

Protecting Refugees

A FIELD GUIDE FOR NGOS

Produced jointly by UNHCR
and its NGO partners

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Foreword

For 50 years we have been working with NGOs to protect refugees. What better way to commemorate our collaboration than to publish this Field Guide for NGOs? It was during the PARinAC (Partnership in Action) Conference in Oslo, nearly five years ago, that the idea for this protection field guide was conceived. Though gestation was long, I believe we can be proud of the result. Protecting Refugees: A Field Guide for NGOs takes the core, legal concepts that underpin the protection of refugees and attempts to make them accessible to the lay reader. It gives practical advice for on-the-ground interventions that can make the difference between rights abused and rights secured; and it aims to provide field workers with guides to other sources of information for more in-depth explanations and analyses.

This Field Guide certainly could not have been produced without the dedicated work of several key people and organisations. The Norwegian Refugee Council assumed the lead role in gathering support for this project amongst the NGO community. A number of NGOs, including Amnesty International, the European Council for Refugees and Exiles, Human Rights Watch, Jesuit Refugee Service and Lawyers Committee for Human Rights, reviewed and critiqued earlier drafts of this publication and offered extensive and helpful comments. We are also grateful to the members of UNHCR's Department of International Protection who contributed their time and expertise to this document; and to Marilyn Achiron, who turned the idea into a book and our legal locutions into readable prose.

Protecting refugees is a shared responsibility. States have the primary duty; NGOs, international organisations and agencies and UNHCR must work together if we want to be sure that this responsibility is met. This Field Guide is both the fruit of partnership and the seed of future cooperation in this crucial area. I hope we can all use it well.

Dennis McNamara
Director, Department of International Protection
UNHCR

Introduction

Protecting Refugees: A Field Guide for NGOs is intended to be used by NGO field staff who work with refugees and displaced persons. It offers both basic legal information about international protection for refugees and practical guidance for including protection measures in all field operations.

The Field Guide illustrates how protection concerns can follow refugees through every phase of their lives as refugees. In doing so, the Field Guide alerts NGO field workers to signs of possible protection problems during each phase of a refugee's life and suggests specific actions that could be undertaken to address those problems.

Subsequent chapters of the Field Guide focus on Special Protection Issues. While many of the suggestions for action offered in these chapters can apply to all persons of concern, each particular population discussed in these chapters (women, children, older refugees, internally displaced persons and stateless persons) has unique needs and problems that require special consideration.

Each chapter concludes with a checklist of recommended actions to be taken to help protect refugees. If field workers want more in-depth information about a particular subject, a list of related documents and publications is also provided at the end of each chapter. A sampling of Frequently Asked Questions about protection and a glossary of key protection-related terms are provided at the end of the Field Guide.

This Field Guide represents the first, not the final, product of the collaborative work between UNHCR and its NGO partners. Comments and suggestions on the use of this Field Guide are most welcome and can be directed to the Norwegian Refugee Council (e-mail: brita.sydhoff@nrc.ch) or to UNHCR (e-mail: alit@unhcr.ch).

Who is a Refugee?

Overview

Who is a Refugee?

A refugee is someone who

- is outside his/her country of origin;
- has a well-founded fear of persecution because of his/her
 - race,
 - religion,
 - nationality,
 - membership in a particular social group, or
 - political opinion; and
- is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution.

This definition of a refugee appears in the 1951 Convention relating to the Status of Refugees. The Convention provides the internationally-recognised general definition of the term "refugee".

Later, several **regional treaties** included language that broadened the 1951 Convention's definition of a refugee. The **OAU [Organization of African Unity] Convention Governing the Specific Aspects of Refugee Problems in Africa**, adopted in 1969, repeats the definition found in the 1951 Convention, but also covers any persons compelled to leave their country

"owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality."

That means that persons fleeing civil disturbances, widespread violence and war are entitled to claim the status of refugee in States that are parties to this Convention, whether or not they have a well-founded fear of persecution.

In 1984, a group of government representatives, academics and distinguished lawyers from Latin America met in Cartagena, Colombia, and adopted what became known as the **Cartagena Declaration**. Among other things, the Declaration recommended that the definition of a refugee used in the region should include, in addition to those fitting the 1951 Convention definition, persons who flee their country

"because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."

This definition is similar to that found in the OAU Convention. Though the Declaration is not legally binding on States, Latin American States apply the definition as a matter of practice and some have incorporated it into their own national legislation.

What is the difference between Refugees and Internally Displaced Persons?

A person becomes a refugee only when he/she crosses an international border. In contrast, an internally displaced person remains inside the boundaries of his/her own country. Thus, the difference between refugees and internally displaced persons is technical and legal, and has little to do with their reasons for flight. Both categories of persons are often affected by the same causes of displacement. They often have identical protection and material needs that deserve the equal attention of the international community. Most humanitarian agencies have the operational flexibility to address the needs of both refugees and internally displaced persons. UNHCR, whose statutory mandate is to protect refugees, has been authorised, on an ad hoc basis by the United Nations, to act on behalf of internally displaced persons.

What is International Protection?

It is, first and foremost, the responsibility of States to protect their citizens. When governments are unwilling or unable to protect their citizens, individuals may suffer such serious violations of their personal rights that they are willing to leave their homes, their friends, maybe even some of their family, to seek safety in another country. Since, by definition, the basic rights of refugees are no longer protected by the governments of their home countries, the international community then assumes the responsibility of ensuring that those basic rights are respected. **The phrase “international protection” covers the gamut of activities through which refugees’ rights are secured.**

The 1951 Convention relating to the Status of Refugees details refugees’ rights. Although some refugee rights may be restricted under certain circumstances (as may citizen’s rights), some of the important rights set out in the Convention include:

- non-discrimination (Article 3);
- freedom of religion (Article 4);
- free access to the courts of law on the territory of all States parties to the Convention (Article 16);
- the right to work (Article 17);
- the right to housing (Article 21);
- the right to education (Article 22);
- the right to public relief and assistance (Article 23);
- freedom of movement within the territory (Article 26); and
- the right not to be expelled from a country [unless the refugee poses a threat to national security or the public order] (Article 32).

The most important right detailed in the Convention is the right to be protected against forcible return, or *refoulement*, to the territory from which the refugee had fled. The Convention stipulates that...

"No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (Article 33)."

Refoulement is also explicitly prohibited in a number of other documents, including the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3), the United Nations Declaration on the Protection of All Persons from Enforced Disappearance (Article 8), and the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Principle 5). In fact, it is widely accepted that **the prohibition of *refoulement* is part of customary international law.** That means that all States must respect the principle of non-*refoulement*, even if they are not party to the 1951 Refugee Convention.

