A best interests determination may thus be required for girls who are being exploited in foster families, who are at risk of domestic violence or whose parents are separated. It may be appropriate, for example, when a decision by a traditional justice mechanism clearly violates a girl's rights.⁸⁴ It is also important in relation to resettlement when, for example, a girl or her mother are victims of domestic violence and are applying for resettlement, as described in the field practice example below.

Field practice: Tanzania

When UNHCR was confronted in northwestern Tanzania, with a situation where many separated children were abandoned by foster families when they repatriated to the Democratic Republic of Congo and Burundi, the Office there took measures to reduce such risks in 2006. These involved:

- conducting best interests determinations (BID) for foster children registered for voluntary repatriation;
- assessing their situation upon return;
- studying cultural and customary norms causing separation; and
- introducing a final physical check of all children on departure day to ensure agreed child protection measures were adhered to.

The BID process assessed the intentions and ability of foster families to provide the child concerned with sufficient care upon return. The family was also sensitized about their responsibilities as foster parents.

Since most primary caregivers were women, they were directly involved in the BID process. Girls and boys were also systematically able to express their views on their preferred option for their future. Community leaders were involved in explaining the BID process and its advantages to refugees.

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⁸³ See "UNHCR Guidelines on Formal Determination of the Best Interests of the Child", provisional release, May 2006; ExCom Conclusions No.105 (LVII) of 2006, paras. (n)(iii) and (o)(i) and No. 107 (LVIII), 2007, on children at risk.

⁸⁴ For further information on traditional justice systems, see Chapter 5, section 4.3.

4.2.5 Best interests assessments and best interests determinations, continued

**Field practice:
Tanzania
(continued)**

Other specific groups such as teachers, religious leaders, (child protection) social workers, and health workers provided additional information on individual children or caregivers. Where separation between caregiver and separated child was inevitable, community members were involved in identifying viable alternative foster care.

Following the institution of a BID procedure, the number of children abandoned upon return was drastically reduced. More children were also able to reunify with their biological parents in areas of return. More generally, the BID enhanced perceptions of the value of children in the community.

The study of cultural and customary norms increased UNHCR's awareness of traditional community foster care and custody arrangements (e.g. the fate of children born out of wedlock or provision of a girl child to compensate for a deceased wife). This has enabled a more targeted response.

This example illustrates the positive impact BIDs can have in voluntary repatriation operations where there are many unaccompanied and separated children. If we implement the BID Guidelines systematically from early in the displacement cycle, this will reduce such risks in future.

Field practice: BID for children in a family suffering domestic violence

Introduction

This initiative shows how one UNHCR Office used the need to determine the best interests and solution for a family in a particularly severe case of domestic violence as an opportunity to involve the local authorities in undertaking a best interests determination (BID) for the first time. This enabled UNHCR and the authorities together to establish formally which solution was in the best interests of the eight children involved, i.e. whether separating them from their father and staying with their mother was in their best interest.

Rights promoted

Among rights promoted in this initiative were the right of the child

- to have her or his best interests taken as a primary consideration in all actions concerning her or him;
 - to express her or his views freely;
 - not to be separated from her or his parents against her or his will, except where competent authorities determine that this is in her or his best interests;
 - not to be subject to torture, inhuman or degrading treatment; and
 - to freedom of movement and to education.
-

Steps to implementation

The case concerned a refugee mother, who along with her eight children had suffered severe and sustained domestic violence at the hands of her husband. Fearing further violence, she took her children, left her husband and sought refuge, saying she was determined not to live with him again. The father complained to the authorities, both in the country of asylum and origin, about this separation, but the wife did not accept any mediation.

The Office found them an apartment and arranged for it to be protected 24 hours a day by two female guards. The threat of the husband finding them in the town was nevertheless quite high. Fearing further violence targeting both the children and the mother, UNHCR submitted the case for resettlement.

UNHCR also asked the government migration service to help find a national body specializing in children's issues, which referred UNHCR to a commission on minors' affairs. UNHCR met with the head of this commission, explained the Office's role, the purpose of, and need to, undertake a BID, shared UNHCR's BID Guidelines, and explained the Office's desire to involve national experts in the BID. The head of the commission appointed two staff for the exercise.

Of the eight children in the family, a daughter and two sons (i.e. those above 11 years old) were interviewed. They stated clearly that they had often been beaten, that the daughter had been kept at home and was not allowed to go to school, and that they wished to stay with their mother. The situation of the younger children was observed by UNHCR during home visits.

Taking into account that divorce could, in this case, only be secured in the country of origin, the BID Panel agreed this option was not feasible. To continue to stay in the country did not seem possible, as the children could not go out into the street or to school because they feared their father would find them. The Panel confirmed that resettlement with the mother was in the children's best interests. This, also in light of the possibility for the mother to request family reunification once resettled, which would therefore not preclude the children's eventual reunification with their father, if this were in their best interests.

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Field practice: BID for children in a family suffering domestic violence, continued

AGDM and empowerment

The BID gave the children a voice in the process of deciding what solution was in their best interest. It meant their views were heard and taken into account.

Community involvement

In a society where domestic violence is very much regarded as a family matter and international standards on children's rights are not widely known, UNHCR also worked more generally with the refugee community and the social service authorities to raise awareness of these issues and to establish reporting mechanisms for SGBV, including domestic violence.

Partners involved

The migration service and commission on minors' affairs were the government departments most closely involved. The authorities in the country of resettlement were later also involved as part of the usual resettlement process.

Constraints

In this particular case, due to the urgency of their situation and the initial assessment at that time, a formal BID was not done before resettlement had been identified as the best solution and before the case was submitted for resettlement. The Office therefore decided at least to do the BID at a later stage, hoping to confirm that the initial assessment more formally and prevent possible reprisals by the husband.

The usual BID procedure requires interviews with both parents. In this case, specific BID interviews took place only with the children, as UNHCR and the migration service had already had regular meetings and interviews with both parents and were fully aware of their positions and situations, but had little independent information from the children.

The final report was prepared in the form of a Note for the File (rather than the forms contained in the BID Guidelines), to make it more comprehensible to officials of the national authorities. The BID report was signed by the two officials who participated in the determination. Since it was the first time such a joint exercise had been undertaken and bearing in mind the prevailing traditional attitudes, UNHCR maintained "ownership" of the process in this case.

Impact

Following the BID, the family was resettled and has since sent messages back stating that they were doing very well. The father has remarried.

The two local participants in the BID process confirmed their willingness to work with UNHCR again and their readiness to assist when required. Doing the BID jointly with the authorities opened the door for a more systematic future involvement.

Lessons learned

The involvement of the national authorities was crucial, especially given the prevailing traditions and attitudes in that society, which tended to mean the authorities did not necessarily see the consequences of domestic violence for the mother and children involved but rather saw solutions only from the perspective of the husband.

4.2.6 Refugee status determination

“The world has woken up to the fact that women as a sex may be persecuted in ways which are different from the ways in which men are persecuted and that they may be persecuted because of the inferior status accorded to their gender in their home society. States parties to the Refugee Convention, at least if they are also parties to the International Covenant on Civil and Political Rights and to the Convention on the Elimination of All Forms of Discrimination against Women, are obliged to interpret and apply the Refugee Convention compatibly with the commitment to gender equality in those two instruments.”

Baroness Hale in the UK House of Lords judgment in *Fornah*⁸⁵

Introduction

Refugee status determination (RSD) is a core protection function. Ensuring that age-related and gender-related forms of persecution are recognized as able to fall within the refugee definition, that women and girls are able to access procedures, and that the latter are implemented in an age- and gender-sensitive manner are key issues to enabling women and girls to enjoy their right to seek and enjoy asylum.

Purpose

The determination of refugee status defines the obligations and responsibilities of States and UNHCR towards the individuals concerned. It thus has profound implications for the life and security of the women, men, girls, and boys concerned.

Summary of challenges

Challenges faced by women and girls in accessing asylum procedures and securing a fair and efficient assessment of their claim include, as also outlined in greater detail below:

- a tendency only to consider the claim of the “principal applicant”;
 - difficulties discussing their experiences and establishing the credibility of their claim;
 - decision-makers’ reluctance to accept gender-related forms of persecution as falling within the refugee definition;
 - particular challenges faced by unaccompanied or separated girls;
 - procedural challenges.
-

Challenge: Consideration of “principal applicant’s” claim

Women’s and girls’ claims may in some situations be more likely to be considered only in relation to the claims of their husband/father or other male family members, who may be viewed as the “principal applicant”.

This has been, and continues to be, the case in many UNHCR refugee status determination (RSD) operations, even where the female family members have experienced the same or other forms of persecution. They therefore continue to have difficulties in accessing individual asylum procedures. This may even be the case where female family members have borne the brunt of the persecution. As a result, women are less likely to be able to access individual procedures. This is even truer for girls, unless they are unaccompanied or separated.

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⁸⁵ See *Secretary of State for the Home Department (Respondent) v. K (FC) (Appellant) and Fornah (Appellant) v. Secretary of State for the Home Department (Respondent)*, United Kingdom House of Lords, October 2006, para. 86, at <http://www.unhcr.org/home/RSDLEGAL/4550a9502.pdf> and for UNHCR submission in the case, which outlines the practice in other States, see <http://www.unhcr.org/home/RSDLEGAL/45631a0f4.pdf>. See also chapter 5, section 3.1.1 for more on harmful practices and on this case.

4.2.6 Refugee status determination, continued

"I couldn't tell immigration because I was told I would be taken to hospital and they would put something inside you. I haven't even told my little sister about this. It would upset her and be too much for her."

27-year-old asylum-seeking woman from Somalia in the United Kingdom, who was raped along with her mother and sister, but who had felt unable to speak about her story, even to her solicitor, and whose claim was rejected, leaving her destitute⁸⁶

**Challenge:
Difficulties
discussing
experiences and
establishing
credibility**

Women and girls may be reluctant to discuss the details of the persecution they have faced with male interviewers or interpreters and/or even with other family members present. They may not want their husband and family to know about the persecution they have suffered. They may therefore remain silent about experiences or fears which relate directly to their need for international protection.

Women and girls may also have difficulties establishing the credibility of their claim if their fear of persecution relates to the private/domestic sphere, as in cases involving domestic violence or other forms of gender-related persecution, including in relation to sexual orientation.

**Challenge: Gender-
related persecution
not accepted**

Decision-makers may have only very limited appreciation of how forms of harm experienced by women and girls can constitute persecution for reasons set out in the refugee definition. They may not, for instance, view persecution by private individuals which is condoned by the State as falling within the refugee definition.

Even where it is accepted, there may be a tendency to examine claims solely under the "particular social group" ground of the refugee definition.⁸⁷

Women and girls who oppose harmful practices and violence which violate their rights can, for instance, also be seen as facing persecution on account of their political opinion.

**Challenge:
Unaccompanied
and separated girls**

In addition, there may not be adequate measures and procedures in place to take care of unaccompanied or separated children, for instance, through the appointment of an appropriate guardian or representative to accompany the child through the process.

**Challenge:
Procedural
obstacles**

At a practical level, procedural obstacles may prevent women and girls from making and pursuing a claim for refugee status. For example, they may

- not even know that it is possible to make such a claim;
 - be discouraged from making a claim by their husband or other family members, where the male head of household's refugee status is already being examined in RSD procedures;
 - lack education and confidence and have language difficulties;
 - lack experience and confidence in engaging with figures of authority;
 - lack access to female-to-female services;
 - lack access to private confidential interviewing spaces; and/or
 - lack familiarity with formal procedures.
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⁸⁶ Refugee Action, "The Destitution Trap: Research into Destitution among Refused Asylum Seekers in the UK", 2007, p. 71, at http://www.refugee-action.org.uk/campaigns/documents/RA_DestReport_Final_LR.pdf.

⁸⁷ See 1951 Refugee Convention, Article 1A(2).

