

UNHCR Position Paper
Relocating Internally as a Reasonable Alternative to Seeking Asylum -
(The So-Called "Internal Flight Alternative" or "Relocation Principle")

February 1999

The Issue

1. Determination of claims to refugee status which involve analysis of whether the fear of persecution extends to the whole of the territory of the country of origin have posed particular problems in recent years. The refugee jurisprudence of a number of countries is increasingly placing emphasis on the need to have explored relocating internally as a pre-requisite to seeking asylum. The possibility of accessing safety elsewhere inside the country of origin has been styled "internal flight alternative", or more recently the "relocation principle" and is being used increasingly as a bar to consideration of claims for refugee status.
2. The use of this notion to deny access to refugee status determination, rather than situating it within the framework of the status determination analysis, is wrong in UNHCR's view, and has the potential seriously to distort refugee law. Moreover, where it has been given a place in individual status determination procedures, it is commonly applied without a proper understanding of how it relates to the criteria for refugee status and without due regard for the circumstances in the displacement area and the reasonableness of relocating internally as opposed to seeking asylum. This is especially so when it is applied in an accelerated procedure, without adequate attention to the specifics of the individual case.
3. The purpose of this note is to set out UNHCR's understanding of the notion, its relationship to basic refugee protection principles, and the considerations which should guide its use as a tool in assessing claims for refugee status.

The Context

4. The 1951 Convention relating to the Status of Refugees is the foundation upon which the global system of refugee protection is built. The principles expressed in or underlying the Convention and the spirit in which it was adopted have informed its interpretation and the development of regional instruments and protection systems. These principles include a number of human rights tenets, the most important for the purposes of this discussion being the right to leave one's country, the right to seek asylum and the entitlement to protection against return to a situation of danger.
5. While the right to seek asylum is not explicitly included in the 1951 Convention, it is nevertheless implicit in its very existence. Provisions of the Convention which are particularly relevant to the right to seek asylum include the prohibition on the imposition of penalties for illegal entry (Article 31), the prohibition on expulsion (Article 32), and, of course, the prohibition on *refoulement* (Article 33). The right to seek asylum is articulated in other universal and regional instruments[1] and has been repeatedly acknowledged in various international fora, including through conclusions of UNHCR's Executive Committee and resolutions of the Commission on Human Rights, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities and the General Assembly. [2]
6. *Non-refoulement*, the principle prohibiting return to the frontiers of territories where a refugee's life or freedom would be threatened, is perhaps the single most important refugee protection principle enshrined in the 1951 Convention.[3] A similar *non-refoulement* principle appears, as well, in other universal and regional instruments.[4] As noted above, it in turn works to uphold the right to seek asylum in the sense that it prohibits turning away refugees at borders and returning them to situations of danger. Both the right to seek asylum and the *non-refoulement* principle are

predicated upon the ability to leave one's country, or to remain outside it, in order to avoid risk of persecution. Without this fundamental basis as the starting point, the international framework for refugee protection could not work.

7. The internal relocation notion, which advocates staying within the borders of one's own country and trying to find safety there, rather than leaving and seeking asylum abroad, rests on understandings which are basically at odds with those underlying the fundamental refugee protection principles. For this reason, UNHCR cannot agree that internal relocation amounts to a "principle" of refugee law; it is rather, in UNHCR's view, a factor or possibility to be analysed in the course of status determination in some individual cases. Caution has to be exercised where this notion is involved, not least because of its potential incompatibility with the right to seek and enjoy asylum from persecution.

Internal Relocation and the Refugee Definition

8. Article 1 of the 1951 Convention relating to the Status of Refugees defines a refugee as someone who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail him or herself of the protection of that country. The core concept of the definition is the existence of a well-founded fear of persecution.

9. The judgement to be made in cases where relocation is an issue is whether the risk of persecution that an individual experiences in one part of the country can be successfully avoided by living in another part of the country. If it can, and if such a relocation is both possible and reasonable for that individual, this has a direct bearing on decisions related to the well-foundedness of the fear. In the event that there is a part of the country where it is both safe and reasonable for the asylum-seeker to live, the "well-founded fear" criterion may not be fulfilled. The analysis about possible internal relocation can be a legitimate part of the holistic analysis of whether the asylum-seeker's fear of persecution is in fact well-founded.[5]

10. UNHCR's approach to analysing cases of this nature is set out in paragraph 91 of the *Handbook on Procedures and Criteria for Determining Refugee Status*.^[6] It explains the elementary idea behind the notion from a perspective which is much more favourable to the asylum-seeker than does the developing jurisprudence, and does not refer to the "internal flight" terminology which has subsequently been utilised, and which appears to have contributed to confusion about how to use the notion:

"91. The fear of being persecuted need not always extend to the whole territory of the refugee's country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country. In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so."