By granting **asylum** to a refugee, a country accepts its obligation to protect the refugee against refoulement, to respect and safeguard the refugee's human rights, and to allow the refugee to remain in its territory until a durable solution is found. Granting asylum is a peaceful and humanitarian act of State sovereignty and should not be regarded as unfriendly by any State, especially the refugee's State of origin. There is, technically, no "right to be granted asylum": such a right does not appear in any legally-binding international document. But the Universal Declaration of Human Rights (1948) asserts that everyone has "...the right to seek and to enjoy in other countries asylum from persecution" (Article 14).

In addition to the rights set forth in the 1951 Convention, refugees, as any other human beings, enjoy basic human rights, as well. These rights are described in various legal texts (including several regional conventions—see If you want to know more about..., page 27) that have been signed and ratified by numerous States. Among the most important of these texts are:

- the International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- the International Covenant on Civil and Political Rights (1966);
- the International Covenant on Economic, Social and Cultural Rights (1966);
- the UN Convention on the Elimination of All Forms of Discrimination Against Women (1979);
- the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
- and
- the UN Convention on the Rights of the Child (1989).

The International Covenant on Civil and Political Rights and the International Covenant on Economic , Social and Cultural Rights also contain restrictions on some human rights that may be legally permissible during emergencies. Consult the texts of these Covenants for specific information about such restrictions.

Among the basic rights listed in the 1948 **Universal Declaration of Human Rights** are

- the right to life, liberty and security of person;
- the right to seek and enjoy asylum;
- freedom from torture, or cruel, inhuman or degrading treatment or punishment;
- freedom from slavery or servitude;
- recognition as a person before the law;
- freedom of thought, conscience, and religion;
- freedom from arbitrary arrest and detention;
- freedom from arbitrary interference in privacy, home and family;
- freedom of opinion and expression;
- the right to be educated; and
- the right to participate in the cultural life of a community.

The 1951 Convention relating to the Status of Refugees contains no definition of the word “persecution” that is used in its definition of a refugee. But violation of the above-mentioned human rights, either individually (the right to life or liberty, for example) or collectively and cumulatively, would be considered persecution if the violation is of such severity as to render a person’s continued stay in his/her home country intolerable or impossible; and **if it is based on one of the five grounds** (race, religion, nationality, membership of a particular social group or political opinion) **listed in the 1951 Convention.**

Violations of the principle of non-refoulement occur when

- asylum seekers are rejected at the frontier when they have no possibility of seeking asylum elsewhere;
- a refugee is expelled from the country of asylum to a territory where his/her life, liberty or physical security may be in danger; and/or when
- refugees are forcibly returned to their country of origin where they fear persecution, or are sent to a country whence they can be deported to their country of origin where they fear persecution.

Who is Responsible for Protecting Refugees?

As stated above, **protecting refugees is primarily the responsibility of States**. Those States that have signed the 1951 Convention are legally obligated to protect refugees according to the terms set out in the Convention. They are required to apply these terms without discrimination as to race, religion or country of origin, and to respect fundamental protection principles, such as non-refoulement and non-expulsion (which non-signatories to the Convention are also obliged to respect). Since refugees rarely have time to prepare travel documents or obtain visas before they seek asylum, signatory States may not penalise refugees for illegal entry into their territories, provided the refugees "...present themselves without delay to the authorities and show good cause for their illegal entry or presence" (Article 31).

When refugee situations occur, individual States must work together to **resolve the cause of the refugee flow** and to **share the responsibility of protecting refugees**. When internal disputes cause an international refugee problem, it is the responsibility of all States, especially neighbouring States, to help restore peace and security within the conflicted country. Countries of asylum shoulder the heaviest burden during a refugee crisis, since providing refuge often means disruption—sometimes great disruption—in the areas in which refugees arrive. But these States need not assume the responsibility alone. Other States, both in the region and beyond, can share the responsibility by providing support, both financial and material, to maintain and protect the refugees for as long as they require international assistance.

The United Nations High Commissioner for Refugees (UNHCR), a non-political, humanitarian agency, was created by the United Nations General Assembly in December 1950 and began operations on 1 January 1951. **Its mandate is to provide international protection to refugees and promote durable solutions to their problems**. It does so by working with Governments and, subject to the approval of the Governments concerned, with private organisations.

The Statute of UNHCR, adopted in December 1950, calls on the High Commissioner for Refugees to provide for the protection of refugees by, among other activities, establishing contact with "private organisations" (now known as non-governmental organisations) dealing with refugee questions and helping coordinate the efforts of private organisations concerned with the welfare of refugees (Chapter 2, no. 8, sections H and I).

When UNHCR was founded, in the aftermath of World War II, it operated primarily in Europe, where material assistance was mainly provided by States that had granted asylum. Later, as many of the world's refugee problems began to arise in developing countries, UNHCR, with the support of the international community, was called upon to provide material assistance to refugees, as well. Providing assistance often enables States to accept refugees, since it relieves the States of some of the financial burden of hosting refugees. While assistance, in many cases, has helped ensure protection, it must be remembered that UNHCR's mandate is for protection: to make sure the basic rights of refugees are respected and to find durable solutions to the problems of refugees.

UNHCR's Statute (Chapter II, no. 9) also allows for operational involvement with non-refugees. Under this provision, UNHCR has often been requested to protect and assist **returnees** (persons who were of concern to UNHCR when outside of their country of origin and who remain so for a limited period after they return home—see pages 70-73), some **internally displaced persons** (persons who fled their homes but remained within the borders of their own countries—see pages 106-110) and others who live in refugee-like situations outside their country of origin, but who have not been formally recognised as refugees (such as victims of war in the former Yugoslavia and various groups in the Commonwealth of Independent States).

UNHCR's protection activities include

- promoting accession to and implementation of refugee conventions and law;

- ensuring that refugees are treated in accordance with recognised international standards of law;
- ensuring that refugees are granted asylum and are not forcibly returned to the countries from which they fled;
- promoting appropriate procedures to determine whether or not a person is a refugee according to the 1951 Convention definition and to definitions found in regional conventions;
- assisting refugees in finding solutions to their problem, such as voluntary repatriation, local integration, or resettlement to a third country; and
- helping reintegrate returnees when they go home; and providing protection and assistance, when asked to do so, to internally displaced persons.

While UNHCR is the only UN organisation devoted solely to the protection of refugees, other UN agencies often work in partnership with UNHCR. They include

- the **World Food Programme (WFP)**, which is the principal supplier of relief food aid;
- the **United Nations Children's Fund (UNICEF)**, which helps governments with programmes that focus on children's health, nutrition, education, training and social services. UNICEF also plays an important role in protecting unaccompanied minors and in reuniting families that may have been separated during flight from their country of origin;
- the **World Health Organization (WHO)**, which acts as directing and coordinating authority on international health work and is active in, among other things, immunisation and AIDS campaigns;
- the **United Nations Development Programme (UNDP)**, which coordinates all development activities undertaken by the UN system, oversees long-term development plans after the emergency phase is over and plays an important role in integration and re-integration programmes; and
- the **United Nations High Commissioner for Human Rights (UNHCHR)**, which plays the lead role on human rights issues and emphasizes the importance of human rights at the international and national levels, coordinates action for human rights throughout the United Nations system, and responds to severe violations of human rights.