4.2.6 Refugee status determination, continued

International legal standards and guidelines

It is by now a well established principle in many countries of asylum that the refugee definition contained in the 1951 Convention should be interpreted as encompassing gender-related forms of persecution. This approach has been endorsed by UNHCR's ExCom and the UN General Assembly.⁸⁸

It is now also recognized that child specific forms and manifestations of persecution, such as "under-age recruitment (including of girls for sexual services or forced marriage with the military) and direct or indirect participation in hostilities constitutes a serious human rights violation and thereby persecution, which should lead to the granting of refugee status" where a link with race, religion, nationality, membership of a particular social group or political opinion can be established.⁸⁹ ExCom has also recognized that child-specific manifestations and forms of persecution may include child trafficking and female genital mutilation.⁹⁰

UNHCR Guidelines on International Protection

UNHCR's Guidelines on International Protection on gender-related persecution⁹¹ provide guidance to staff, legal practitioners, decision-makers, and the judiciary on the interpretation of the 1951 Convention refugee definition from a gender perspective, and also provides guidance on procedural practices. The Guidelines aim to ensure that female applicants for refugee status are given due consideration and that claims with a gender-related element are recognized as such.

UNHCR's Guidelines on International Protection on "membership of a particular social group", on religion-based claims, and on the application of the refugee definition to victims of trafficking and persons at risk of being trafficked likewise reflect gender and age concerns in both substance and procedures.⁹²

Other guidance

Other guidance can be found in:

- UNHCR's *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*,⁹³ which contain a number of provisions aimed at ensuring that refugee women and girls have independent and confidential access to UNHCR registration and RSD procedures and that the individual protection needs of women and girls are identified and fully examined in these procedures;
 - UNHCR's three module resource package on ensuring gender sensitivity in the context of RSD, including procedural issues, and of resettlement;⁹⁴ and
 - Action for the Rights of Children (ARC) CD-Rom, International legal Standards, Topic 3 Legal Status – Birth Registration, Nationality and Refugee Status Determination.
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⁸⁸ See for instance, ExCom Conclusions No. 87 (L), 1999, para. (n); No. 105 (LVII), 2006, para. (n)(iv).

⁸⁹ See CRC Committee, General Comment No. 6, 2005, para. 59.

⁹⁰ See ExCom Conclusion No. 107 (LVIII), 2007, para. (g)(viii).

⁹¹ UNHCR, "Guidelines on International Protection: Gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", HCR/GIP/02/01, May 2002.

⁹² See UNHCR, "Guidelines on International Protection, on 'membership of a particular social group'", HCR/GIP/02/02, May 2002; on religion-based claims, HCR/GIP/04/06, April 2004, particularly paras. 24, 28, and 30; and on victims of trafficking and persons at risk of being trafficked, HCR/GIP/06/07, April 2006.

⁹³ UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*, September 2005. See also UNHCR's Guidelines on International Protection on gender-related claims, see footnote above no. 91, paras. 35–38.

⁹⁴ See UNHCR, *Ensuring Gender Sensitivity in the Context of Refugee Status Determination and Resettlement*, modules 1, 2 and 3, Regional Bureau for Europe, October 2005, at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>.

4.2.6 Refugee status determination, continued

Responsibility

It is, in principle, the responsibility of States to determine refugee status. When the authorities are unable or unwilling to do so, UNHCR may conduct RSD and provide documentation attesting to refugee status when appropriate.⁹⁵

As part of UNHCR's supervisory responsibility,⁹⁶ we have a responsibility to monitor government asylum procedures and to promote the gender and age-sensitive interpretation of the refugee definition, including by making interventions before courts.

How to respond

The RSD Procedural Standards and the Guidelines on International Protection referred to above contain more detailed information on how national and UNHCR decision-makers should carry out RSD in an age- and gender-sensitive manner. This includes ensuring that:

- all examiners are familiar with the ways in which gender and age can be relevant to determining whether a particular form of harm of treatment constitutes persecution;
- extensive background information on the situation of women and children in the country of origin is available;
- all adult family members and dependants accompanying a "principal applicant" have an individual and confidential registration interview and, if this has not taken place, a separate status determination interview, and if any information obtained during the principal applicant's claim indicates that another family member may have an independent refugee claim;⁹⁷
- women and girls have access to counsellors able to explain how the asylum procedure works, including the possibility that gender-related forms of persecution can constitute grounds for refugee status;
- specially trained female interviewers and interpreters are available to asylum-seekers, especially where it becomes evident that sexual and gender-based violence may be an issue;
- special procedures are in place for asylum-seeking girls and boys who are unaccompanied or separated, which provide amongst other things for
 - the child's representation by an adult familiar with her or his background who can protect her or his best interests,
 - child-friendly interviewing by specially trained interviewers and interpreters, and
 - priority determination in the regular procedure.⁹⁸

Ensuring such standards are realized in practice, means we should, for instance, lobby and cooperate with decision-making authorities to raise awareness of why women and girls may feel unable to raise their protection concerns and of other age- and gender-related issues during the procedure. Similar awareness raising is also integral to UNHCR's RSD training for its own staff.

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⁹⁵ See Rick Stainsby, "Individual Refugee Status Determination (RSD) in UNHCR's Protection Activities and Operations", internal UNHCR study, April 2006.

⁹⁶ See 1951 Refugee Convention, Article 35: UN General Assembly Resolution 428(V), 14 December 1950, para. 2(d), annexing UNHCR Statute.

⁹⁷ UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*, November 2003, sections 3.2.6 and 4.3.13.

⁹⁸ See e.g. UNHCR, *Refugee Status Determination: Identifying Who is a Refugee*, Self-study module 2, 1 September 2005, pp. 122–123; ExCom Conclusions No. 105 (LVII) of 2006, para. (n)(iv); No. 107 (LVIII), 2007, para. (g)(viii).

4.2.6 Refugee status determination, continued

How to respond (continued)

Where governments do not have the capacity to operate advice centres to provide counselling to asylum-seeking women and girls, we should work to establish such advice centres, perhaps through partnerships with local NGOs or universities.

Field practice: Germany

In Germany, the UNHCR office in Nürnberg participates in the Federal Working Group of Refugee Women organized by the NGO “Diakonisches Werk der EKD”, which mainly consists of social work experts who have their own refugee background. These women are now well integrated in German society, working as psychotherapists, sociologists or refugee counsellors. The group meets in plenary three times a year to discuss issues relevant to asylum-seeking and refugee women and girls in Germany.

One initiative developed by UNHCR has involved setting up meetings between them and first instance asylum policy experts at the Federal Office for Migration and Refugees (BAMF). At these meetings, the women have spoken about their experiences in their countries of origin, women’s and girls’ position in their society, the limits to their freedom of action in strongly patriarchal societies, the likely response to an attempt to approach the police and the reality, for instance, of seeking to live independently of patriarchal family structures. For the officials, this has provided an excellent opportunity to appreciate and understand more fully the experiences of women and girls in certain countries of origin.

The approach has proved more persuasive than purely legalistic arguments, although other more “traditional” approaches were also used, such as training and promotion of UNHCR’s Guidelines on International Protection on gender-related persecution and on membership of a particular social group. The latter also provided useful lobbying tools to raise awareness and understanding of how gender-related forms of persecution can fall within the refugee definition.

A new Immigration Law also entered into force in January 2005, Section 60 of which specifically includes gender as a “particular social group” and hence as a ground which can result in refugee status.

An assessment of first instance decisions made during 2006 indicates that the “membership of a particular social group” ground in the refugee definition is now being used more frequently. It also shows that some 25 per cent of cases where refugee status was recognized in 2006 involved gender-related forms of persecution. These included cases involving domestic violence, forced marriage, sexual orientation, and threats of female genital mutilation or of “honour” killings, whether singly or in combination.

Field practice: Domestic violence and refugee status

Introduction

Women and girls exposed to various forms of gender-related persecution are now recognized as refugees in many countries. It is only more recently, however, that a growing number of countries of asylum have also recognized that women and girls who are victims/survivors of domestic violence⁹⁹ may have international protection needs which require their recognition as refugees.

Rights promoted

When a victim/survivor of domestic violence flees her country and her asylum claim is found to fall within the refugee definition given in the 1951 Refugee Convention, she is able to enjoy many rights including her right to

- seek and enjoy asylum from persecution;
 - equal protection before the law;
 - liberty and security of person; and
 - be free from torture, cruel inhuman or degrading treatment.
-

Steps to implementation

Historically, the refugee definition was interpreted through a framework of male experiences. This meant many women's claims went unrecognized. Since the early 1990s, however, the analysis and understanding of sex and gender in the refugee context have advanced substantially, in parallel not least with developments in international human rights and international criminal law.

As part of the process of raising awareness and acceptance of how gender-related forms of persecution can fall within the refugee definition, UNHCR has issued guidelines and provided legal advice and training to decision-making authorities.¹⁰⁰

A key step has been promoting a clearer understanding of the nature of gender-related persecution and of the distinction between the terms "gender" and "sex".

Some countries, especially those in Latin America, have adopted the approach of approving legislation which specifically recognizes that persecution on the basis of sex, gender and/or sexual and gender-based violence (all of which may of course also affect men and boys although in different ways) can fall within the refugee definition. Others have opted to issue guidelines on the gender-sensitive interpretation of the refugee definition. Whichever approach is adopted, it is clear that the Convention and its interpretation can no longer be seen as gender neutral.

With respect to domestic violence, it should be made clear that all abused women are not automatically entitled to refugee status. Each case needs to be analysed holistically and within its own particular cultural and political context.

Relevant questions include:

- How severe and persistent is the persecution or harm?
 - If the fear of persecution is well-founded, is it related to one or more of the Convention grounds?
 - What protection does the applicant have in law, and in fact?
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⁹⁹ On domestic violence generally, see e.g. UNICEF, "Domestic Violence Against Women and Girls", Innocenti Digest No. 6, 2000, at <http://www.unicef-icdc.org/publications/pdf/digest6e.pdf>.

¹⁰⁰ See e.g. UNHCR, "Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002, at <http://www.unhcr.org/publ/PUBL/3d58ddef4.pdf>.

Field practice: Domestic violence and refugee status, continued

Steps to implementation (continued)

- Is the persecution knowingly tolerated by the authorities?
- Are the authorities unable or unwilling to offer protection?
- Could the woman find safety somewhere else in her country?

These issues are of course also relevant in situations where UNHCR conducts RSD in the absence of a national determination system. Like States, Offices are also now generally more aware of these issues and recognize that it may well be that accompanying female family members have an independent refugee claim in their own right, including in relation to domestic violence.¹⁰¹

At the same time, UNHCR has worked more broadly to raise awareness of the issue, for instance, through news stories explaining the complexities of such cases and promoting understanding for the situation of women and girls in such situations, as for instance recently in relation to cases recognized in Spain, Hungary and Argentina.¹⁰²

AGDM and empowerment

In cases of domestic violence or abuse, a victim/survivor who flees and claims asylum may not only have suffered a situation of severe and persistent domestic abuse at the hands of her husband. She may also be threatened by his or her own family if she attempts to leave him and may be perceived as “dishonouring” the family, while the authorities may not grant her any effective protection or remedy against her persecutor(s). Girls may also be subject to domestic violence, for instance, at the hands of their father or step father or if they are subject to early or forced marriage.

Where such women and girls are granted asylum, this provides them with an opportunity to start a new life far from their home country. In Lebanon, for instance, one survivor of domestic violence recognized as a refugee by UNHCR went to work in a refugee community centre. She started as a cleaner there but her creative talents were soon recognized and she now trains other refugees in ceramics and jewellery design and making. The experience of being able to share her skills with other women refugees and help them achieve greater economic independence has been an immensely empowering experience for her. It has given her back her sense of dignity.

Psychological care and support as well as other integration measures are critical to survivors’ empowerment and integration.

Partners involved

The process of raising awareness of the situation of women and girls subject to gender-related persecution, including domestic violence, involves working with a wide range of actors from national decision-making authorities and the judiciary to NGOs, the media, and universities where refugee studies are taught.

Continued on next page

¹⁰¹ UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR’s Mandate*, 2003, unit 4–15.

¹⁰² For further details see, UNHCR, “Spain Grants Asylum to Battered Woman”, 9 June 2005, at <http://www.unhcr.org/news/NEWS/42a849eb4.html>; UNHCR, “Abused Woman Granted Refugee Status in Hungary”, 1 November 2005, at <http://www.unhcr.org/news/NEWS/436788e94.html>; UNHCR, “Argentina Offers Care and Support to Refugee Women Victims of Violence”, 4 January 2007, at <http://www.unhcr.org/news/NEWS/459cfbea4.html>.

Field practice: Domestic violence and refugee status, continued

Constraints

Constraints which can be encountered include:

- lack of understanding of how sex and gender can influence the type of persecution or harm suffered and the reasons for this treatment;
 - lack of recognition that domestic violence is not a private family matter but rather that the authorities have a duty to protect the human rights of the victim/survivor and to provide protection if the country of origin is unwilling or unable to do so; and
 - lack of female interviewers and interpreters in refugee status determination procedures.
-

Impact

Asylum-seeking women who faced severe domestic violence in their country of origin have been recognized as refugees in an increasing number of countries. These include Argentina, Australia, Canada, Ecuador, Germany, Hungary, Ireland, New Zealand, Romania, Spain, the United States, and the United Kingdom, as well as in UNHCR RSD operations.

Once recognized, the woman or girl concerned has a vital opportunity to start afresh in an environment where she is safe from the perpetrator of the violence and protected by the authorities of the country of asylum.

Lessons learned

An integrated approach is needed, working with a wide range of actors including the government, parliament, decision-making authorities, the judiciary, civil society, health authorities and partners providing healthcare and psychosocial care, and the media, as well as asylum-seeking women and girls themselves.

4.3 Securing solutions for women and girls

Overview

Introduction

UNHCR's mandate to secure durable solutions for all persons of concern requires us to adopt solution-oriented strategies which take account of each individual's particular situation from the outset.



For refugees, these solutions traditionally involve voluntary repatriation to the country of origin, local integration in the country of asylum or resettlement in a third country. For the internally displaced, this involves them being able to realise their basic human rights in an effective and sustainable manner and without discrimination vis-à-vis those who never left their homes. This may mean they choose to go home, stay more permanently in the area where they have sought safety or relocate to another area.¹⁰³

Demoractic Republic of the Congo / Returnee women learning furniture making in a Women-to-Women International vocational training project in Baraka, South Kivu Province, which is currently benefiting 1,000 women / UNHCR / P. Mateu / 2007

Purpose

The purpose of this section is to describe briefly various strategies and approaches which are particularly relevant to securing durable solutions for displaced women and girls. It also highlights some of the perspectives and skills they can bring to achieving such solutions, sets out applicable legal standards and guidelines, suggests actions and responses to support the process, and provides field practice examples.

Note: The applicable international standards use abbreviations to refer to key human rights treaties and conventions. These are given in full in the List of Abbreviations at the start of the Handbook. Additional information on these standards and guidelines can be found in chapter 6.

Importance of self-reliance

Self-reliance is central to solutions for women and their families, just as it is for men. It also enhances their protection and dignity. Empowering women, fostering livelihoods, and enhancing their capacities and opportunities during displacement are critical to avoiding exploitation and achieving food security (see also chapter 5, section 7.1), and help equip and capacitate them to achieve any of the durable solutions. When women and girls are self-reliant, they are better able to use their skills and experience wherever they are.¹⁰⁴

In this section

This section covers the following topics.

Topic	See Page
4.3.1. Participation in peacebuilding processes	146
4.3.2 Voluntary return and reintegration	151
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¹⁰³For further information see the "Framework for Durable Solutions" welcomed by the IASC Working Group in March 2007.

¹⁰⁴ See ExCom Conclusion No. 104 (LVI), 2005, on local integration, para. (m); UNHCR, "Local Integration", EC/GC/02/6, 25 April 2002, especially paras. 9–13; UNHCR, "Framework for Durable Solutions for Refugees and Persons of Concern", EC/53/SC/INF.3, 16 September 2003; UNHCR, *Handbook for Self-reliance*, August 2005, including Appendix 1, pp. 31, 32, 143, 149.

4.3.1 Participation in peacebuilding processes

“Only the parties responsible for war and its accompanying atrocities are negotiating the terms of peace, while those who have been lobbying for peace and campaigning against human rights violations over the past two decades find themselves marginalized in the formal process.”

Sri Lankan internally displaced woman speaking at the 5th anniversary of Security Council Resolution 1325, New York, October 2005

“The men who had been negotiating didn’t feel that they [women] had any right to be there. These men felt they had a right to be there because they were fighters or had been elected to the parliament before the war escalated. But Burundi women who had suffered so much didn’t have any legitimacy in their eyes. But by bringing women in, the documents have more legitimacy now.”

Conclusion following a women’s conference organized to enable women to contribute to the Burundi Peace Accords¹⁰⁵

Introduction

Security Council resolution 1325 (2000) emphasizes the importance of women’s equal participation as active agents in peace and security.¹⁰⁶ It calls for

- increased participation of women at all decision-making levels in conflict prevention, management, and resolution,
- support for local women’s peace initiatives and indigenous processes for conflict resolution,
- measures that support women’s participation in peacebuilding processes and in all implementation mechanisms of peace agreements; and
- action by governments, parties to armed conflict, the UN Secretary-General, and other UN bodies to achieve this.

UN Peacebuilding Commission

Since then, UN member States agreed at the 2005 World Summit to establish a Peacebuilding Commission. A part of its mandate, the Commission has a responsibility to incorporate a gender perspective in its work. Indeed, it has identified gender equality as a critical cross-cutting issue for peace consolidation.¹⁰⁷ The Commission thus represents an important mechanism to ensure full implementation of resolution 1325.

Summary of opportunities

Peacebuilding and reconstruction processes offer a unique opportunity to improve the protection of women and girls. They can, for instance, provide an opportunity to achieve greater gender balance in national and local decision-making structures. Including women in peace negotiations can help ensure that human rights provisions to safeguard gender equality are incorporated into new constitutions and that reconstruction efforts address their priorities.

It can also help ensure that national legislation on such issues as property, inheritance, domestic violence and the prosecution of perpetrators of gender-based violence are drafted. In Sierra Leone, for instance, three laws approved in July 2007 make domestic violence a criminal offence, allow women to inherit property and protect women and girls against early and forced marriage by introducing a minimum age for marriage of 18 and requiring the consent of both parties.

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¹⁰⁵ E. Johnson-Sirleaf and E. Rehn, *Women, War and Peace: The Independent Experts’ Assessment on the Impact of Armed Conflict on Women and Women’s Role in Peace-building*, Progress of the World’s Women, UNIFEM, 2002, p. 80.

¹⁰⁶ For an overview of Security Council Resolution 1325, see chapter 6, section 2.3.

¹⁰⁷ “Report of the Peacebuilding Commission on its First Session”, A/62/137–S/2007/458, 25 July 2007, para. 11.

4.3.1 Participation in peacebuilding processes, continued

Summary of challenges

As Ellen Johnson-Sirleaf, now elected President of Liberia, and Elizabeth Rehn have reported: “Women establish their credibility as peacemakers at the grassroots level but they are marginalized during official negotiations. Making it from the grass mat to the peace table has nothing to do with their qualifications as peacemakers. Once the foreign mediators come and the official negotiations start, you have to be able to sit at the table and speak their language. Often, women are not trained or given the chance.”¹⁰⁸

As a result, despite the recognition that peace is inextricably linked with equality between women and men¹⁰⁹ and despite all the groundwork done by women, often in support of men, women are often excluded from high-level decision-making arenas. As a result, their priorities disappear from global and national agendas.¹¹⁰ Mechanisms to identify and respond to their concerns may not be in place or may lack sufficient expertise.

Too often, women feel they have to change to adapt to the needs of negotiators – a belief that inadvertently supports and reinforces gender inequalities. Women and girls also have to overcome gender inequalities within their own environment and sometimes even hostility, including ridicule and violence, from their male counterparts in order to exercise their right to participate. They may, for instance, be given last-minute speaking time at the end of the process, when, with coordination, planning, and support from UN agencies and NGO partners, they could be seated in their rightful place at the negotiating table from the outset.

International legal standards and guidelines

The themes of participation and equal rights in decision-making run through the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and include the equal rights of women to participate in the political and public sphere. This provides the basis for realizing equality between women and men by ensuring equal access to, and equal opportunities in, political and public life, including the right to vote, to be eligible for election, to participate in the formulation and implementation of government policies, to hold public office at all levels, and to participate in NGOs concerned with the public and political life of the country.¹¹¹

Similarly, the Convention on the Rights of the Child (CRC), with its principles of non-discrimination, best interests, and participation, is a key instrument for ensuring gender equality for girls in peace and reconstruction processes.

The Guiding Principles on Internal Displacement provide clear guidance on voting rights. Principle 22 provides that internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of a number of rights, including the right to associate freely and participate equally in community affairs and the right to vote and to participate in governmental and public affairs. The right to participation in public affairs and return programmes with equal access to public services is outlined in Principles 27 and 28.

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¹⁰⁸ E. Johnson-Sirleaf and E. Rehn, *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building*, Progress of the World's Women, UNIFEM, 2002, p. 79.

¹⁰⁹ “Members of the Security Council ... affirm that the equal access and full participation of women in power structures and their full involvement in all efforts for the prevention and resolution of conflicts are essential for the maintenance and promotion of peace and security”, Security Council President Anwarul Karim Chowdhury of Bangladesh on 8 March 2000, cited in *Women, War and Peace*, 2002, p. 75.

¹¹⁰ E. Johnson-Sirleaf and E. Rehn, *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building*, Progress of the World's Women, UNIFEM, 2002, paras. 190–191, p. 61.

¹¹¹ CEDAW, Article 7; CEDAW Committee, General Comment No. 23, political and public life, 1997.

4.3.1 Participation in peacebuilding processes, continued

Responsibility: States

CEDAW requires States parties to eliminate discrimination against women in the political and public life of the country. It obliges them to ensure to women, on equal terms with men, the right to vote in elections and public referenda, to be eligible for election to public bodies, to participate in the formation of government policy and its implementation, to hold public office, to perform all public functions at all levels of government, to participate in NGOs and associations, and to represent their governments at the international level.¹¹²

The CRC obliges States parties to assure children’s right to express their views freely in all matters affecting them, to have the opportunity to be heard in any judicial and administrative proceedings affecting them. States are also obliged to ensure these rights without discrimination and to consider the child’s best interests as a primary consideration.

Responsibility: UN and UNHCR

UN agencies have a responsibility to work together to ensure negotiation processes are adapted to consider the specific needs of women and to support women in strengthening their capacities to assume leadership roles.

UNHCR staff and partners should be aware of gender inequalities and obstacles women and girls face when they seek to participate in what are often highly-charged political processes. They should work with male leaders and women and girls in the community to tackle these obstacles.

How to respond

In order to support women’s and girls’ equal participation in peace processes and their enjoyment of their political rights, UNHCR, together with local, national, and international partners should carry out the following actions:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Work with our partners to support and equip women and girls to participate in all decision-making processes, particularly peace processes. This requires working with women and girls from the beginning of an emergency to ensure that their views, protection risks, and needs are immediately incorporated into protection strategies and planning. • Seeking women’s and girls’ guidance on how to work with men and boys to support women will, in itself, raise awareness among the male leaders and can strengthen work in favour of women and girls. Failure to work with men and boys will undermine the process. An important partner in this work is likely to be UNIFEM.¹¹³ • Work with male leaders to open channels for active participation by women and avoid token representation, and lobby with high-profile male participants in the peace process. • Agree with all parties responsible for, and participating in, the peace process on the criteria for women’s participation and how they will be supported. • Ensure foreign mediator missions have a gender balance and work with all to gain support for the rights of displaced women and girls.

Continued on next page

¹¹² CEDAW, Articles 3, 7 and 8.

¹¹³ See, for instance, the work of the UNIFEM Regional Project “Women in Conflict Prevention and Peace-Building in the Southern Caucasus” which has developed a training module for gender equality advocates entitled *Advancing Gender Equality using CEDAW and UN Security Council Resolution 1325*, available in English at http://www.unifem.org/attachments/products/AdvancingGenderEqualityManual_eng.pdf and in Russian, Armenian, Azeri and Georgian.

4.3.1 Participation in peacebuilding processes, continued

How to respond (continued)

Response	Actions
Assess, analyse and design	<ul style="list-style-type: none"> • Work to mobilize women well before peace negotiations begin to ensure the peace process includes gender analysis and women's participation and rights.¹¹⁴ • Analyse the political situation with the community, identify all parties and then work with women and men in the community, including young people, to develop a strategy for women's participation. • Design and support programmes to build on women's capacities and to sensitize men about women's participation.
Intervene to protect	<ul style="list-style-type: none"> • Support women and adolescent girls who take on leading roles in peacebuilding negotiations and are exposed to intimidation or threats of violence as a result and ensure they receive support and protection including, for instance, through women's and adolescent girls' associations.
Strengthen national capacity	<ul style="list-style-type: none"> • Raise awareness of the judiciary about women's rights • Support the equal participation of women in all electoral processes, including through the use of quotas.¹¹⁵
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Prepare women and girls for participation in peace processes through training programmes, by lobbying with partners, especially UN agencies, for women's direct participation in the decision-making bodies, and ensuring cross-border support for women's organizations. • Support women's representatives with clear ties to a female constituency; support their efforts to organize themselves into a broad-based coalition with a common agenda and lobby for its inclusion into the peace agenda.¹¹⁶ • Support displaced women and girls to organize themselves; identify and work with local women's organizations, regional networks, and those in their place of origin which work to enhance respect for women's rights and participation in peace processes. • Encourage women and girls to participate in decision-making bodies in the community, including in camp, urban displaced, and returnee structures, by providing training and child care, developing skills in information sharing, and organizing with other women and girls in the community. (Approaches adopted in Nepal to secure women's greater participation in refugee camp elections are also relevant in this respect, as set out in the corresponding field practice example in chapter 2, section 5.) • Facilitate women's access to information on the peace process and help leaders to organize workshops for them so they can analyse their content and formulate their inputs. • Sensitize men and boys about the value of women's and girls' participation in decision-making in family and community life and promote the advantages of women's and girls' empowerment during exile and upon return.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Together with other UN agencies and partners, including NGOs, monitor and support women's participation in decision-making bodies, including in national and local authority structures.

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¹¹⁴ "The opportunities for the involvement of women in formal peace negotiations and their capacity for effective participation are often dependent on their political mobilization prior to the peace process itself, as evidenced by the examples of Guatemala, Israel, and Palestine, where women and adolescent girls were mobilized politically before the start of the formal peace process. At the same time, however, women and adolescent girls who have traditionally been excluded from decision-making and peace processes can become more actively involved if they receive support from local and international actors", E. Johnson-Sirleaf and E. Rehn, *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building*, Progress of the World's Women, UNIFEM, 2002, para. 194, p. 62. The study goes on to cite examples where women's participation was minimal or not supported and resulted in no significant progress for women, such as in Kosovo, Bosnia and Herzegovina and El Salvador.

¹¹⁵ Adapted from E. Johnson-Sirleaf and E. Rehn, *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building*, Progress of the World's Women, UNIFEM, 2002, p. 127, Actions 5 and 7.

¹¹⁶ Department of Peacekeeping Operations (DPKO), "Gender Resource Peace-keeping Package for Peace-keeping Operations", 2005.

4.3.1 Participation in peacebuilding processes, Continued

How to respond (continued)

Response	Actions
Monitor, report and evaluate, contd.	<ul style="list-style-type: none"> When monitoring the peace process and its implementation in a return situation, work with other UN Country Team (UNCT) members to support the passage and implementation of draft legislation (e.g. on prosecuting perpetrators of gender-based violence, on domestic violence or on property ownership and inheritance). Provide advice and support to institutions and communities to support such initiatives where needed. Evaluate the impact of such changes and support returnee women and girls to access reparation.

Field Practice: African women's committees	The Africa Women's Committee on Peace and Development, launched in 1999, and Femmes Africa Solidarité have focused on promoting conflict resolution in a number of African countries. The Mano River Women's Peace Network brings together women from Guinea, Liberia, and Sierra Leone to the same end. These processes cut across the divisions between warring factions to promote peace. ¹¹⁷
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Field Practice: Sierra Leone/ Liberia	In Sierra Leone, UNHCR organized several workshops for refugee women from Liberia to prepare for repatriation and discuss how to build and consolidate peace. These workshops aimed to raise refugees' awareness of ethnic chauvinism as a root cause of strife in the region, which had meant some tribes or those deemed to have been in power earlier were targeted by rebel elements and Government forces where civil strife has erupted in the country of origin. Refugee women came out strongly as advocates for peace. They reasoned that in the end, it is the women and children who have suffered most in the successive conflicts that have engulfed the region.
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Field practice: South Africa	<p>The groundwork for greater gender equality as part of the transition to democracy in South Africa was laid by women (and men) in the African National Congress, trade unionists, and others, both in exile and within the country. In the early 1990s, women across party lines agreed each party should be one-third represented by women on their negotiating teams for the formal constitutional process, resulting in key gains for women. The South African Constitution includes a comprehensive Bill of Rights which</p> <ul style="list-style-type: none"> forbids discrimination "directly or indirectly against anyone on grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth", and upholds women's right to make decisions about reproductive health and have control over their own bodies, their rights to property, to health care, including reproductive health care, to education, and to enjoy and practice their own cultural and religious beliefs.¹¹⁸ <p>Legislation has since been passed recognising women's reproductive health rights, including as regards abortion, on domestic violence, and giving women and men equal status and capacity in customary marriages.¹¹⁹</p>
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¹¹⁷ See generally, Susan Bazilli, "Review of Global Women's Peace-Building Programms", International Women's Right Project, February 2006, at http://www.iwrp.org/pdf/peacebuild_bazilli.pdf.

¹¹⁸ E. Johnson-Sirleaf and E. Rehn, *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building*, Progress of the World's Women, UNIFEM, 2002, para. 193, p. 62.

¹¹⁹ Further information can be found on the site of the South African Constitutional Court at <http://www.concourt.gov.za/text/rights/know/women.html>.

4.3.2 Voluntary return and reintegration

"If UN agencies had a better understanding of refugee women's and girls' needs and what they fear upon return, the agencies could better address the problems. More women and girls would repatriate and be safer as a result."

Women's Commission for Refugee Women and Children¹²⁰

"Conflict may create space for a temporary redefinition of social relations, but often does not change them fundamentally. Gains made are usually reversed after the end of the conflict."

From *Women, Peace and Security*¹²¹

Introduction

Experience has shown that, although war changes the roles of women and men, many of these changes are subject to reversals in the aftermath of the conflict. Men often seek to re-establish themselves as the decision-makers in the public arena and as the main providers – and ultimate authority within the home – while women return to the private, home-bound domain. The gains that women and girls may fear losing include:

- access to health care, education, and economic opportunities;
 - prevention of SGBV;
 - participation in decision-making processes; and
 - the potential to challenge traditional justice systems not in keeping with international norms.
-

Challenges during the return process

Voluntary repatriation or return poses particular challenges for women and girls. They may

- not be able to make a free, informed and individual decision, either because information relevant to their particular concerns is not made available or because decisions to return are made by the men in the family or by male community leaders;
- find their concerns (e.g. regarding continued insecurity or the risk of trafficking en route and/or past trauma) are not adequately taken into account, in the repatriation or return planning process;
- find families are split and the support and protection they offer is lost, as girls (and boys), grandparents or family members with disabilities become separated, are left behind or are abandoned in transit;
- find themselves reliving the trauma they experienced before fleeing as they return and face their persecutors;
- return as female-headed families, because they are widowed or their husbands do not return with them; and/or
- face difficulties securing access to property, reconstructing their homes and re-establishing themselves.

Those particularly at risk during the return process include separated or unaccompanied children, children in foster families, women and girls who are survivors or witnesses of human rights violations in their place of origin; heavily pregnant or lactating women, and those who are older, have disabilities, and/or are in need of medical attention.

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¹²⁰ Women's Commission on Refugee Women and Children, "Focus on Refugees Lacking in Implementation of Resolution 1325 on Women, Peace and Security, 50th Anniversary: Time for Action on Refugees is Now", 31 October 2005, at http://www.womenscommission.org/archive/05/press_releases/103105.shtml.

¹²¹ E. Johnson-Sirleaf and E. Rehn, *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building*, Progress of the World's Women, UNIFEM, 2002, para. 11.

4.3.2 Voluntary return and reintegration, continued

Challenges upon return

Women and children are more likely to be injured by land mines upon return than men, since mines are often placed near water and firewood sources, cultivation plots and other places where women go to provide for their families and where children play.¹²²

Discrimination against women and girls and gender inequalities may also persist or deepen in the post-conflict period, as men are anxious to re-establish their traditional roles. Returning women and girls may therefore face challenges maintaining their autonomy and consolidating their civil and political rights.

Even where legislation strengthening women's and girls' rights is passed, the infrastructure and resources necessary to implement them may be lacking and need to be (re)established.

Working on gender equality and respect for women's rights in the return and reintegration context can be complex (see Guatemala field practice example below). It is important to work with men and boys, particularly male leaders, to ensure genuine support. As in displacement, specific targeted actions are required to support women and girls to ensure they can sustain gains made during displacement and exercise their rights once they return.

International legal standards and guidelines

Under international human rights law, no one shall be arbitrarily deprived of the right to enter her or his country and to liberty of movement and freedom to choose her or his residence within it.¹²³

Each person's right to enter their country underpins the voluntary repatriation of refugees. It may also be exercised to entitle a refugee to come to the country for the first time, if for instance, she or he was born outside the country, as in the case of refugee girls and boys born in exile.¹²⁴

Guidance on legal safety issues in the context of voluntary repatriation of refugees can be found in ExCom Conclusion No. 101 (LV) of 2004.¹²⁵

For internally displaced women, girls, men and boys the search for solutions is based in particular on their right to freedom of movement and choice of residence. A durable solution will only have been achieved once the basic rights that were violated during all phases of the displacement cycle have been reinstated without discrimination vis-à-vis other citizens in an effective and sustainable manner.

The *Inter-Agency Peace Education Programme: Skills for Constructive Living*, published by UNESCO, UNHCR and Interagency Network for Education in Emergencies (INEE) provides comprehensive guidance on peace education and conflict minimization and prevention to reach refugee and returnee children, young people and the wider community.¹²⁶

Continued on next page

¹²² Mary Anne Fitzgerald, *Throwing the Stick Forward: The Impact of War on Southern Sudanese Women*, UNIFEM and UNICEF, 2002.

¹²³ Universal Declaration of Human Rights, Article 13(1); ICCPR, Article 12; CRC, Article 10; Guiding Principles on Internal Displacement, Principles 14, 15(d), 28, 29 and 30.

¹²⁴ UN Human Rights Committee, General Comment No. 27, 2 Nov. 1999, CCPR/C/21/Rev.1/Add.9, para. 19.

¹²⁵ More generally, see also, the "UNHCR Guide on Selected Good Practices in Reintegration", issued in June 2006, which provides good practice examples including some relevant to women and girls from reintegration operations in Afghanistan, Angola, Eritrea, Guatemala, Liberia, Mozambique, and Sierra Leone.

¹²⁶ See UNESCO, UNHCR and Interagency Network for Education in Emergencies (INEE), *Inter-Agency Peace Education Programme: Skills for Constructive Living*, November 2005, at http://portal.unesco.org/education/en/ev.php-URL_ID=47164&URL_DO=DO_TOPIC&URL_SECTION=201.html.

4.3.2 Voluntary return and reintegration, continued

Responsibility: in asylum

In the context of voluntary repatriation, countries of asylum have a responsibility, amongst other things, to continue to grant asylum to those who remain in need of international protection. This includes, for instance, women and girls who have faced severe forms of persecution and cannot return to their homes. Countries of asylum also have a responsibility to fully adhere to the principle of voluntariness of return and to ensure all refugees who voluntarily decide to repatriate are able to do so without obstacles or discrimination, including as regards age, sex and disability.

Since women and girls are particularly at risk of not having relevant documentation, to loss of nationality during exile and other such problems, these State responsibilities are especially relevant to them.

Responsibility: in repatriation

Under international human rights law, the right to return to one's country entails a duty for States to admit their nationals and not to arbitrarily prevent them, whether through legislative, administrative or judicial means, from returning to their country.¹²⁷ Countries of origin thus have a responsibility – without discrimination as to age, sex, disability or health status – to

- allow their nationals and long-term residents to return in safety, including legal, material and physical safety, and with dignity;¹²⁸
 - assume lead responsibility for creating conditions conducive to voluntary return;
 - provide returnees with necessary travel documents, entry permits, and any other documentation required for return; and
 - arrange for the restoration of nationality to refugees who have lost this and for granting nationality to the children of nationals born outside the country and, as appropriate, to non-national spouses.
-

Responsibility: in internal displacement

In the context of internal displacement, the Guiding Principles affirm that it is the “competent authorities” who have the primary duty and responsibility to establish the conditions and the means for internally displaced persons, including women and girls, amongst other solutions, “to return voluntarily, in safety and with dignity to their homes or places of habitual residence” and to facilitate their reintegration.

Responsibility: UNHCR

UNHCR has a responsibility to promote durable solutions, including voluntary repatriation and return where appropriate, as part of its mandate to secure “permanent solutions” for refugees and persons of concern, including women and girls.

Continued on next page

¹²⁷ UN Human Rights Committee, General Comment No. 27, 2 Nov. 1999, CCPR/C/21/Rev.1/Add.9, para. 21.

¹²⁸ See e.g., ExCom, Conclusion No. 101 (LV) of 2004 on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees.

4.3.2 Voluntary return and reintegration, continued

The “four Rs” framework

In this context, UNHCR has promoted the “four Rs” as an overarching framework for institutional collaboration during returns. These are:

- repatriation,
- reintegration,
- rehabilitation, and
- reconstruction.

This approach is an important component in the transition process that includes peacebuilding, reconstruction and development, and in which partnerships are a particularly important element. The promotion of gender equality and the empowerment of women are an integral aspect of the “four Rs” approach.

How to respond

In order to support women and girls in exercising their rights in peace, return and reconstruction processes, UNHCR, together with local, national, and international partners should carry out the following actions:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Long before repatriation starts, coordinate and work with communities on both sides of the border to help women and girls retain enhanced equality and rights that have been gained during displacement. Verifying the individual and voluntary nature of repatriation for women and adolescent girls, as required by UNHCR procedures, is key to supporting them in this process. • Work with women and girls and the whole community to develop appropriate voluntary return methodologies that take into account the concerns of specific groups, particularly <ul style="list-style-type: none"> – female-headed households, – women and girls with disabilities, – unaccompanied or separated children, – children in foster families, – older women with no family, and – women and girls who have been subject to rape and other forms of SGBV by persons in their area of return.
Assess, analyse and design	<ul style="list-style-type: none"> • When designing repatriation/return programmes incorporate specific measures to address the protection concerns of specific groups identified (including those as listed under “coordinate” above). For girls and boys in foster families, for instance, measures to prevent them being left behind or abandoned en route include information campaigns on effective fostering, ongoing best interest assessments for foster children, and cooperation with ICRC to reunify any separated children with their families.

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4.3.2 Voluntary return and reintegration, continued

How to respond (continued)

Response	Actions
Assess, analyse and design, contd.	<ul style="list-style-type: none"> • Involve women, men, girls, and boys in the design of reconstruction and assistance programmes and community-based economic projects in return areas and support women to ensure that they benefit equitably from the projects established. • Ensure age, gender and diversity perspectives are taken into account in our assessment of conditions for return and when designing economic reconstruction programmes and promote the inclusion of women and girls in local reconstruction processes.
Intervene to protect	<ul style="list-style-type: none"> • Give special attention in return and reintegration operations to specific groups of women and girls as outlined above under “Coordinate” to make sure that they can be included in initiatives. • Promote respect for women’s and girls’ equal rights to make a free and informed choice to return voluntarily and to equal access to housing, land, property, and inheritance so as to enable female refugees to return,¹²⁹ including by ensuring that information relevant to their concerns is transmitted and incorporated into information provided to the community deciding to return. • Incorporate measures in tripartite voluntary repatriation agreements to ensure adequate ongoing assistance and support for those who were at risk,¹³⁰ • Establish economic and other projects that target groups of women with specific needs to ensure they are not exposed to exploitation or violence and can exercise their rights on return. • Include older persons as well as girls and boys in initiatives to restore family unity, especially where these individuals may have become separated from their families and support mechanisms or left behind. • Where women and girls have been traumatized by severe past persecution, provide them with counselling and advice on other durable solutions which may be available to them, even if most of the community are returning voluntarily. See also section 3.4 of this chapter below on refugee resettlement.
Strengthen national capacity	<ul style="list-style-type: none"> • Work with UN agencies and the government to sustain and advance progress made for women and girls during displacement, e.g. by providing training and promoting gender-sensitive national legislation. • Work with UN agencies and the government in post-conflict societies to ensure that gender issues are mainstreamed when accession to international instruments and the drafting of national legislation to consolidate peace is being considered. • Raise awareness of women’s and girls’ rights among the judiciary • Support the equal participation of women in all electoral processes, including through the use of quotas.¹³¹ • Ensure national authorities issue individual documentation to all adult returnee women and unaccompanied and separated girls.

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¹²⁹ See ExCom Conclusion No. 105 (LVII) of 2006, para. (p)(i).

¹³⁰ See ExCom Conclusion No. 105 (LVII) of 2006, para. (p)(i).

¹³¹ Adapted from E. Johnson-Sirleaf and E. Rehn, *Women, War and Peace: The Independent Experts’ Assessment on the Impact of Armed Conflict on Women and Women’s Role in Peace-building*, Progress of the World’s Women, UNIFEM, 2002, p. 127, Actions 5 and 7.

4.3.2 Voluntary return and reintegration, continued

How to respond (continued)

Response	Actions
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Ensure young and older women representatives are elected and participate in all “go-and-see” visits to return areas and “come-and-inform” visits, assist them in preparing for return by gathering questions from women and girls in the community, and support their efforts to share the information when they return. • Ensure information campaigns regarding return include information relevant to children and adolescents and provide information in a child friendly way. • Work with receiving communities to sensitize them to any changes in dress codes, behaviour, and levels of participation that might have taken place among women and girls during displacement to ensure that returning women and girls are not targeted or ostracized upon return. • Encourage women and girls to participate in decision-making bodies in the community, including in returnee structures, by providing training and child care, developing skills in information sharing, and organizing with other women and girls in the community. • Sensitize men and boys about the value of women’s and girls’ participation in decision-making in family and community life and promote the advantages of women’s and girls’ empowerment during exile and upon return. • Work with the community on campaigns to prevent sexual exploitation and abuse and to establish clear complaints mechanisms.¹³² • Make voluntary repatriation grants directly available to women and girls and not through husbands/partners or fathers, so that women and girls have equal access to resources and particularly to cash income. • Integrate new skills that women and girls may have acquired during displacement and any resulting changes in gender roles into reintegration, rehabilitation and reconstruction efforts. • Establish women’s centres in returnee areas so that women and adolescent girls can gain access to a combination of educational, awareness-raising, income generation and healthcare services. • Ensure women and girls are able to access housing, land and property on an equal basis with men and boys. More detail on this issue can be found in chapter 5, section 8.2. • Tap the experience and wisdom of older members of the community to promote reconciliation, by drawing on their formal and informal leadership of communities and the respect they command.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Monitor the rights of women and girls in return situations to ensure that gains made in displacement are not eroded. • Monitor the situation of women and girls in the post-conflict period carefully, including in particular that of single adolescent girls and women, girls and boys in foster care, female heads of household, widows, older women, women and girls with disabilities, women and girls from ethnic or religious minorities. • When monitoring returnee situations pay particular attention to the situation of women and girls when serious economic deprivation and/or large influxes of peacekeepers and/or foreign workers may arise or combine, as this can lead to abuse and exploitation.

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¹³² Secretary-General’s Bulletin, “Special Measures for Protection from Sexual Exploitation and Sexual Abuse”, S/SGB/2003/13, October 2003, as circulated in IOM/FOM/77/2003 of 13 November 2003. For further information, see also chapter 5, section 3.1.2 of this Handbook.

4.3.2 Voluntary return and reintegration, continued

Field Practice: Angola

In order to promote returnee women's empowerment and participation in the reconstruction of their country and in upcoming elections, UNHCR worked in close collaboration with the Angolan Ministry of Family and the Advancement of Women (MINFAMU) and partners to promote returnee women's empowerment.

They worked together to establish women's rights committees in three of the key return districts, in particular to ensure returnee women were not disenfranchised and were able to participate in the electoral process. The association "USA for UNHCR" arranged for financial support from private sources so that almost 17,000 women could be made aware of their rights. Over 30 "training of trainers" workshops on basic human and women's rights were organized in 2005. The initiative also established a constructive working relationship between UNHCR and the independent electoral commission.

Broad-based civil society involvement was a major asset of the project. Women's community centres in remote areas became the institutional backbone of its implementation. They enabled partner agencies to incorporate educational and literacy initiatives into the project and make it better known among returnee women involved in income-generating and reproductive health programmes.

In Lumbala N'Guimbo, for instance, the Community Development Centre is now run by a women's group called Kukwava ("Bringing Women Together"). The Centre focuses mainly on women's socio-economic empowerment. Kukwava helps women start activities such as dressmaking, making handicrafts, practising horticulture or attending literacy classes. It also provides a place where women can gather to learn about issues affecting the community, such as domestic violence, HIV/AIDS and mine hazards and agree on innovative ways to address them.

UNHCR has in addition worked closely with the International Labour Organization (ILO). The ILO Women's Entrepreneurship Development and Gender Equality Team has helped the Lumbala N'Guimbo Community Development Centre to empower women and thereby rehabilitate the region's economy.

As part of this project, a technical expert undertook an economic mapping exercise of the area and provided training for the women at the Centre. The mapping exercise identified existing capacities among the population and the kind of economic opportunities that could flourish in the region. The communities were then given practical advice on income-generating activities with a strong potential to succeed. Women received training on how to start, run and manage individual businesses sustainably. They learnt about the concept and advantages of association and how best to structure the functions and overall management of the Centre, so that it could continue to promote improved conditions for women, women's rights and gender equality and to restore dignity.¹³³

¹³³ UNHCR, *Global Appeal 2007*, p. 32.

Field practice: Women's rights during Guatemalan repatriation

Overview The repatriation and reintegration of refugees in Guatemala in the second half of the 1990s stands out as an early example of how gender issues can be integrated into UNHCR return operations.¹³⁴

Rights promoted Among the rights promoted during the operation were women's equal right to:

- return to their country in legal, material and physical safety and with dignity;
 - information, freedom of expression and participation;
 - personal identity documentation, including birth certificates; and
 - enjoyment of civil, political, economic, social and cultural rights, including ownership of housing, land and property.
-

Steps to implementation One innovation was a Forum for Refugee Women on issues related to displaced and returnee women in the region held in 1992. This raised awareness of their particular situation and bolstered UNHCR's subsequent inclusion of a clear gender focus in its planning. For the first time, the Forum gave a visible role to these women, including Guatemalan refugee women, who were able to give their testimonies. It publicly recognized and affirmed their experience.

Examples of how women's issues were mainstreamed into programming, protection and documentation activities include:

- UNHCR's direct verification of the delivery of assistance to both heads of households, which found that in-kind assistance was preferable to cash and was easier for women and children to access;
 - provision of personal identity documentation to some 42,000 women and men to support returnees' enjoyment of their civil, political, and socio-economic rights, a process UNHCR supported by building the capacity of municipalities and returnee "documentation promoters" to provide personal documentation, including birth certificates, in post-conflict areas with a specific focus on women, who were not accustomed to having documentation, through radio and other media;
 - giving legal counselling on national remedies to victims/survivors of domestic violence and possibilities to remain in the country of asylum, even if their husband/partner or father opted for voluntary repatriation; and
 - supporting women's refugee organizations which mobilized to demand co-ownership of land.
-

AGDM and empowerment The UNHCR Office adopted a gender focus to its mission plan in 1996. Contact with Guatemalan returnee women raised the profile of incorporating women into planning and influenced changes in policy. It raised the expectations of UNHCR staff regarding what was possible in striving for gender equality.

Community involvement Refugees participated actively and directly in negotiations with the Guatemalan and Mexican Governments on voluntary repatriation conditions and helped shape the peace process. Refugee women played a decisive role in determining return conditions and equal rights in relation to both assistance and protection.

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¹³⁴ See generally, UNHCR, "Guatemala Reintegration 1994–2000", available on the UNHCR intranet. UNHCR internal draft document on reintegration, 2006.

Field practice: Women's rights during Guatemalan repatriation, continued

Partners involved

Female staff in UNHCR and UNDP and local and international NGOs with a gender perspective were instrumental in establishing the Forum. UNHCR left operational responsibilities for the repatriation to NGOs, community organizations and the government. It concentrated on monitoring, coordination, and trouble shooting. The Office worked with two government agencies, 21 NGOs and eight other operational partners. Funding from the Canadian Development Agency (CECI) and other donors played an important role.

Constraints

Women nevertheless faced many challenges. When, for instance, some women returnees opted to prioritize “the agenda of women and their rights” and demonstrate greater autonomy, they were met with hostility.

Male leaders in some return areas questioned the legitimacy of the members of the women's organizations. They even sought to remove them from elected leadership positions and replace them with women who were likely to follow the accepted agenda. Ironically, these same male leaders had encouraged women to organize as refugees to secure funding and support for their (male) political agenda.

In an effort to address these challenges, UNHCR played an important role in the empowerment process, providing training, financial assistance and support for women's inclusion in decision-making. The scale of societal change during the transition to peace meant, however, that on return returnee women found a reversal of the greater equality they had secured in exile. There was thus a gap between their expectations as refugees and the reality of their lives in returnee communities. Once they had crossed the border, many male leaders expected the women to “give up” their hard-earned rights and simply follow the “community” (male) agenda.

Impact

Despite the challenges encountered, some of the refugee women's organizations still exist today and some of the women leaders have taken up key roles. They survived the transition process and have continued their struggle for women's rights.

Lessons learned

The Guatemalan experience demonstrated that

- gender equality rights realized in exile can be diminished upon return, where both returnee men and some women expect women to return to their traditional roles;
 - all activities to promote women's rights and equal participation require changes at the grassroots level, in legal systems and official institutions, in culture and in social systems;
 - men in leadership roles in the community must be genuinely committed to women having their own agenda; and
 - societal changes require long-term commitment from UN agencies, donors, NGOs and civil society in general.
-

4.3.3 Local integration

"I didn't feel sorry that I am a doctor and I was working as a cleaner. I cleaned three times a week and I was very proud of the fact that I was able to earn money. For me, this was the beginning of integration. I was very tired, but it was somehow pleasant because I was proud that I could earn something for my children."

Roza, a Chechen refugee in Poland, who applied for her doctor's diploma to be recognized and started working as a cleaner before finding a job as a school doctor. For her, integration means rethinking her rules and values. At home, she cultivates her own traditions, teaching her children about their religion, where they come from and their language. In public, she takes part in Polish traditions.¹³⁵

Introduction

Local integration is a complex and gradual process, comprising three distinct but inter-related legal, economic, and social and cultural dimensions. Each of these dimensions is important for refugees' ability to integrate successfully as fully included members of society.¹³⁶

As ExCom has emphasized, "age and gender sensitive approaches, and attention to participatory and community development processes should permeate all activities aimed at enhancing the capacities of refugees to integrate locally". It has also recognized "the need for different strategies and support to boost the integration capacity of various groups with special needs, such as refugee women, refugee children and older refugees".¹³⁷

Challenges in the context of local integration

Local integration or settlement can pose challenges for women and girls, especially if they have to integrate into a cultural environment very different from that of their place of origin. Some of these challenges relate to:

- limited freedom of movement and access to livelihoods and/or housing, land and property;
- changed gender roles and cultures;
- additional pressures on girls (and boys);
- lengthy asylum procedures;
- experience of trauma in the country/place of origin, during flight or in asylum; and
- marginalized status.

Note: These challenges are discussed further below.

Challenge: Freedom of movement, livelihoods and property

Integration presents particular challenges for women and girls if they are unable to enjoy freedom of movement and/or livelihood opportunities, since both are critical for their self-reliance. This may be because the authorities wish to retain employment opportunities for their own citizens or because female single heads of household never had documentation permitting them to work or this has been taken by the husband.

Where provision of housing, land and property for locally integrating refugees and internally displaced persons discriminates against women, this also reduces their potential to achieve sustainability.

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¹³⁵ See European Council on Refugees and Exiles, Refugee Stories Project (supported amongst others by UNHCR), at <http://www.ecre.org/refugeestories/>.

¹³⁶ ExCom Conclusion No. 104 (LVI), 2005, on local integration, para. (k) and generally UNHCR, "Local Integration", EC/GC/02/6, 25 April 2002.

¹³⁷ ExCom Conclusion No. 104 (LVI), 2005, on local integration, para. (o).

4.3.3 Local integration, continued

**Challenge:
Changed gender
roles and cultures**

As ExCom has recognized, displacement can result in “changes in gender roles”.¹³⁸ Where male family members are unable to find work and have difficulty adapting to not being able to support their family, this places additional burdens on female family members and may expose them to domestic violence.

The disruption caused by displacement often splits families and can lead to many single female or child or grandparent headed households, which places additional burdens on these individuals, who often have to cope alone without adequate support.

Women and girls may find it difficult adapting to a culture where their female counterparts in the host community have much greater autonomy and independence. Where they wish to retain their own customs, they may face criticism, discrimination and even hostility in the host community.

**Challenge:
Additional
pressures on girls**

Where asylum-seeking and refugee girls and boys go to separate schools from those attended by local children, including for instance where asylum-seekers are detained, their integration and rehabilitation is hampered.

In other situations, girls (and boys) may have better language skills than their parents through attending school and may become the point of contact with local authorities and services with the attendant additional responsibilities this entails.

Separated or unaccompanied girls may be at particular risk of exploitation and abuse, including trafficking, if adequate arrangements are not in place to enable their integration. These include access to a full education and monitoring of their situation on an ongoing basis.

Refugee girls born in asylum countries whose birth has not been registered may become stateless if not permitted to integrate locally and acquire the nationality of the country of asylum.

**Challenge:
Lengthy asylum
procedures**

Female asylum-seekers can face particular challenges integrating, if

- they have spent a long time in limbo, for instance, awaiting the outcome of their asylum application, before being permitted to stay;
 - they have been detained or placed in care; and/or
 - if they have not been able to become self reliant during that time.
-

**Challenge:
Trauma**

Where women and girls have been severely traumatized by their experiences, whether in the country of origin, during flight and/or in the country of asylum, they may find the process of adjustment difficult. This is particularly so if medical and psychological treatment and support is not available or, if available, is prohibitively expensive and/or subject to long waiting lists.

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¹³⁸ Ibid.

4.3.3 Local integration, continued

**Challenge:
Marginalization**

Widows, single women, unaccompanied and separated girls and women and girls with disabilities can be particularly at risk of marginalization, exploitation, abuse and/or trafficking. It can take many years before they can be reunited with family members, if at all.

Older women, especially widows and/or those with no family members in the country of asylum may find themselves socially isolated, neglected and/or chronically dependent on social support. They may find it particularly difficult to adapt to the new environment, for instance, if they cannot speak the local language or have hearing or mobility problems.

**International legal
standards and
guidelines**

The 1951 Refugee Convention and relevant human rights instruments provide the legal framework guiding the local integration process. The wide range of social, economic and civil rights and entitlements which form part of the achievement of local integration are essentially the same as those attached to refugee status itself. Naturalization as provided for under Article 34 of the Convention marks the legal culmination of the process.

ExCom Conclusion No. 104, 2005, on local integration also provides valuable guidance on the legal, economic and social and cultural dimensions of local integration.

Principles 28 and 29 of the Guiding Principles on Internal Displacement refer to the possibility of the internally displaced to “resettle voluntarily in another part of the country”. This includes either local integration in the place to which the person has fled within the country or settlement in another part of the country. The need for the full participation of internally displaced persons in the planning and management of this process is specifically mentioned and necessarily includes women and girls.

Responsibility

States party to the 1951 Convention are responsible for implementing the range of rights and minimum standards for the treatment of refugees set out in the Convention and thus ultimately for the process of integration. They are responsible under Article 34 of the Convention, for facilitating “as far as possible ... the assimilation and naturalization of refugees”. ExCom has acknowledged that host States are required to take the lead role in the process of achieving local integration, while the sustained commitment by all stakeholders of the necessary time and resources is also needed.¹³⁹ Refugees have a responsibility under Article 2 of the 1951 Convention to conform with laws and regulations of the country of asylum.

UNHCR has a responsibility to promote durable solutions, including local integration where appropriate, under its mandate to secure “permanent solutions” for refugees and persons of concern, including women and girls.

In the context of internal displacement, the Guiding Principles affirm that it is the “competent authorities” who have the primary duty and responsibility to establish the conditions and the means for IDPs, including women and girls, amongst other solutions, “to resettle voluntarily in another part of the country” and to facilitate their reintegration.

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¹³⁹ ExCom Conclusion No. 104, 2005, para. (q).

4.3.3 Local integration, continued

How to respond

In order to ensure that women and girls are able to integrate locally, UNHCR, together with local, national and international partners, should carry out the following actions:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Establish/strengthen links with a wide range of national and international relief/humanitarian and, particularly, development actors, including governments especially ministries for health, education, and family welfare, NGO partners, and displaced communities themselves. Work with them to raise awareness of the particular situation of forcibly displaced women and girls and promote the inclusion of their concerns in development strategies. • Work to bring partners together and promote host government leadership of “development through local integration” (DLI) initiatives and the engagement of the UN Country Team, international financial institutions and bilateral donors in such initiatives to support the local integration of refugee women, girls, men and boys.¹⁴⁰ • Identify local women’s business associations that may wish to support displaced women’s economic empowerment.
Assess, analyse and design	<ul style="list-style-type: none"> • Use the UNHCR <i>Handbook for Planning and Implementing Development Assistance for Refugees (DAR) Programmes</i>, January 2005, as a tool to assess the potential and design strategies for the inclusion of refugee women, girls, men and boys in development programmes. • Use the UNHCR <i>Handbook for Self-Reliance</i>, August 2005, as a tool to plan, launch and guide a self-reliance strategy, including its material relating e.g. to gender, separated or unaccompanied children and adolescents. • Examine national legislation such as that on local government to see whether this can be used e.g. to support the establishment of refugee women’s welfare councils to create a space for refugee women to articulate their concerns and needs regarding the integration process. • Use participatory assessments to determine the capacities and skills already existing in the displaced population and make sure their experience is taken account of in devising strategies to promote self-reliance and integration. • Analyse with the local authorities how refugee and internally displaced women are integrated into and able to access public services and work with them to address any gaps.
Intervene to protect	<ul style="list-style-type: none"> • Target women and girls at risk for livelihood initiatives to increase their self-reliance and integration and reduce their vulnerability to exploitation and abuse. • Advocate with national authorities to permit prompt family reunification with recognised refugees and persons with complementary forms of protection, especially in the case of women and girls who are alone or are single heads of household, so that family members can provide mutual support during the integration process. • Ensure girls are able fully to access education, including secondary and tertiary education.

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¹⁴⁰ UNHCR, “Framework for Durable Solutions for Refugees and Persons of Concern”, EC/53/SC/ INF.3, 16 September 2003, para. 91.

4.3.3 Local integration, continued

How to respond (continued)

Response	Actions
Strengthen national capacity	<ul style="list-style-type: none"> • Advocate with government for refugees to be included in national development strategies and for such strategies to include special emphasis on the concerns of marginalized and at risk groups, such as single-headed households, unaccompanied or separated children or stateless women and girls. One such example has been the “Zambia Initiative”. • Encourage the implementation of anti-discrimination policies and awareness-raising activities aimed at combating institutionalized discrimination and at promoting the positive aspects of a diverse society and interaction between refugees, the local population, civil society and refugee organizations.¹⁴¹ • Train national ministry staff on refugees’ rights and entitlements to reduce discriminatory treatment e.g. by hospital workers, teachers etc. • Urge governments and all relevant actors to combat intolerance, racism and xenophobia, including obstacles faced by refugee women, and to foster empathy and understanding through public statements, appropriate legislation and social policies, especially with regard to the special situation of refugees with the aim of allowing refugees to participate actively in the civic, economic, and social and cultural life of the host country.¹⁴² • Persuade government authorities of the importance of family unity and reunification, since family members can reinforce the social support system of refugees and, in so doing, promote the smoother and more rapid integration of refugee families.¹⁴³ • Ensure self-reliance initiatives benefit local host communities as well as displaced communities. • Work with partners to promote the development of legal and institutional frameworks to foster productive activities and protection relevant civil, social and economic rights.
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Promote the establishment of women’s cooperatives where women can work together including with assistance of an NGO partner to administer a revolving loan fund to enable different women successively to borrow and return small-scale loans for commercial undertakings and thereby enhance their self-reliance. Ensure adequate training is provided beforehand on how they work and the importance for the community of repayments so that each member of the cooperative can benefit.¹⁴⁴ • Encourage women to group together so that they can fund larger purchases or investments and help overcome the difficulties one individual on her own may encounter in buying larger items or borrowing funds when the latter are limited. • Include women and girls in vocational training and credit schemes to make sure they are not left out of initiatives, including especially adolescents, older women, those with disabilities, and their carers. • Promote the admission of asylum-seeking girls and boys into local schools so that they can learn the local language and begin integrating as early as possible. • Lobby for and support language classes, which are at times and places accessible to women and include childcare arrangements/facilities, so that women are able to attend these classes.

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¹⁴¹ ExCom Conclusion No. 104, 2005, para. (n)(i).

¹⁴² ExCom Conclusion No. 104, 2005, para. (n)(ii).

¹⁴³ ExCom Conclusion No. 104, 2005, para. (n)(iv).

¹⁴⁴ For details of this approach adopted in Senegal for Mauritanian refugees, see David Stone, “Refugee Livelihoods, Enhancing Livelihood Security among Mauritanian Refugees, Northern Senegal: A Case Study”, EPAU/2005/11, June 2005, especially pp. 2–3 on lessons learned, at <http://www.unhcr.org/research/RESEARCH/42bbcb702.pdf>.

4.3.3 Local integration, continued

How to respond (continued)

Response	Actions
Monitor, report and evaluate	<ul style="list-style-type: none"> • Monitor the performance of micro-credit schemes through assessments with refugee and internally displaced women, to ensure they are adjusted as necessary in line with their and their community's needs. • Evaluate the level of integration with the host community and those providing services. • Evaluate the host community's level of tolerance of the community seeking to integrate, checking especially for situations of abuse of integrating women and girls.

<p>Field practice: Mexico</p>	<p>The words of former Guatemalan refugee Esperanza Vázquez, a member of the Technical committee of the Social Welfare Revolving Fund (FORBIS), Campeche, effectively outline the range of empowerment and integration activities that were successfully implemented in the context of the local integration of Guatemalan refugees in Mexico:</p> <p>“In the process of integration, we have had the opportunity to reaffirm the skills we have acquired throughout the different stages of asylum. In the last few years, we have demonstrated that, as women, we can also organize and manage our own income generation projects, and not just take care of our homes and children. An example of this is the first community credit scheme established in Los Laureles refugee settlement. At the beginning it was difficult to organize ourselves since we had never had this opportunity, and our husbands discouraged us telling us, and making us believe, that we would never be able to manage any projects.</p> <p>“Now we realize that we have learned many things, from operating a calculator, to writing cheques, depositing and withdrawing money from the bank, applying for loans and assessing whether a project will succeed or not. We can do paperwork, voice our concerns and vote on issues not just in the meetings of our organization but also in large community gatherings. We now have the courage to participate, and our male colleagues have started to realize and to be conscious of the importance, for our families and for our communities, of our participation.”¹⁴⁵</p>
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¹⁴⁵ Cited in UNHCR Reintegration and Local Settlement Section, Division of Operational Support, *Handbook for Self-reliance*, August 2005, appendix 1, p. 150, and extracted from Edith F. Kauffer-Michel (ed.), *The Integration of Former Guatemalan Refugees in Mexico: A Multi-Faceted Experience*, San Cristóbal de Las Casas, Mexico, El Colegio de la Frontera Sur, 2002.

4.3.4 Refugee resettlement

The amazing odyssey of thousands of youths ripped from their homes in the late 1980s by fighting in Sudan and forced to wander for years across the East African Savannah became the stuff of African legend. They eventually reached Kenya, where they languished in camps, becoming known as the Lost Boys of Sudan. The United States agreed to resettle nearly 4,000 of them. As they flew in small groups to all parts of America, they became instant celebrities, interviewed endlessly in the media about their amazing survival and their thoughts about starting new lives.

Forgotten in all this publicity were the fates of several thousands of girls aged between 8 and 10 who had undergone similar ordeals. While the boys remained an identified group which caught the sympathy and attention of the resettlement countries, the girls were ignored. Absorbed into foster families, their protection needs became invisible. Abduction and forced marriage was common and many girls were caught in a cycle of exploitation and abuse.¹⁴⁶

Introduction

Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State that agrees to admit them, as refugees, with permanent residence status.

Purpose

Refugee resettlement provides individual protection for refugees who are not adequately protected in a first country of asylum. It also acts as a durable solution and a responsibility and burden sharing tool. This section focuses particularly on its function as a tool to protect women and girls.

While resettlement is not the only solution for refugee women and girls with serious protection concerns in countries of asylum, it may be the only way to ensure protection for some of them.

Summary of challenges

Even though women and girls face particular gender-related risks that may make local solutions untenable, women and girls can have difficulty accessing resettlement programmes. UNHCR's women-at-risk resettlement programme is underutilized and quotas are not always filled. Reasons for this include:

- UNHCR faces challenges identifying women and girls for resettlement;
- family members may provide inaccurate information to qualify for resettlement;
- problems related to divorce and child custody;
- problems related to polygamous marriages; and
- children are unaccompanied or separated.

Note: These challenges are discussed further below.

Challenge: Identifying women and girls for resettlement

Some of the challenges related to identifying refugee women and girls for resettlement are listed below.

- Many women and girls may not even be aware of the possibility of resettlement.
 - Women may be living in hiding or in insecure locations and/or may be too afraid to approach individuals in authority, including UNHCR, or may be pressured not to do so.
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¹⁴⁶ Adapted from "The Lost Girls of Sudan", *Refugees magazine*, Vol. 1, No. 126, 2002, pp. 8–9.

4.3.4 Refugee resettlement, continued

Identifying women and girls for resettlement (continued)

- Violations endured by women and girls may be perpetrated by the community or within families and so may be invisible to us.
 - UNHCR staff may be insufficiently aware of how to use resettlement as a tool to protect women and girls.
 - They may find it difficult to identify women and girls at heightened risk, particularly because so many female refugees are potentially at risk.
 - Staff may believe that refugee women and girls are exaggerating claims of sexual and gender-based violence (SGBV) to gain resettlement, which may colour their response to SGBV cases. This inaction may, in turn, serve to confirm the attitudes of some decision-makers who do not necessarily regard rape and sexual abuse as sufficient grounds for specific protection measures.
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Challenge: Inaccurate information

Refugee women and their families may provide inaccurate information in order to qualify for resettlement, for instance, as single heads-of-households, thus committing fraud. Refugee women with resettlement prospects may be forced to add dependants – such as children – who are not, or who are no longer, family members to their application.

Where staff have had experience of such behaviour, they may adopt a negative attitude toward those requesting resettlement, especially if they themselves are burnt out.

Challenge: Divorce and child custody

The resettlement of women and girls may be impeded by problems relating to divorce and child custody. For instance,

- resettlement may be the only protection solution available to women and girls who are victims of domestic violence, even though many of these women would not want to be resettled without their children or siblings;
 - discriminatory laws and cumbersome and lengthy procedures may prevent women from obtaining a divorce or custody of their children; or
 - even if divorce and/or custody has been granted, refugee women may not have documentation that confirms this and/or the decision may not have been implemented.
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Challenge: Polygamous marriages

Women in polygamous marriages may also face obstacles to resettlement. As outlined in Chapter 5, section 2.2, the practice of polygamy violates women's right to equality in marriage. Nevertheless, where a polygamous marriage is contractually valid, all family members are, in principle, eligible for UNHCR assistance. Most resettlement countries will, however, only accept one spouse because their own national legislation forbids polygamy.

This problem is particularly acute when UNHCR has recognized the refugee status of family members only on a derivative basis. This emphasizes the importance of granting refugee status to each individual family member who applies for asylum and falls within the criteria for refugee status in their own right. By doing so, submissions for resettlement can be made independently of the husband/father. Even so, some resettlement countries have been known to decline resettlement to individuals because of their polygamous relationship, regardless of their refugee claim or the protection merits for resettlement.

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4.3.4 Refugee resettlement, continued

**Challenge:
Unaccompanied or
separated children**

Children face many problems securing resettlement when they are unaccompanied or separated and when resettlement would involve separation from a parent, for instance, in the context of emergency resettlement in cases of girls exposed to domestic violence. These problems can be compounded when UNHCR staff may believe that domestic violence does not justify separation of children from one parent (usually the perpetrator) through resettlement.

For more on this issue, see section 2.5 on best interests assessment and best interests determinations and related field practice example concerning emergency resettlement.

**International legal
standards and
guidelines**

UNHCR's *Handbook on Resettlement* provides guidance to UNHCR protection and resettlement staff and partners on this issue.¹⁴⁷ In addition, module 3 of UNHCR's resource package on ensuring gender sensitivity in the context of RSD and resettlement focuses on ensuring gender sensitivity in the context of resettlement.¹⁴⁸

**UNHCR criteria for
resettlement**

The UNHCR *Handbook on Resettlement* sets out eight criteria for resettlement.¹⁴⁹ Refugee women and girls, like men and boys, are eligible for resettlement if they meet one of these UNHCR criteria. They may, for instance, be refugees who:

- have legal and physical protection needs;
- are survivors of violence and torture;
- have medical needs;
- require family reunification;
- are older refugees; or
- are refugees without local integration prospects.

In addition, refugee women and girls may be eligible for resettlement under a seventh “women-at-risk” criterion. For resettlement purposes, “UNHCR considers women-at-risk as 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”.¹⁵⁰ Women and girls at heightened risk may be eligible for resettlement under other criteria too, such as those for survivors of violence or torture or older refugees.

Girls, including adolescent girls up to the age of 18, may also be eligible for resettlement under an eighth criterion for children including adolescents.

Responsibility

No country is obliged to resettle refugee women, men, girls or boys. Only a small number of States do so on a regular basis.¹⁵¹

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¹⁴⁷ UNHCR, *Handbook on Resettlement*, November 2004, Chapter 4.

¹⁴⁸ See UNHCR, *Ensuring Gender Sensitivity in the Context of Refugee Status Determination and Resettlement*, modules 1, 2 and 3, October 2005, at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>.

¹⁴⁹ UNHCR, *Handbook on Resettlement*, November 2004, Chapter 4.

¹⁵⁰ *Ibid.*, Chapter 4.5, p. IV/16.

¹⁵¹ UNHCR, *Handbook on Resettlement*, November 2004, Chapter 1.

4.3.4 Refugee resettlement, continued

Responsibility (continued)

Resettlement is a specialized task that is carried out by specifically trained staff. All UNHCR staff involved in protection, including community-services and field officers, should, however:

- be familiar with the categories and criteria for resettlement;
- be able to identify women and girls who may be eligible for resettlement; and
- coordinate with the appropriate officers for follow-up.

How to respond

Chapter 3, section 3 explains how to identify women and girls who are at heightened risk. This involves working with partners and the community in a participatory process to identify groups of refugees who are most at risk. It then involves making individual assessments of members of these groups to identify potential resettlement cases. One example is given in the Kenya field example at the end of this section below. It is important to avoid raising expectations and to be transparent and honest in all our communications.

Depending on the situation and issues that arise, different approaches are required as detailed in the table below.

Where a case involves	UNHCR should...
Women and girls at risk	<ul style="list-style-type: none"> • Strengthen the use of resettlement as a protection and durable solutions tool by <ul style="list-style-type: none"> – using other resettlement criteria in addition to the women-at-risk criterion; – enhancing identification, including through training (see the Kenya field practice example below and chapter 3, section 2, under “identification, assessment and monitoring” and “identification and immediate response”); and – streamlining processing further, including by establishing measures to enable the departure of women and girls at risk and their dependants.¹⁵² • Consider using special evacuation programmes for internally displaced women and girls at risk, given that resettlement is not as such presently available to them.¹⁵³
Provision of inaccurate information	<ul style="list-style-type: none"> • If inaccurate information has been provided, explore with the woman or girl concerned to understand why and to address any protection threats which may have been made to coerce her. • Support refugees who may do this by providing counselling and information on the criteria for resettlement and on their rights and obligations.
Divorce and child custody	<ul style="list-style-type: none"> • Work towards a solution that respects the rights of the woman and the best interests of the child(ren), and that conforms to international law.

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¹⁵² See ExCom Conclusion No. 105 (LVII) of 2006, para. p(ii).

¹⁵³ See ExCom Conclusion No. 105 (LVII) of 2006, para. (p)(iii).

4.3.4 Refugee resettlement, continued

How to respond (continued)

Where a case involves	UNHCR should...
Families of polygamous marriages	<ul style="list-style-type: none"> • Not risk splitting the family by asking one spouse to be chosen, as this could expose the remaining wife and child(ren) to even greater protection risks. • Explore, rather, the possibility of resettling the family in a country that would allow the family to remain together, even if the relationship to one spouse will not be legally recognised by that country. • Ensure that families of polygamous marriages are counselled concerning all aspects of resettlement and the rights and obligations in the resettlement country prior to submission of the case, especially as concerns any detrimental impact (economic/social) arising from the non-legal recognition of the marriage.
Unaccompanied or separated children or resettlement would involve separation from a parent	<ul style="list-style-type: none"> • Conduct a formal best interests determination¹⁵⁴ as provided for in UNHCR's Guidelines on Formal Determination of the Best Interests of the Child, by first ensuring that a decision on custody rights is made by the competent authorities before departure. (For further information see section 2.5 of this chapter, including field practice example.) • Where no custody decision exists, encourage the competent authorities of the country of asylum to decide on the custody of the child before departure for resettlement. • Promote the provision of age appropriate and female-to-female services for refugee girl children awaiting resettlement. • If this is not possible, for instance, in emergency cases involving domestic violence, <ul style="list-style-type: none"> – undertake a formal best-interests determination before the resettlement submission; – formally ask the resettlement country to decide on custody rights as soon as possible after the child's resettlement; and – at the same time, inform the parent with whom the child is resettled how to acquire custody rights upon arrival in the resettlement country.¹⁵⁵

Field practice: Ecuador	<p>In Ecuador, UNHCR works through local women's associations to identify women and girls at risk and provide a protection network for (mainly Colombian) refugee women in such vulnerable conditions. Inter-agency and inter-institutional committees have also been established to identify problems faced by unaccompanied and separated children and women, who are victims/survivors of sexual and gender-based violence and to determine appropriate protection needs and responses, including the possibility of resettlement. Possible resettlement cases are referred to a Unit for the Analysis of Cases with Special Protection Needs (UANEP), established in 2003, to which referrals can only be made by "internal" actors (i.e. the UNHCR Protection Unit, UNHCR Field Offices, and UNHCR's main Implementing Partners). An increasing number of refugee women and girls whose protection cannot be secured in Ecuador have been referred. They are mainly single heads of households and young girls who have suffered direct or indirect threats from different, irregular armed groups in Colombia or have fled violent confrontations in remote rural areas between the different parties in the Colombian conflict.¹⁵⁶</p>
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¹⁵⁴ UNHCR, "UNHCR Guidelines on Formal Determination of the Best Interests of the Child", provisional Release, May 2006, p. 10.

¹⁵⁵ For further details see, "UNHCR Guidelines on Formal Determination of the Best Interests of the Child", UNHCR, provisional release May 2006, p. 19.

¹⁵⁶ UNHCR, Annual Protection Report, 2005.

4.3.4 Refugee resettlement, continued

Field practice: Brazil	Brazil recently joined a number of other resettlement countries and adopted a special procedure for emergency resettlement, under which emergency cases, including women and girls at risk, can be resettled within 72 hours.
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Field practice: Iceland	<p>In the past, most refugees resettled in Iceland were settled and integrated in the capital, but an increasing number are now being settled in small fishing villages. The Icelandic Red Cross (IRC) operates a year-long central government-funded Family Support System, which pairs local families with resettled refugee families to support the integration process.</p> <p>Under the scheme, the Ministry of Social Affairs places a newspaper advertisement asking municipalities willing to receive refugees to contact them and explaining the support and benefits central government can offer. The IRC and municipal authorities volunteering to accept the refugees then organise general meetings for interested community members to share essential information about the Family Support System. The steering committee of the project (the IRC and local authorities) analyses the composition, characteristics and needs of the refugee families to pair these with the characteristics of the Icelandic support families.</p> <p>A month before the refugees arrive, IRC volunteers collect furniture, utensils and clothing and prepare the apartment where the refugee family will live. The support families are given an introduction to the culture and traditions of the country of origin and the political and humanitarian situation there. They are also given training in psychological first aid, since many of the refugees have gone through traumatic experiences. On average, two or three Icelandic families support each refugee family, providing information about Icelandic society, psychological support and human warmth to support them.</p> <p>In the beginning, the support families visit the refugee families every day to guide them in their day-to-day activities, such as going to the bank, taking the bus and how the school system works. After the first three weeks, there are weekly meetings and then later monthly meetings, the frequency depending on the needs and interests of the refugee family.</p> <p>For the first six months, the focus is on language training and the integrating refugees notionally do not work. After that, half-time work is envisaged for three months and then full-time work. The refugees are also offered 530 hours of Icelandic language classes. In fact, many of the refugees start to work after 4-5 weeks once their “green cards” (work permits) have been issued.</p> <p>A particular focus of the programme over the past few years has been on resettling single women and single mothers with their children. One recently resettled Colombian mother, Marta, explained how armed groups had wanted to forcibly recruit her 17-year-old son, forcing her to flee first within Colombia and then to Ecuador. She was urgently resettled when the armed groups traced her in Ecuador, threatened to take her son and kill her for hiding him. Now in Iceland, she has benefited from the integration programme described above and appreciates the warm welcome and support she has received. “We feel so safe here”, she says, “We can go to sleep without being afraid, and that is what really counts.”¹⁵⁷</p>
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¹⁵⁷ See, UNHCR, “Chilly Iceland Gives a Warm Welcome to South American Refugees”, 4 January 2008, at <http://www.unhcr.org/news/NEWS/477e51ca4.html> for more information on Marta’s experience and the integration programme.

Field practice: Identifying Sudanese refugee women and girls at risk for resettlement, Kenya

Introduction

Following the resettlement from Kenya of several thousand mainly young male Sudanese refugees, known as the “lost boys” of Sudan in 1999/2000, it was recognized that there were also a significant numbers of “lost girls” in Kakuma refugee camp, Kenya, many of whom were at risk and in need of resettlement.

As a result, UNHCR undertook an exercise between October 2003 and August 2004 to assess their protection needs. This had to adopt a discrete and sensitive approach, as many of the girls and women were in exploitative and abusive foster families. The exercise successfully identified women and girls in Kakuma who were at heightened risk. Their cases were then considered for resettlement.

Rights promoted

Among the rights promoted by this initiative are the right to:

freedom from forced labour and servitude;
consent to marriage and protection from underage marriage;
primary and higher education;
property ownership individually or in association with others; and
just and favourable conditions of work.

Steps to implementation

In the course of the resettlement of the Sudanese “lost boys”, it became clear there were also significant numbers of “lost girls” who had followed the same path but were not so readily visible. A UNHCR consultant raised concerns as to their welfare. The Office therefore assessed a number of lists of Sudanese girls who had arrived in Kenya as unaccompanied or separated children.

Unlike the “lost boys”, who were more easily identifiable because they had stayed together and faced a common protection threat of forced conscription as child soldiers, many of the girls had been placed in foster families by the Sudanese community. Identifying the girls required a more labour-intensive approach because they were dispersed in different foster families and less visible to humanitarian agencies. UNHCR recognized that they needed to be individually and systematically interviewed to identify who was at risk and determine appropriate responses to their situation, including resettlement.

The girls were assessed individually by psychosocial counsellors. Interviews had to be discreetly administered and included lengthy counselling to determine the level of vulnerability each individual faced. Only later were those found to be “vulnerable” or “highly vulnerable” considered for resettlement, while a number of highly vulnerable persons were resettled immediately. A further assessment was required in many cases, including best interest determinations where minor children were involved, to determine whether resettlement was appropriate. In the meantime, other protection interventions were made, such as removal from the source of risk, including in some cases through relocation to Nairobi and placement in “safe house” accommodation.

Profiles of girls and women identified as being at heightened risk included young unmarried girls and women facing a threat of forced marriage by their foster family in exchange for a bride price, young women who had “unofficially” married someone of their choice and/or had a child from this or another “unrecognized” partnership and widows who risked being forced to marry one of their husband’s relatives or whose children risked abduction.

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Field practice: Identifying Sudanese refugee women and girls at risk for resettlement, Kenya, continued

Steps to implementation (continued)

Ultimately, the exercise established a useful methodology which has now been adapted and applied to regular case identification and referral mechanisms. It recognises the need for “multifunctional teams” of experts, involving community services, protection and resettlement staff, as well as external partners such as NGOs to identify and address protection needs.

AGDM and empowerment

The focus of the exercise to assess the protection needs of the “lost girls” enabled their situations to be mainstreamed and addressed, even though the initial focus had been on the “lost boys”. It helped both to identify women and girls in need of resettlement and to identify other women and girls with protection concerns that required response. It gave UNHCR and NGO partners a better insight into the dynamics within the refugee community which contributed to the risks faced by refugee women and girls. This also allowed for interventions to protect other individuals who did not belong to the list of “lost girls”.

Community involvement

Prevailing social customs among the refugees meant the interviews had to be administered discreetly, so the girls concerned, who were by then sometimes women, were not exposed to greater risks. Given that some of the risks faced by the women and girls came from within the Sudanese community, the engagement of the community in the process was a delicate undertaking. Information sharing and briefings of community representatives was undertaken to mitigate these risks and to foster confidence and support toward the outcomes, including steps to mitigate such risks in the future.

Partners involved

UNHCR involved a number of NGOs in the exercise under special secondment-type arrangements. NGOs provided psychosocial counsellors and social workers able to assess the risks individuals faced and determine best interests.

Constraints

Firmly entrenched traditional Sudanese cultural values and practices presented challenges to the smooth implementation of the project which had to be implemented sensitively and discreetly. The complexities of the relationships between the Sudanese girls and their foster families and the guardianship arrangements reached also required sensitivity by UNHCR when considering resettlement interventions. This made group designation for resettlement problematic, requiring individual case assessments and protection interventions.

Impact

Of 415 interviews conducted, about a third of the individuals were identified as “vulnerable” or “highly vulnerable”. Some were later screened out in resettlement interviews, but 71 cases (341 individuals) were submitted for resettlement.

Lessons learned

UNHCR needs to be aware of the effects of traditional practices on refugee girls and address their welfare concerns systematically, in a way that is sensitive to cultural values and guardianship relations. The cases of highly vulnerable individuals must be considered on a priority basis to avoid further abuse or violence. The exercise can usefully be extended to women and girls of all ethnicities in the camp and involve expertise from different sectors to quickly identify and respond to the situation of women and girls at risk.



Uganda / A Sudanese refugee mother and her baby who have fled attack by an armed rebel group receive emergency assistance from UNHCR / A rights-based approach to protection requires us to recognize that women and girls of concern are not passive recipients of humanitarian aid but “rights holders” with legal entitlements / UNHCR / S. Mann / 2002