11. As this paragraph indicates, in order for internal relocation to be relevant, the asylum-seeker must, in some localised part of his or her country of nationality, experience a serious problem, or risk of serious harm, on Convention grounds, and there must be other places within the country to which the fear or risk does not extend. As is clear from the *Handbook*, this is essentially a factual, evidentiary question to be addressed when assessing the claim, not beforehand to preclude analysis of the substance of the claim. Furthermore, the viability of relocation as an alternative to flight depends also on the reasonableness of the proposed relocation in all the circumstances of the individual case.

12. Clearly, therefore, there are two key points to be addressed in analysing when and how the internal relocation notion may usefully contribute to determining well-foundedness of fear in any particular case. These are its relevance in the individual case, and the reasonableness of the relocation for the person concerned.

The Relevance Analysis

13. This analysis requires an objective assessment of the situation in the part or parts of the country proposed as alternative or safe locations.[7]. Evidence must be available to show that the risk giving rise to the asylum-seeker's fear of persecution does not extend to that part of the country, and that the area is generally habitable.

14. Factors which will be relevant to consider include, among others:

- the actual existence of a risk free area, which must be established by evidence;
- the stability of the area and the likelihood that safety will be a durable feature;[8]
- the accessibility of the area (both internally and from outside the country);[9]
- its fitness for habitation, that is, persons living there must not have to endure undue hardship or risk. [10]

The Reasonableness Analysis

15. It also has to be demonstrated that, in all the circumstances, it would be reasonable for *this* asylum-seeker to seek safety in *that* location, in order to overcome his or her well-founded fear of persecution. In assessing this question, there are probably as many considerations as there are different circumstances of asylum-seekers and of countries; thus it is not possible to define them all. However, it may be helpful to list some of the issues which may usefully be explored.

16. The claimant's personal profile will be important. Factors to be considered might include, but are not limited to:

- age
- sex
- health
- family situation and relationships
- ethnic and cultural group
- political and social links and compatibility
- social or other vulnerabilities
- language abilities
- educational, professional and work background
- any past persecution suffered, and its psychological effects

17. The country's particular political, ethnic, religious and other makeup will also be important. Elements which should be taken into account may include:

- the existence and legality of government-sponsored population transfer programmes[11]
- government policies of segregation or other limitations on freedom of movement and choice of residence[12]
- numbers, ethnicity, religion and related features of others already in the area in question, and the area's absorption capacity.

Conclusion

18. In summary, the so-called "internal flight alternative" is not an easy answer to refugee claims, and cannot be used as a "short-cut" to by-pass refugee status determination or to decide cases in an accelerated procedure. The "possible relocation" analysis may be relevant, in the individual case, to an assessment of the well-foundedness of the fear of persecution. However, the analysis must include assessment of the safety and reasonableness of internal relocation in all the circumstances of the specific case at issue.

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February, 1999*

Annex: Some Related Issues

Relocation and State Agents

1. UNHCR has long held that the possibility of internal relocation cannot be a relevant consideration where the feared agent of persecution is a state agent, as these are presumed to be able to act throughout the country. UNHCR continues to believe that in the overwhelming majority of cases involving a fear of state agents of persecution, the availability of a safe internal alternative will not be a relevant consideration.

2. This assertion deserves a caveat, however, in the sense that the presumption that state agents are able to act throughout the territory under the state's nominal control is a rebuttable one. It may be open to a status determination authority to find, on appropriate evidence, that in fact the state is not in control of its entire territory, and thus it may, in certain factual circumstances, be possible to conclude that internal relocation would be a safe and reasonable alternative.

3. The issue of the durability of the proposed relocation would, in such circumstances, have to be very carefully considered, as the issue has most usually arisen where war or internal conflict existed. Where there is a volatile situation, for instance, where battle lines are moving frequently, the durability of any proposed safe location behind such lines is questionable.

Relocation and Internally Displaced Persons

4. The presence of internally displaced persons who are receiving international assistance in one part of the country is not in itself conclusive evidence that an asylum seeker who has fled the country could, instead, have chosen to relocate and join the group of internally displaced.

5. Internally displaced persons may be fleeing violence and its consequences, and may not be fleeing persecution. In such cases, the presence of internally displaced persons will have little relevance to the situation of asylum-seekers and refugees whose claims are based on a fear of persecution. Even where persecution is at issue, displacement may not have resolved their situation and the threat of persecution may well remain a part. Again, this is a factual assessment which has to be made, case by case. A further consideration is that the standard and quality of life of the internally displaced persons may not be sufficient to support a finding that living in the area would be a reasonable alternative to flight.

6. The sad reality is that many thousands of internally displaced the world over do not enjoy basic rights and have no opportunity to exercise their right to seek asylum outside the country. Thus, although there now exist standards^[13] largely agreed by the international community, the implementation of those principles and the effective exercise of those rights by internally displaced persons are by no means assured in practice.

7. It is worth noting in this context that the *Guiding Principles* referred to above explicitly confirm in section 2 of Principle 2, that they are not to be used to weaken or undermine other important human rights, particularly the right to seek asylum, as follows:

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Relocation and the Burden of Proof

8. Resort to the relocation notion has sometimes imposed an additional burden of proof on a claimant for refugee status. In addition to showing that he or she has a well-founded fear of persecution in one or more parts of the country, the applicant has also been called upon to show that there is no part of the country in which the fear is not well-founded. This is not correct. The use of the relocation notion should not lead to shifting burdens or additional burdens. The usual rule must continue to apply, i.e. the burden of proving an allegation rests on he (or she) who asserts it. This is consistent with paragraph 196 of the *Handbook*[14] which states:

...while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application.

[1] The right to seek asylum is recognised in Article 14, Universal Declaration of Human Rights (UDHR); is set out in the United Nations Declaration on Territorial Asylum (Preamble and Article 1) and is reconfirmed in the Vienna Declaration and Programme of Action at Article 23; it also appears in various regional instruments: the African Charter on Human and Peoples' Rights (Article 12 (3)), the American Convention on Human Rights ("Pact of San Jose, Costa Rica" (Article 22 (7)) and the Cairo Declaration on Human Rights in Islam (Article 12).

[2] See for example Executive Committee Conclusion No. 82 (XLVIII) - 1997, CHR Resolution 1998/49 (Human Rights and Mass Exoduses), Sub-Commission resolution 1997/29 (Freedom of Movement and Population Transfer); and GA resolution A/RES/51/75 of 12 February 1997.

[3] Found in Article 33 of the 1951 Convention, and recognised by many authorities to be a norm of customary international law.

[4] A more general right not to be returned to a country where there is a risk of torture or cruel or inhuman treatment is also found, either explicitly or by interpretation, in other human rights instruments, the most prominent perhaps being Article 3 of the Convention against Torture, Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights and Fundamental Freedoms. Similar prohibitions are found in African, Middle Eastern and American human rights and refugee instruments.

[5] It is evident from the foregoing that the expansive use of this notion is not advocated by UNHCR; this note is in response to the current perceived misuse of the concept, and analyses how and when its limited use may be warranted.

[6] United Nations High Commissioner for Refugees, Geneva, 1979, re-edited 1992.

[7] While it is clear that objective information is at the core of this analysis, the analysis must always be made against the circumstances of the individual claim.

[8] The unfortunate nomenclature of "internal flight alternative" has fed the confusion about which time or date is determinative to deciding status when relocation is a consideration. Refugee status determination is always prospective, and decision-makers must have regard to what is likely to occur in the future to the asylum-seeker, and not only what has happened in the past. Thus the determinative consideration in such cases is whether the asylum-seeker could reasonably live safely in the relocation site now and for the foreseeable future, and not primarily

whether that site was an "alternative" at the time of flight. The existence of the alternative at the time of flight will, nonetheless, be a relevant consideration in considering the claim in its entirety, but in a practical sense the time of decision and the time of return are more important.

[9] As an asylum-seeker whose claim is being determined is necessarily outside his or her country or origin, the issue of safe return will be a relevant one for the decision-maker. If the area where the claimant's fear would no longer be well-founded is not accessible from outside the country and return would have to be effected through an area which would give rise to a well-founded fear, then refugee status ought not be denied on the basis that the asylum-seeker could find internal protection, as that protection is not in fact accessible. The analysis must take into account the reality of the situation at the time of the determination. In addition to concerns about legality of return, relevant considerations will include having regard to natural barriers which mean it is difficult or dangerous to reach the area, such as a lake, a river, a mountain range; or man-made barriers which have the same effect, such as having to cross the front lines in a war, areas where there may be landmines, strafing, snipers or other forms of attack, or military or other checkpoints through which it will be difficult and/or dangerous for the asylum-seeker to pass.

[10] Conditions in the area must be such that a relatively normal life, in the context of the country concerned, can be led. An alternative in the middle of a desert, without access to food or water, is not a habitable alternative.

[11] That arbitrary forced population displacement is contrary to international law is recognised and elaborated, inter alia, in the *Guiding Principles on Internal Displacement* recently communicated to the Commission on Human Rights by the Representative of the Secretary-General on Internal Displacement (see Annex, note 13). Refugee status determiners ought not risk assisting ethnic cleansing campaigns by failing to recognise victims of such displacement as refugees when their fundamental rights are violated on account of race, religion, ethnicity, political opinion or membership of a particular social group.

[12] These rights are set out in universal instruments: the UDHR (article 13(1) and the International Covenant on Civil and Political Rights (article 12); and in regional human rights treaties: African Charter on Human and Peoples' Rights (article 12 (1)), American Convention on Human Rights "Pact of San Jose" (article 22 (1)), Protocol No. 4 to the European Convention on Human Rights and Fundamental Freedoms (article 2), and the Cairo Declaration on Human Rights in Islam (article 12).

[13] *Guiding Principles on Internal Displacement* communicated to the Commission on Human Rights at its 54th session in 1998 by the Representative of the Secretary-General on Internal Displacement, Mr. Francis M. Deng (E/CN.4/1998/53/Add.2)

[14] See note 6

"6. United Nations High Commissioner for Refugees, Geneva, 1979, re-edited 1992."