The **International Organization for Migration (IOM)**, an inter-governmental body which helps transfer refugees, displaced persons and others in need of internal or international migration services, also cooperates with UNHCR.

UNHCR also works with the **International Committee of the Red Cross (ICRC)**, an independent agency that acts to help all victims of war and internal violence, and tries to ensure implementation of humanitarian rules restricting armed violence.

The **International Federation of Red Cross and Red Crescent Societies (IFRC)** also works with UNHCR. Through its national Red Cross and Red Crescent societies, it provides humanitarian relief to people affected by emergencies and promotes international humanitarian law.

Non-governmental organisations (NGOs) may not be specifically mandated through international conventions to offer protection to refugees. Through their work, however, many NGOs operate under mission statements that commit them to providing protection. In doing so, they perform an urgent and valuable service that can make a critical difference in the effective protection of refugees.

By carefully planning their assistance with sensitivity to refugees' protection needs, NGOs can also help with the practical, on-the-ground protection of refugees. For example, if protection matters are considered when designing a refugee camp, water points, clinics and firewood-collection areas could all be located in easily-accessible, well-lit areas so women and children would not have to walk long distances, alone, to make use of them.

Because of their independent status, NGOs are often the first agencies to arrive and provide assistance during an emergency. Local NGOs can provide the first warning of an impending emergency. NGOs can use their presence and direct involvement with individuals to help protect refugees by

- reporting protection concerns, either to government authorities and international bodies or other NGOs, as they occur;
- alerting the public and the media to those concerns;
- promoting international standards among government and local officials;
- offering legal and social advice, education and training programmes to refugees; and
- monitoring human rights both within the country of origin and within the country of asylum.

NGOs can perform these invaluable services no matter what kind of assistance they usually provide. All relief workers, whether their specialty is medicine, education, skills training, religion or law, can help protect refugees by being alert to protection problems and reporting them as they occur.

NGOs vary greatly in their size, breadth of programmes, source of funds and style of operation. Some are international, some are national, but have international activities, others are solely nationally- or locally-based. Most NGOs working with displaced persons provide material assistance and/or assist in the establishment and maintenance of camps and other settlements. That puts them in a perfect position to monitor and report on rights violations that may occur in the camps or settlements.

As they work in refugee camps or settlements, NGO staff can help protect refugees by involving them in all aspects of planning and maintaining assistance activities. **Refugees know and understand their own communities better than anyone.** They should always participate in determining the needs of their community and planning and designing programmes to meet those needs. By doing so, mutual trust and confidence will grow, NGO staff will have access to the broadest possible refugee population, and the refugees will retain their self-respect and self-confidence. All refugee men, women and children, not just their representatives, should be included in these activities.

Some relief NGOs may be worried that by participating in protection activities they are risking their neutrality. While this concern may be valid in some circumstances, it is important to remember that **humanitarian actions are based on a respect for human rights and should also serve to defend those rights.** NGOs can and should, of course, devise their own methods of promoting protection without jeopardising the safety of their staff. While in some situations NGOs can share their protection concerns with government officials, in others it would be wiser to contact UNHCR staff, UN peacekeepers or monitors, or other NGOs and pass on information discreetly.

In the end, **protecting refugees is a shared responsibility.** Only by working together, by complementing one's strengths with another's, can NGOs, individual States and international organisations provide the effective protection that refugees deserve.

If you want to know more about...

THE DEFINITION OF A REFUGEE: see Protecting Refugees: Questions and Answers, published by UNHCR; The State of the World's Refugees 1997-98, published by Oxford University Press.

THE DEFINITION OF INTERNATIONAL PROTECTION: see *Protecting Refugees: Questions and Answers*, published by UNHCR; *The State of the World's Refugees 1997-98*, published by Oxford University Press.

INTERNATIONAL LAWS RELATING TO REFUGEES: visit UNHCR's web site (www.unhcr.ch); see the REFWORLD CD-ROM, produced by UNHCR (also accessible through the UNHCR web site).

INTERNATIONAL HUMAN RIGHTS LAWS: see *The UN and Refugees' Human Rights* (a manual on how UN human rights mechanisms can protect the rights of refugees), published by Amnesty International and International Service for Human Rights, August 1997; *Refugees' Human Rights Have No Borders*, published by Amnesty International Publications, 1997; REFWORLD CD-ROM, produced by UNHCR; the web site of the United Nations High Commissioner for Human Rights (www.unhchr.ch).

UNHCR: see *The State of the World's Refugees 1997-98*, published by Oxford University Press; visit UNHCR's web site (www.unhcr.ch).

Protecting Refugees

Protection

Pre-Flight and Flight

What compels someone to flee his/her home? Persecution—torture, harassment, sexual violence, detention, other violations of human rights and threats to a person's life or liberty—and the well-founded fear of persecution, will drive a person to leave family, friends and homeland to seek safety elsewhere. Persecution can occur during war or armed conflict; it can occur during a time of peace, as a deliberate policy of a State against individuals, a group or groups.

Those who flee their homes and seek refuge within the borders of their country of origin are known as **internally displaced persons**. They will be considered in a subsequent chapter (see pages 106-110). Those who cross the border of their home country to seek refuge in another country may, after individually going through refugee status determination procedures (see page 36), or, as a group, on the basis of their circumstances, be recognised as refugees.

Refugee flows are not created in a vacuum. Usually, there are indications that human rights violations are occurring or may soon occur in a country. NGO staff and others working in the country in question may note that the government does not protect certain individuals or that the country's media is being used to promote divisions within a population. There may be social unrest in the country that could lead to the detention of individuals or to armed conflict between groups. The government, itself, may be threatened by an external force, such as another government or an armed group that is not controlled by any State. In any and all of these circumstances, **relief workers on the ground should be alert to the political and social climate in which they're operating.**

Sometimes, concerted efforts at mediation are required to prevent tension from erupting into open conflict. NGOs can help initiate and support these mediation efforts.

INDIVIDUAL FLIGHT

When people flee persecution, they do so at great personal risk. Even as they are seeking refuge, they are often hounded by the fear that, if caught, they could face severe reprisals for trying to leave. These people often cannot leave the country through normal entry and exit points; their identities may be known to authorities at border checkpoints. So they must make their way through difficult or dangerous terrain or via clandestine transportation arrangements that always run the risk of being discovered and stopped. Sometimes, unscrupulous people take advantage

“I, my wife

and two children left by car. We could pass the government checkpoints after we paid some money to the commander of the unit at the checkpoint. I paid (about US\$200 in local currency). At the second checkpoint, I paid (about US\$100 in local currency). In -----, I asked around for someone to take us to Country Z, and a man brought me to a smuggler called K, who was from Country Y. He wanted US\$400 per person and I paid him US\$1,600. We left the same day. We walked on foot and sometimes we rode horses. We walked about 13 hours in the high mountains. We stayed in a small house at night. Our group consisted of 22 persons and the walking route was very difficult. Our travel through Country Y took about one week. We reached Country Z early in the morning. A friend of the smuggler was waiting for us in a village and each of us paid (about US\$ 55 in local currency) to this person. He brought us here by private minibus.” —from a statement given by an asylum seeker to UNHCR officers in southern Europe.

...of fleeing individuals by offering, in exchange for large sums of money up-front, transportation that never arrives. During the course of their flight, individuals face the threat of bandits, pirates and corrupt border guards. Sometimes they are assaulted, raped or even killed. Many times, those who are fleeing leave their families behind, hoping that if and when they acquire refugee status, their families can join them in a country of asylum. Often, they are alone and afraid and face an uncertain future.

MASS FLIGHT

Though there may be some safety in numbers, when masses of people flee war or conflict, they face many of the same dangers that individuals fleeing persecution confront. In fact, **in circumstances of war or conflict, the rule of law is often non-existent; generalised violence makes the flight of even large numbers of people dangerous.**

The Rwandan

genocide was in full swing and there were rumors that a refugee exodus of Biblical proportions was underway. In neighbouring Tanzania, [UNHCR's] Maureen Connelly and other aid workers anxiously visited the border area almost daily to check, but at first there was only an ominous silence...On April 28, 1994, Connelly's small scouting team approached the Rusumo Bridge frontier crossing as usual. "We looked up at the Rwandan Hills," she said. "There was nothing but people. The hills were covered with a moving mass. The entire African landscape was awash with people, all headed our way." More than 200,000 Rwandans crossed into Tanzania in 24 hours through this single border post... (from Refugees magazine, no. 110/Winter 1997, published by UNHCR)

People must often travel long distances, through difficult terrain or across open seas, often in inadequate transport, to flee the country. Combined with harsh climates, these conditions can threaten the health of people in flight, especially children, the sick and the elderly. During flight, people can become separated from their families, increasing their vulnerability and, especially in the case of small children, causing serious trauma. Bandits and pirates can also threaten people, even if they are traveling in large groups. Sometimes, unscrupulous elements among those in flight may prey upon more vulnerable people—stealing their belongings or assaulting them—as they seek safety.

What NGOs do

- Work with the authorities/groups concerned to resolve conflicts peacefully.
- Share information about human rights violations with other NGOs, with UNHCR, and with the media.

C H E C K L I S T

Pre-flight and flight

In the country of origin

- Be alert to early signs of conflict that may cause population flight.
- If individuals claim persecution, refer them to human rights agencies.
- Show your presence. Simply being on the scene may deter human rights violations.

Monitor the situation carefully. If you see a serious deterioration in respect for human rights, notify international human rights agencies and the United Nations High Commissioner for Human Rights and UNHCR.

In the country of asylum

- Inform the population of the assistance available from the government, your organisation, other NGOs and UNHCR.
- Pay close attention to women, children, the elderly and the ill as they flee. Often, these groups need special care (medicines, food, physical protection) to keep them healthy and safe.

If you want to know more about...

THE CAUSES OF REFUGEE FLOWS: see The State of the World's Refugees 1997-98, Part One - Safeguarding Human Security, published by Oxford University Press.

Arrival

INDIVIDUAL ARRIVAL

When a person enters another country and appeals to State authorities to provide refuge, he/she is known as an **asylum seeker**. But gaining entry into a country of asylum can be very difficult. Individuals may be turned away at the border if they do not have proper identification papers or travel documents. Corrupt guards at border posts may demand money—or, if the asylum seeker is a woman, sexual favours—before allowing entry.

Often, States have laws imposing time limits on how long after arrival in the country an asylum seeker can apply for asylum. If the asylum seeker fails to contact government authorities within that time limit, he/she risks possible deportation as an illegal alien.

In order to determine whether an asylum seeker is, in fact, a refugee according to the 1951 Refugee Convention or to other international (or national) human rights or humanitarian laws, governments set up **refugee status determination procedures**. It is important to remember, however, that a person is a refugee as soon as the criteria, as set forth in the 1951 Convention and other international, national, human rights or humanitarian laws, are fulfilled. This usually occurs before status is formally determined. Recognition of refugee status is therefore declaratory: it states the fact that the person is a refugee. In other words, a person does not become a refugee because of recognition, but is recognised because he/she is a refugee.

UNHCR advocates that governments adopt rapid, flexible and liberal procedures since it is often difficult for refugees to document and prove persecution. Sometimes, UNHCR conducts status determination procedures on behalf of governments: for example, when a State is not party to any international refugee treaty or when the national authorities ask for UNHCR's assistance. If a person seeks asylum in a State that has no refugee status determination procedures, UNHCR can conduct the procedures under its mandate to protect refugees. If the State concerned does not respond to UNHCR's advice, NGOs can help protect the asylum seeker in question by pressuring the Government to do so. This can be achieved through advocacy, representations to the concerned authorities and public information campaigns.

The refugee status determination procedure, whether conducted by State authorities or by UNHCR, involves a lengthy interview with the asylum applicant. Detailed information gathered during the interview, as well as information about the person's country of origin, is then assessed according to the criteria established in the 1951 Refugee Convention (“...a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion...”), other relevant regional conventions or declarations (such as the OAU Convention and the Cartagena Declaration) and the country's national legislation. If the person's case is judged to meet those criteria, he/she will then have the fact that he or she is a refugee legally recognised and be granted the rights accorded to refugees under the Refugee Convention and other human rights laws and treaties.

The Convention, however, also explicitly defines those who do not deserve international protection as refugees. These **exclusion clauses** define them as persons “with respect to whom there are serious reasons for considering that”

- they committed a crime against peace, a war crime, or a crime against humanity, as defined in international law;
- they committed a serious non-political crime outside the country of refuge prior to their admission to that country as a refugee;
- they have been guilty of acts contrary to the purposes and principles of the United Nations.

People are also not entitled to international protection as refugees if they benefit from the same rights and obligations as nationals of the country in which they have taken residence, or if they receive protection from UN agencies other than UNHCR.

(Palestinians in Jordan, Lebanon, Egypt, Syria and Israeli-occupied territories, for example, are included in this latter clause since the United Nations Relief and Works Agency for Palestine Refugees in the Near East [UNRWA] was established to provide assistance to these refugees. However, if Palestinian refugees are outside the UNRWA area of operations, they fall within UNHCR's mandate, like any other refugees.)

Persons excluded from international protection are then no longer considered to be of concern to UNHCR as refugees. However, they may continue to be entitled to protection under the laws of the country of asylum and human rights laws.

In many countries, asylum seekers are kept in **detention** in prisons, closed camps or airport transit zones because of their illegal entry or presence in search of asylum. They are kept there until their status is resolved. Detention, which can last weeks, months or even years, is often used by States to address perceived abuses of the asylum system by bogus claimants. But it may also have the effect of deterring genuine asylum seekers from seeking asylum in these countries. In many instances, asylum seekers are not provided information about their rights in detention, are not allowed to seek legal advice, and are sometimes refused access—or permitted only restricted access—to UNHCR or concerned NGOs.

As a general rule, **asylum seekers should not be detained. Seeking asylum is not a criminal offense; and freedom from arbitrary detention is a fundamental human right.** If they are detained, asylum seekers have a right to know on what grounds they are being detained and they have a right to challenge the detention order.

There are several viable **alternatives to detention**, such as allowing asylum seekers to live in the community as long as they periodically report to State authorities, finding a guarantor who will vouch for the whereabouts of the asylum seeker and ensure his/her compliance with the State's status determination procedures, or setting bail for an asylum seeker. Whenever possible, these kinds of alternatives should be used instead of detaining asylum seekers.

Article 31 of the 1951 Convention relating to the Status of Refugees says:

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Detention may be considered as a last resort, **only if necessary and only if it is clearly prescribed by a national law which conforms to the general norms and principles of international human rights laws**, for the following cases:

- when authorities need to verify an asylum seeker's identity (when the identity may be undetermined or in dispute);
- when authorities are trying to determine the facts on which a claim for refugee status is based (this means an asylum seeker may be detained for a preliminary interview only to obtain facts concerning the reasons the person is seeking asylum. It does not extend to a determination of the merits, or otherwise, of the claim);
- when asylum seekers have destroyed their travel and/or identity documents or have used false documents in order to mislead authorities in the country of asylum (asylum seekers who arrive without documentation because they are unable to obtain any in their country of origin should not be detained solely for that reason); or
- when an asylum seeker poses a threat to national security or the public order.

If detention is deemed necessary, certain conditions must be met:

- detention of minors should be avoided;
- men, women and children should be segregated, unless they are part of a family group;
- asylum seekers should not be required to mingle with prisoners on remand or convicted criminals;
- regular contact with friends, relatives, and religious, social and legal counsel must be made available;
- medical treatment, psychological counselling and regular exercise must be available;
- education or vocational training must be available;
- asylum seekers must be able to practice their religion and receive a diet in accordance with their religion; and
- asylum seekers must have access to basic necessities, such as beds, shower facilities, etc.

But States should create and use alternatives to detention.

- Asylum seekers often face a host of other problems as well. They may be:
- harassed by government authorities;
- denied access to refugee status determination procedures because they do not have the requisite travel or identity documents, because a time-limit has elapsed, or because of internal, political reasons;
- put through unfair or discriminatory procedures;
- denied access to legal assistance or to UNHCR or concerned NGOs.

Most of these problems are borne of States' fears that migrants will create security risks or destabilise their economies and that asylum procedures are abused by would-be immigrants. Racism and xenophobia also play a part; as does the concern that relations with the country of origin may be damaged if refugees are admitted.

A **female asylum seeker** faces particular difficulties:

- she may not always be given a separate interview if she is accompanied by her spouse;
- she may be reluctant to speak freely in front of a male interviewer, either because of cultural mores or past experiences;
- she may feel embarrassed or humiliated when relating information about sexual assaults she has had to endure;
- the person reviewing her claim may not be sensitive to the particular persecution she faces as a woman.

While some women flee persecution that is not gender-specific, others flee a particular form of persecution that targets them as females. Increasingly, a gender-based approach to interviewing female asylum seekers and to interpreting the refugee definition is being used to give weight to the particular persecution faced by women. There is growing recognition that gender-related violence under certain circumstances falls within the refugee definition. **Gender-related persecution** can involve:

- harsh or inhuman treatment for violating social norms;
- sexual violence;
- harmful traditional practices, such as female genital mutilation;
- the imposition of coercive and intrusive methods of birth control;
- punishment or mistreatment based on a person's sexual orientation (which can affect men, as well); and
- severe cases of domestic violence, in which State authorities are unable or unwilling to provide protection to the person(s) concerned.

Sometimes it is relevant to consider as part of status determination whether an individual could have remained safely in or could return to some part of his/her own country rather than seek asylum in another country. This is sometimes referred to as an "**internal flight alternative.**" This decision must be made on an individual basis, taking into account both the situation in the country of origin, especially the stability of the proposed area of relocation, and the asylum seeker's individual circumstances. The judgment to be made is whether the risk of persecution that the asylum seeker experiences in one part of the country can be successfully, and reasonably, avoided by living in another part of the country. If it can, that would suggest that the fear of persecution may not, or may no longer be, well-founded. Factors that would be relevant in judging the reasonableness of relocating within the country of origin include: the asylum seeker's age, sex, health, educational or professional background; the presence of family members; the existence of ethnic and religious communities to which the asylum seeker belongs; and political or other links to the relocation area.

But it is important to remember that **displaced persons should be free to move where they choose and to seek asylum in another country.**

What NGOs do

- Share information on asylum seekers with other NGOs, other bodies specialising in refugee protection and with UNHCR.
- Lobby governments for timely and fair refugee status determination procedures.
- Encourage governments to create and use alternatives to detention.
- Provide support and advice to asylum seekers.

C H E C K L I S T

Individual arrival

- Help arrange or locate legal counselling for an asylum seeker.
- Monitor, or call on organisations that specialise in refugee law to monitor, the asylum seeker's case.
- Assist asylum seekers in obtaining information on:
 - his/her rights;
 - how to apply for asylum;
 - how to reunite with his/her family;
 - how to obtain travel documents;
 - refugee community groups.
- Lobby for fair and expeditious status determination procedures. Insist that qualified officials conduct the interviews and that female asylum seekers are interviewed by qualified female officials.
- Monitor asylum seekers in detention; lobby for use of alternatives to detention.
- Monitor children's rights upon arrival.

MASS ARRIVAL

War, armed conflict and mass repression often result in large-scale population movements. Faced with a mass influx of refugees, neighbouring States sometimes close their borders or use force against refugees seeking asylum there. Boatloads of refugees have been intercepted at sea or pushed back out to sea by State authorities unwilling to allow them refuge in the country. For asylum countries, such large influxes of people represent an enormous strain on financial, environmental and social resources. Often, camps or settlements

In 1980,

a boat carrying about 20 people fleeing Vietnam was intercepted off the shore of Country X by a navy vessel from that country. The boat carrying the refugees was having engine trouble. Navy crew could not fix the problem and so sent the boat off in the direction of another country hundreds of miles away. The boatload of refugees was kept at sea, guarded by Country X's patrol boat, until, in a heavy storm, the refugees' boat capsised. The navy crew offered no assistance to the stricken vessel; indeed, the patrol boat left the scene. But it later returned and navy crew took on board a few survivors, including a woman and her infant son. One half hour later, however, the crew threw overboard the people they had just rescued.

Meanwhile, a small group from the capsised boat was picked up by a passing commercial vessel and brought to Country X. A few others—including the husband of the woman who had been briefly rescued—managed to swim to the shore of Country Y. It was there he learned from a UNHCR official that his wife and baby son had drowned when they were thrown back into the water by Country X's navy crew. — as recalled by a UNHCR field officer

...must be built and maintained; food and fuel must be provided. The areas in which massive numbers of refugees are accommodated face near-certain environmental degradation; and local communities may be or grow intolerant of sharing perhaps scarce resources with the new arrivals.

Sudden, mass influxes of refugees require immediate assistance. In these instances, there is no time to conduct individual status determination procedures. Therefore, when it appears that all members of a group are fleeing a country for similar reasons, it may be appropriate to declare group determination, or prima facie determination, of refugee status. In these situations, each member of a group is considered to be a refugee prima facie—that is, in the absence of evidence to the contrary. This form of determination offers a more flexible application of the refugee definition. It is based on the objective conditions in the country of origin that led to refugee flight.

Some countries in Europe have responded to emergency mass influxes of refugees by offering **temporary protection** to asylum seekers. To date, there are no universal standards that apply to the term “temporary protection”. The definition of “temporary” differs from country to country; so do the kinds of rights accorded to people who are given refuge in this way. Those who find refuge under temporary protection measures are sometimes not granted all the social rights of refugees, such as welfare payments, education or the right to work.

Hundreds of

thousands of people who fled the conflict in the former Yugoslavia in the early 1990s found refuge in Western Europe under various temporary protection schemes. But these

schemes also left some of the refugees in a kind of legal limbo for three years or more—longer than it would take to process any regular asylum claim. UNHCR advocates that after a reasonable period of time, people benefitting from temporary protection should be given the right to assert their claims to refugee status. Those rejected should, nonetheless, be allowed to remain in the country of asylum until they can return in safety and with dignity to their country of origin.

In general, however, temporary protection is a provisional form of protection that should be replaced by a longer-term solution as quickly as possible. It is sometimes applied during mass influxes, when determining individual refugee status is practically impossible. Many of those people accorded temporary protection are refugees as defined in the 1951 Refugee Convention.

Temporary protection should not be prolonged. It should be lifted, with UNHCR's agreement, when people can return to their country of origin in safety and with dignity. Individuals who do not want to go home must be allowed to go through established national procedures to determine their on-going need for protection. They should have the chance, after a reasonable period, to acquire full refugee status, if they qualify.

What NGOs do

- Monitor early-warning signs in countries in which there is generalised violence and/or human rights abuses.
- Raise awareness of and response to refugee movements. Help build international pressure for a resolution to the conflict or an end to human rights abuses in the country of origin.
- Urge governments to grant asylum to large-scale influxes.

C H E C K L I S T

Mass arrival

- Be aware of State and regional concerns:
 - What are relations like between the country of origin and country of asylum?
 - Would a mass influx of refugees destabilise the country of asylum?
 - What would be the financial and environmental impact of a mass influx of refugees on the country of asylum?
- Gather information from refugees. Determining the causes of refugee movements, updating contingency plans, and assessing refugees' needs are all vital protection activities.
- Contact and share information with authorities, UNHCR and others concerned.
- Help identify groups with special needs, such as unaccompanied minors and the sick.

If you want to know more about...

ASYLUM: see *The State of the World's Refugees 1997-98, Chapter 5 -The Asylum Dilemma*, published by Oxford University Press; *Working with Refugees and Asylum Seekers – A Handbook*, published by the International Federation of Red Cross and Red Crescent Societies, Geneva, 1991; REF WORLD CD-ROM, produced by UNHCR; visit UNHCR's web site (www.unhcr.ch).

REFUGEE STATUS DETERMINATION: see *Protecting Refugees: Questions & Answers*, published by the Public Information Section, UNHCR; *Interviewing Applicants for Refugee Status - Training Module*, published by UNHCR.

EXCLUSION CLAUSES: see *Protecting Refugees: Questions & Answers*, published by UNHCR; *Convention and Protocol relating to the Status of Refugees* (in booklet form, published by the Public Information Section of UNHCR, or at UNHCR's web site - www.unhcr.ch); *An Introduction to the International Protection of Refugees - Training Module*, published by UNHCR.

SPECIAL PROBLEMS OF FEMALE ASYLUM SEEKERS: see *The State of the World's Refugees 1997-98, Chapter 5.2 - Gender-related persecution*, published by Oxford University Press; *Guidelines on the Protection of Refugee Women*, published by UNHCR.

TEMPORARY PROTECTION: see *The State of the World's Refugees 1997-98, Chapter 5 - The Asylum Dilemma*, published by Oxford University Press; *Protecting Refugees: Questions & Answers*, published by the Public Information Section, UNHCR.

Asylum

The first step toward protecting refugees is determining their legal status. But that is only the first step. Once their status has been recognised, their rights and physical security must be protected so they can settle adequately in the country of asylum while awaiting a solution to their problem.

Many of the world's refugees live in specially created camps or settlements that accommodate anywhere from several hundred to tens or even hundreds of thousands of people at any one time. Providing care for and services to refugees in these conditions requires intricate planning and well-coordinated efforts among NGOs, UN agencies and any State authorities that may be involved.

From the refugees' perspective, living in these conditions is fraught with unforeseen problems. Privacy is lost; so may be the refugees' sense of control over their lives. Divorced from the routines and responsibilities of daily, independent life, refugees may find it difficult to maintain their self-respect, self-reliance and the belief in their own futures. Relief workers can help refugees cope and start rebuilding a "normal" life by consulting them and involving them in planning and maintaining the programmes designed to benefit them.

But not all refugees live in these conditions. Many live in urban areas or in villages, dispersed among the local population. Some of these people may not yet have gone through refugee status determination procedures so they may have no legal status within the country of refuge. Some may be recognised as refugees by UNHCR but may be only barely tolerated by the host government, thus making them vulnerable to harassment and extortion by police and other authorities.

Unfortunately, **protection concerns can follow refugees into asylum.** Protection problems in a country of asylum can be caused by

- authorities of the country of origin (or other agents of persecution based there);
- authorities of the country of refuge (or other agents of persecution based there);
- other refugees;
- the local population in the country of refuge;
- bandits and armed factions; and/or
- inappropriate or inadequate measures taken by UNHCR, NGOs and other agencies involved with the refugees.

Problems that may originate in the country of origin

Authorities, or other groups, in the country of origin may stage **cross-border attacks** on refugee settlements.

Response: Refugee settlements should always be located away from the border; authorities in the country of refuge should increase the military presence at the border; and diplomatic efforts, including international condemnation, if necessary, should be made to try to stop the attacks.

Sometimes, the country of origin will try to **infiltrate refugee settlements** in order to foment conflict with local populations and, by doing so, turn public and official opinion in the country of refuge against the refugees.

Response: If the refugee community is well-organised, these schemes are discovered early and foiled. It is therefore essential to support the social structure of the refugee community and to be alert to the presence of possible infiltrators and aware of any unusual disturbances between members of the refugee community and members of the local population.

Authorities of the country of origin may try to **pressure officials of the country of refuge to expel or extradite certain refugees**, usually high-profile civil or military leaders who are often charged with acts of terrorism, murder, or treason. Though the accusations are seldom substantiated, they can be used to extradite the individual to the country of origin.

Response: Individuals who may be targeted for extradition under these circumstances should be identified early and provided appropriate protection, such as special surveillance and relocation away from the border or, when necessary, resettlement to a third country. Some of these people, however, may fit the definition of those who do not deserve international protection as refugees under the exclusion clauses of the Refugee Convention. If there is some suspicion that a person threatened with expulsion may be excludable from international protection, staff of human rights NGOs or of UNHCR should be contacted.

Problems that may originate in the country of refuge

It is the State's responsibility to protect refugees. However, some States may choose not to for political or other reasons. Protection problems that arise in a country of refuge may also be the result of inexperience or the abuse of power by officials or others who are responsible for dealing with refugees. In these instances, **the physical safety of refugees can be threatened by rights violations**, such as refoulement (the forced return to the country of origin), detention or excessive use of force; or sexual violence (see pages 86-93 for information on protecting refugee women).

The well-being of refugees may also be jeopardised by discriminatory practices in the distribution of food and other assistance, or by the abuse of the distribution system by those controlling the supply of food and other basic necessities. For example, local officials or refugee leaders selected to distribute these essential goods may demand payment of money, enrollment in a paramilitary force or sexual favours in exchange for these items.

Response: Encourage the refugee community to organise itself and involve the community in all aspects of administering the refugee settlement. Organise frequent meetings among local authorities, NGOs, UNHCR and representatives of the refugee community to learn of particular problems identified by the refugees and discuss ways to respond to them. Establish a committee, composed of representatives of the refugee community, including women, local officials, UNHCR and NGOs, to organise and supervise the distribution of food and other basic supplies to prevent abuse of the distribution system.

Problems that may be posed by members of the refugee community

A refugee community, like any other community, is composed of individuals and is thus susceptible to internal discord. Minor disturbances are not unusual, given the difficult living conditions in a large camp or settlement. On occasion, camps and settlements can be riven by more serious conflicts. A single camp may house different ethnic groups that had previously lived in separate areas or that fought against each other in their country of origin. **Ethnic conflict may arise**, either as a continuation of the conflict that caused the refugees' flight or because the proximity imposed by camp conditions has resulted in a volatile mix of ethnic groups.

There may also be **resentment towards certain minority groups**, especially if those groups are associated with the forces of persecution in the country of origin.

Refugee leaders—or refugees who proclaim themselves to be leaders of the refugee community—**may sometimes exert excessive pressure on the rest of the community**. They may, for example, refuse to allow the camp or settlement to be moved further away from a border, particularly if they want to use the camp as both a base and a shield in order to continue hostilities. In doing so, they expose the refugee population to the risk of military attacks, and they expose refugee children to the possibility of being forcibly recruited as soldiers. They may also try to prevent fellow refugees from returning home for their own political reasons.

For much

of late 1997 and 1998, a handful of politically radicalised refugees exerted its will over some 20,000 other refugees in two camps in southeast Asia. While these refugees claimed that conditions in their country of origin had not improved sufficiently for them to consider returning, they exploited the refugee population in the camps for their own purposes. They prevented many refugees, including women and children, from receiving medical aid and other assistance. At the same time, camp authorities of the country of refuge were pressuring many refugees to sign up for “voluntary” repatriation.

Objectively, conditions in the country of origin were not conducive to returns; but families who were ready to sign up for repatriation were told not to by the radicalised elements in the camps. Eventually, local authorities arrested some refugees who were involved in extortion and physical abuse of their fellow refugees and the situation in one of the camps improved. But those arrested were put in detention; and in doing so, local authorities created another protection problem, especially since they did not grant UNHCR unconditional access to those detained refugees.

The presence of **armed people in the refugee camps** poses obvious problems. Not only can they threaten other refugees—and aid workers—individually, but their very presence threatens the entire system of refugee protection. In order to protect the majority of innocent civilians, those who are armed, and are perhaps members of a formal army or a militia, must be separated from the civilians. Since neither UN agencies nor NGOs have the means to accomplish such a politically and logistically difficult task, it is up to the States involved, or, if necessary, a concerted action by the international community, to do so.

Some refugees may engage in **criminal activity** since traditional means of imposing law and order have broken down.

The problems

caused by the militarisation of refugee camps were demonstrated in all their complexity and tragedy during Africa's Great Lakes Crisis of 1994-96. Members of the former Rwandan army and militia took control of food and relief distribution in order to consolidate their power and dominate the populations of the vast refugee camps in the then-Zaire. The United Nations called on the international community to try to separate the military elements from the civilian population, but States showed no political will to do so and no concerted action was ever taken. The presence of these armed groups prompted some NGOs to stop operating in the camps while other agencies, UNHCR in particular, were accused of feeding military elements and possible criminals involved in the genocide. The failure of the States involved, and then the international community, to de-militarise the camps resulted in the largest loss of refugee life since the system of refugee protection was created in the wake of World War II.

Response: Promote dialogue between opposing refugee groups to resolve tensions and conflict. Mobilise the refugees to take responsibility for and assist in maintaining law and order within their settlements. Ensure that all refugees respect the exclusively civilian and humanitarian character of their settlements. Insist with refugee leaders that refugee children are not recruited into military service. Criminals should be prosecuted according to local legal procedures.

Problems that may be posed by the local population

In many refugee emergencies, the local population plays an important role in meeting the needs of refugees. The food and shelter offered by local populations in border areas save many lives. Sometimes, the local population is instrumental in finding temporary solutions to the refugees' problems by helping the refugees settle within their community.

However, when large numbers of refugees arrive in an area, the local population may show great hostility to their new neighbours. There may, in fact, be **a history of problems with the refugees**, either because there were previous conflicts over land or water rights when the refugees were in their country of origin, or because the local population and the refugees belong to different and opposing ethnic groups.

Large refugee settlements make huge demands on available, and often scarce, resources. As a result, prices of basic commodities may rise. Sometimes, the environment can suffer great damage. Local forests may be slowly destroyed as they are cut down to provide fuel and firewood; natural water resources may become polluted or depleted or both. It is important both to consider the environmental impact of large settlements and to incorporate projects within assistance programmes that will help alleviate the negative impact of these settlements.

Assistance provided to the refugees may cause resentment among local communities. Local populations may feel neglected when refugee communities receive services and goods which they, themselves, may lack. It is therefore essential to provide activities—such as improving water sources and delivery, health facilities and roads—that benefit local populations as well as the refugee settlements.

The sudden presence of large numbers of people can also result in social tensions. Ethnic, cultural and political differences may be magnified by the uncertainty of the refugee situation. Suspicion and ignorance may give way to open hostility. Confidence-building and reconciliation programmes should be launched as soon as possible.

Response: Arrange for regular meetings between representatives of the refugees and the leaders and elders of the local community to foster dialogue, identify problems and resolve conflicts. Sensitise the local population to the plight of the refugees. Inform the refugees of the importance of respecting existing local customs and religious and cultural traditions.

Problems that may be posed by bandits or warring factions

Refugees arriving in remote areas are vulnerable to attack by bandits and criminals. They are particularly at risk because they are known to have fled carrying only their most precious possessions, and they often travel alone or in small groups, unarmed, and in areas in which there is no effective law enforcement. Refugees living in larger settlements may be subject to attacks by bandits involving theft, looting and physical assaults, including rape and murder. Relief supplies and vehicles may be stolen or commandeered; relief workers may be attacked—some have been killed—by bandits.

Response: Local authorities should vigorously investigate and prosecute perpetrators of serious crimes. When necessary, bolster security along supply routes.

Problems that may be posed by inappropriate or inadequate protection and assistance measures

Inappropriate or inadequate protection and assistance measures taken by well-intentioned relief workers can lead to protection problems.

Response: Keep in mind the protection aspect of assistance when running programmes and delivering services. Some elements key to the protection of refugees during asylum are:

- appropriate camp design and location;
- no discrimination in the delivery of food and services;

- compliance with basic standards of treatment; and
- adequate response to refugees with special needs (such as women, children, the elderly and the ill).

During a large-scale influx of refugees, **the country of refuge may not be able or willing to grant full economic, social and civil rights to refugees.** For example, refugees may not be allowed freedom of movement, given the right to work or provided with an education.

Response: Refer to the **minimum standards of treatment** as defined in the 1951 Refugee Convention and set forth in Conclusion 22 of UNHCR's Executive Committee (a Conclusion is a text based on the consensus of the States that comprise UNHCR's Executive Committee. Though not legally binding, Conclusions are widely regarded as essential to the development of refugee law). Among many other standards stipulated in Conclusion 22, the text asserts that

- **refugees should enjoy fundamental civil rights**, in particular, those, such as the right to life, liberty and security, recognised in the Universal Declaration of Human Rights;
- **refugees should receive all necessary assistance and be provided with basic necessities of life**, including food, shelter and basic sanitary and health facilities;
- **there shall be no discrimination in the delivery of services;**
- **families should not be separated** and all possible assistance should be given for tracing and reuniting relatives;
- **children and unaccompanied minors should receive special protection;** and
- **appropriate arrangements should be made for the registration of births, deaths and marriages.**

Sometimes, UNHCR may not know that there are **asylum seekers living dispersed in towns and cities or in more remote regions of a country.**

Response: NGOs in contact with these asylum seekers can help protect them by alerting UNHCR to their presence.

Dispersed refugees living with relatives or within a community of similar ethnic background may enjoy a certain level of support that ensures their rights are respected. But if a refugee or refugee family is living in a community whose ethnic or political background is different from their own, then protection becomes a more urgent concern. It is then important to ask:

- how is the refugee treated by State authorities?
- how is the refugee treated by the local community?

The answers to these questions will determine how NGOs and UNHCR can and should intervene on the refugees' behalf.

Sometimes, the country of refuge has not ratified the 1951 Refugee Convention or other international treaties on refugees and has no formal system in place for protecting and assisting refugees. The **immigration laws of some countries may require that people without legal status be deported.**

Response: In these cases, other international standards or national legislation may be relevant to help protect refugees. Often, UNHCR intervenes with the government and requests that recognised refugees be protected by being allowed to remain in the country of refuge until a durable solution is found.

There are times when refugees are not familiar with the language or culture of the community in which they live and/or **the social support system in the country of refuge does not meet the refugees' needs.**

Response: In these cases, it is important that the refugees have access to programmes that help them adjust to life in the country of refuge. If the government of the country of refuge does not provide these kinds of services, then UNHCR and NGOs can step in. UNHCR and NGOs can also intervene with the State concerned to allow refugee children to attend local schools while they remain in the country of refuge. Medical NGOs can provide treatment and referrals to hospitals to refugees when States are not willing or able to do so. In short, when the country of refuge's social support system is inadequate, NGOs help meet refugees' needs.

What NGOs do

- Include monitoring for rights abuses as part of all refugee assistance programmes.
- Create assistance programmes that benefit both the local community and the refugee community.
- Inform the appropriate authorities and UNHCR about abuses of refugee rights and about the existence of dispersed asylum seekers.
- Support and help develop refugee community organisations.

CHECKLIST

Asylum

- Help refugees organise themselves.
- Conduct information campaigns to alert refugees to their rights and responsibilities under national and municipal laws.
- Monitor to ensure authorities respect refugee rights.
- Monitor asylum seekers and refugees for possible rights violations by authorities and individuals of the country of refuge.
- Inform the local population about refugees and their rights.
- Foster a dialogue between the refugee community and the local population.
- Ensure that assistance to the refugees does not drain already-scarce local resources.
- Create projects that benefit the local community as well as the refugee community.

In camps and settlements

- Help ensure that the layout, location and infrastructure of the camp are designed to protect camp residents (e.g., that latrines, water and fuel collection points, medical facilities, etc. are within easy, safe access to all; and that camps are well-lighted).
- Ensure that women are included as initial points of contact for emergency and longer-term food distribution.
- Consider alternatives for dealing with conflicts within camps or settlements, such as conflict resolution activities or possibly relocating individuals.
- