

FAMILY PROTECTION ISSUES

I. INTRODUCTION

1. The Executive Committee of the High Commissioner's Programme has on a number of occasions turned its attention to questions relating to the protection and well-being of the refugee family, including that of family reunification.¹ Most recently, the Conclusion on International Protection adopted at its forty-ninth session in 1998 (A/AC.96/911, para. 21), the Executive Committee recalled the principle of the unity of the family proclaimed in international human rights instruments and *inter alia* recommended that Governments take appropriate measures to ensure that the unity of the family is maintained.

2. The discussion which preceded the adoption of this Conclusion was quite protracted and revealed the need for a more in depth analysis of how protection of the family unit can impact in important ways both on individual refugee protection and on the success and durability of solutions to refugee situations. The Executive Committee accordingly requested that the question of protection of the refugee family be placed on the agenda of the Standing Committee in 1999. This conference room paper responds to that request.

II. THE REFUGEE FAMILY

3. There is no standard definition of family. The concept of family may differ in some respects from State to State and even regionally within a State.² The term family, however, clearly includes "nuclear family" consisting of husband and wife,³ along with their minor children. In a number of societies, family is understood in a wider sense to embrace also dependent, unmarried children, minor siblings and dependent elderly parents of the adult family member.

4. How the family is defined depends very much on the cultural roots of its members and the society in which it is formed. Another factor which is particularly important in this regard is the reason why the definition is being attempted. UNHCR has always held that pragmatism and flexibility, in addition to cultural sensitivity, be brought to bear in the process of identifying the members of the refugee family.⁴ The nuclear family is clearly the core, but the element of dependency among family members, both physical and financial, as well as psychological emotional, should find its appropriate weight in the final determination.

¹ Executive Committee Conclusions on family reunification (A/AC.96/549, para. 53, (7) and A/AC.96/601, para. 57, (4)); refugee children and adolescents (A/AC.96/702, para. 205, A/AC.96/737, para. 26 and A/AC.96/895, para.21) and refugee women (A/AC.96/673, para. 115, (4), A/AC.96/721, para. 26, A/AC.96/737, para. 27 and A/AC.96/760, para. 23).

² Human Rights Committee (Thirty-ninth session, 1990) General Comment 19 on Art. 23, para. 2.

³ Besides legally married spouses, couples who are actually engaged to be married, who have entered into a customary marriage, or couples who have lived together for a substantial period are understood to be a family by UNHCR for resettlement purposes.

⁴ This approach is in line with that adopted in the Convention on the Rights of the Child, which uses differing concepts of family for different rights.

III. THE FAMILY'S RIGHT TO PROTECTION

5. The United Nations designated 1994 as the International Year of the Family, honouring what the United Nations General Assembly resolution called "the foundation of human society and the source of human life." The fundamental importance of the family and its right to be protected have consistently received international recognition, including through Article 16 of the Universal Declaration of Human Rights, which provides: "The family is the natural and fundamental group unit of society, and is entitled to protection by society and the State." The same principle was subsequently promulgated in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.⁵ It is further embodied in one form or another in a range of other universal and regional binding human rights instruments.⁶

6. Refugee families are entitled to protection under the above-mentioned provisions. In addition, the Conference of Plenipotentiaries that adopted the 1951 Convention relating to the Status of Refugees recognized the right of the refugee family to protection. The Conference considered the family to be the "natural and fundamental group unit of society"⁷ and recommended that Governments take the "necessary measures for the protection of the refugee's family."⁸

7. Respecting the principle of unity of the family is one of the primary means of protecting the refugee family. This was also noted by the Conference, which considered "unity of the family" to be "an essential right of the refugee" and recommended that measures for the protection of the family be taken with a view to "ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country"⁹.

8. The importance of respecting family unity, either by maintaining or reuniting the family unit, is also reflected in Articles 7, 8, 9, 10, 18 and 22 of the Convention on the Rights of the Child, Article 17 of the International Covenant on Civil and Political Rights and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. International humanitarian law also contains a number of provisions aimed at maintaining family unity during armed conflict and reuniting families that have been separated by conflict.¹⁰

A. Extension of refugee status to the family group

9. It is generally agreed that applicants for refugee status must normally show good reasons why, individually, they fear persecution. However, it follows from the principle of family unity that, if the head of a family meets the criteria for recognition of refugee status, the dependent members of his or her family should normally be recognized as refugees. Such recognition would not, of course, be appropriate if it is incompatible with the personal legal status of the member of the family in question. For instance, recognition of refugee status would not be appropriate if the member of the family is a national of the country of asylum, or has another nationality and enjoys the protection of the country of that nationality. Equally, recognition of refugee status would not be warranted where the dependent member of the family falls within the scope of the exclusion clauses.

10. It should be pointed out that the concept of "head of the family" as traditionally understood does not necessarily correspond to, and should not automatically be associated with, that of the "main refugee claimant". It is not uncommon that persecution is inflicted on the family group because of the particular position or actions of a family member other than the "head." Accordingly, each family member should

⁵ International Covenant on Civil and Political Rights (Art. 23); International Covenant on Economic, Social and Cultural Rights (Art. 10).

⁶ Convention on the Rights of the Child (Preamble); European Social Charter (Art. 16); African Charter on Human and Peoples' Rights (Art. 18); American Convention on Human Rights (Art. 17).

⁷ Final Act of the 1951 United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Recommendation B.

⁸ Ibid.

⁹ Ibid.

¹⁰ The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Times of War of 12 August 1949, Art. 25, 26, 49, para. 3, 82, para. 2. Additional Protocol I of 1977, Art. 74 and 75, para. 5, Art. 76, para. 2; Additional Protocol II of 1977 Art. 4, para. 3, litt. b.

have the possibility of separately submitting any refugee claim that he or she may have. The need to resort to this possibility would not arise where the head of the family has been recognized as a refugee (as, subject to the caveats in paragraph 9, such recognition will normally cover the rest of the dependent family). However, where the claim by the head of the family has been rejected, this option must be available in order to ensure that the protection needs of the family unit are appropriately addressed.

11. It is a matter of concern to UNHCR that in some countries there is a tendency to assume that, in the case of family groups which include couples (spouses), the main refugee claimant must always be the husband. UNHCR has, on occasion, had to intervene with national authorities to ensure that the refugee claim of the wife (who in these cases was the main applicant) be admitted to the asylum procedure.

B. Family reunification

12. As noted above, in order to respect the principle of family unity, it is necessary not only to take measures to maintain the unity of the family, but also to reunite families that have been separated. This was highlighted by the Human Rights Committee, which stated that “the possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or *reunification of families, particularly when their members are separated for political, economic or similar reasons.*”¹¹

13. Jurisprudence of the European Court of Human Rights is also relevant to the issue of family reunification of refugees. The Court has held that family life includes cohabitation and that respect for family life may, in some cases, obligate States to allow the family members of a lawful resident of that State to reside in that State, provided that the family cannot live together elsewhere.¹² Applying this reasoning, if an individual has been recognized as a refugee by a State, it follows that he or she is entitled to be reunited with his or her family in that State, provided that there is no other country where the family can live together.

IV. WHY PROTECT THE REFUGEE FAMILY?

14. The refugee family plays an important role in ensuring the protection and well-being of its individual members. When the family unit breaks down -- either as a result of physical separation during flight or pressures placed upon it in the refugee situation -- individual family members can become more vulnerable. Refugees who are alone, particularly children and the elderly, may have more difficulty accessing basic necessities such as food, shelter and health care. Single women or those who head families, and children separated from their families, are at greater risk of exploitation and abuse, including sexual violence. Separated children are more likely to face other threats to their liberty and security, including neglect and military recruitment.¹³ Their legal status may also be more uncertain.

15. The refugee family also helps to ensure the emotional well-being of its individual members.¹⁴ The important psychological support which the family environment can provide to individual refugees should not, in UNHCR's experience, be underestimated. Maintaining the family unit is one means of ensuring a semblance of normality in an otherwise uprooted life. This is particularly important for refugee children. As noted in UNHCR's Guidelines on the Protection and Care of Refugee Children, “the single

¹¹ Human Rights Committee (thirty-ninth session, 1990) General Comment 19 on Art. 23 para. 5 [emphasis added]

¹² This issue was considered in the context of Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which includes, *inter alia*, the right to respect of one's family life. A similar provision is found in Art. 17 of the International Covenant on Civil and Political Rights and Art. 8 of the Convention on the Rights of the Child. The Committee on the Rights of the Child, in its country specific recommendations, has also referred to the right of family reunification.

¹³ Impact of Armed Conflict on Children, Report of the Expert of the Secretary-General, Ms. Graça Machel, submitted pursuant to General Assembly resolution 48/157 (A/51/306), 26 August 1996, para. 69. The issues highlighted in this report are the subject of continued attention by the Secretary-General's Special Representative for Children and Armed Conflict.

¹⁴ The importance of the family for the growth and well-being of all its individual members is also reflected in the Preamble to the Convention on the Rights of the Child.

best way to promote the psychosocial well being of children is to support their families. A family that is split or under serious stress may not fully meet the physical and emotional needs of their children.”¹⁵ Similarly, much needed support is provided through the family structure to its elderly dependent members. It is important to recognize, however, the contribution that elders can make to the well-being of the younger generation of family members through their knowledge about the language, culture and traditions of their homeland.

16. Protecting the refugee family also helps to ensure that durable solutions, whether voluntary repatriation, local integration or resettlement, are lasting. Experience has shown that the family unit has a better chance of successfully reintegrating in their homeland or integrating in a new country, than do individual refugees. In this respect, protection of the family is not only in the best interest of the refugees themselves, but is also in the best interest of States.

17. Protecting the family during and after voluntary repatriation greatly facilitates the reintegration process. Re-establishing a life and earning a livelihood is much more difficult for those whose family is split. Access to land and property, for example, is often a problem for female or child-headed households. Refugees are often returning to communities disrupted by years of conflict, where infrastructures and resources are lacking, and tensions may exist between returnees and residents. In such situations the family is usually the greatest source of support and assistance for its individual members. Experience has also shown that a family unit has a better chance of integrating in a new country. For this reason States often prefer to resettle family units rather than single men, or to accept refugees with family links already in the country. In the case of local integration or resettlement, children, who assimilate more easily, often play an important role in helping their parents and other family members integrate into their new communities.

V. HOW TO PROTECT THE REFUGEE FAMILY

A. Preventing the separation of families

18. The recent crisis in Kosovo is one example of the engagement of the international community in activities to preserve the family unit in a very complex situation. It is a fundamental tenet of the Humanitarian Evacuation Programme (HEP), through which many States have generously offered to evacuate refugees from The former Yugoslav Republic of Macedonia, that the family unit should not be split. Family links in the country of destination are also important criteria in planning for the evacuation. States have been actively counselled to ensure that close and dependent family members reunited under this programme are not involuntarily split at a later stage when the period of protection following evacuation expires. This would be one example of a best practice to be respected by States.

B. Family reunification

19. UNHCR places great emphasis on family reunification in all its programmes throughout the world. Activities in support of family reunification in the Office's operations include identification of separated minors, registration, interim care, family tracing, counselling, and eventually family reunification. The adoption of measures to prevent the separation of families is also an integral part of UNHCR's voluntary repatriation programmes. In carrying out these activities UNHCR works closely with UNICEF, ICRC, IFRC and their national societies and non-governmental organizations.

20. The task of family reunification is both time-consuming and labour-intensive. In the interim, UNHCR's objective is to reintroduce these children to a family structure in the refugee camps. Experience has shown that a family environment, particularly if the family comes from the same background, culture and region, can best provide for the physical and emotional needs of a child. Foster care arrangements should, however, be closely monitored by a community-based system. While many foster families provide excellent care, there is a risk of exploitation of a foster child, especially when resources are scarce.

21. UNHCR promotes family reunification of families of persons who are refugees within its mandate. This includes not only those recognized by States as Convention refugees, but those who come within

¹⁵ Refugee Children: Guidelines on Protection and Care (UNHCR, Geneva) 1994, p. 43.

the Office's extended mandate and who have been granted a permit to stay under a humanitarian protection scheme. UNHCR's task in this regard is considerably complicated by laws in certain asylum countries which either do not allow or partially allow family members to join persons granted refugee stay and residence rights in those countries, or which set up what prove to be insurmountable obstacles to reunification of families.

C. Supporting families to support themselves

22. As previously noted, the family plays an important role in the protection and well-being of its members. The provision of economic opportunities for refugee and returnee families to enable them to become self-sufficient is a pragmatic way to assist families to meet their responsibilities vis-à-vis their individual members. It is important, however, that these programmes are oriented towards the family unit and do not privilege one member of the family without considering the impact they may have on the family as a whole. For example, initiatives which privilege women without taking into account that the impact on male family members may weaken the family structure and contribute to domestic problems.

23. UNHCR is accumulating valuable experience with programmes that assist individual refugees by focusing on their families. One such example is the *Twiererere Abana* (Care for Our Own Children) Programme in Rwanda, which was built around providing transitional assistance to especially vulnerable families in order to enable them to become self-sufficient and maintain family unity. This programme, which integrated food, agriculture and housing assistance, had a very positive impact on the way in which the beneficiary families were able to reintegrate in their communities. Another programme of this nature is the Liberian Children's Initiative, a joint UNHCR/UNICEF project, which incorporates livelihood strategies such as community-based micro-credit programmes for heads of households, especially female heads of households.

VI. ADOPTION OF SEPARATED CHILDREN

24. The importance of protecting the family and maintaining family unity needs also to be highlighted in the context of adoptions. UNHCR has long advocated the policy that refugee children in an emergency context are not available for adoption. In taking this position, UNHCR is guided not only by the Convention on the Rights of the Child, but also by the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption and the "Recommendations Concerning the Application to Refugee Children and other Internationally Displaced Children of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption". The premise of the policy is that an adoption should not be carried out if there is reasonable hope for successful tracing and family reunification in the child's best interests.¹⁶

25. Emergency situations continue to be an acute reminder of the rationale and need for this policy. UNHCR received a significant number of requests for adoption during the crisis in the Great Lakes region of Africa. With emphasis placed on family reunification, some 85 to 90 per cent of children separated during the crisis were eventually reunited with their family members. Similarly, UNHCR is now receiving regular requests to adopt ethnic Albanian children separated as a result of the Kosovo crisis. Adoption at this stage is not regarded as an appropriate solution. Recognizing the fact that most separated children are not orphans, efforts have to continue to be directed towards finding suitable interim care for these children, with a view to possible reunification with their families, including extended family members.

26. Nevertheless, when an assessment has been made that indeed it would be in the best interest of the child for an inter-country adoption to take place, unnecessary restrictions and obstacles should not be created by States. Strict requirements for documentation either for a refugee child seeking to be adopted or for a refugee parent hoping to adopt a child, may not serve the best interest of the children or the family.

¹⁶ This policy is rooted in the best interest of the child principle, whereby staying with relatives in extended family units in a similar cultural milieu is usually a better solution than uprooting the often already traumatized child completely, Convention on the Rights of the Child, Art. 3

VII. CONCLUDING REMARKS

27. In summary, UNHCR recommends that the following principles are relevant to the right of the refugee family to protection and should accordingly be respected:

(a) The family is the natural and fundamental group unit of society and is entitled to protection by society and State.

(b) The refugee family plays a central role in ensuring the well-being and protection of its family members, both in the emergency situation and in the context of durable solutions.

(c) Respecting the unity of the family is one of the principal means of protecting the refugee family. This requires not only taking measures, including national legislative measures, to maintain the unity of the family, but also to reunite families that have been separated.

(d) In order to maintain the unity of the refugee family, it is important that when the head of the family is recognized as a refugee, his or her dependants should normally be recognized as refugees. In addition, recognizing that family members may fear persecution based on the particular position or actions of a family member other than the head, each family member should have the possibility of separately submitting any refugee claims that he or she may have.

(e) Governments are encouraged to deal with applications for family reunification of refugees in an expeditious and humane manner. A flexible definition of the term family, which takes into account the element of dependency among family members, should be used. The situation of the elderly in this context should receive special attention.

(f) Separated families can only enjoy family life through the reunion of family members in a country where they can live a normal family life together. Therefore, refugees and other persons in need of international protection who have no country other than the country of asylum to lead a normal family life together, should be entitled to family reunion in the country of asylum.

(g) Activities to maintain family unity and reunite families who have been separated should be prioritized at an early stage in all operations. Close cooperation among Governments, UNHCR, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and their national societies and NGOs is encouraged in this respect.

(h) Pending family reunification, interim foster care arrangements should be facilitated for separated refugee children. These arrangements should be monitored to ensure the well-being of the foster children. Adoption of refugee children should only be considered when all feasible steps for family tracing and reunification have been exhausted, and then only in the best interests of the child and in conformity with international standards.

(i) UNHCR and its partners should be encouraged to implement self-sufficiency programmes aimed at enabling refugee and returnee families to carry out their responsibilities towards individual family members.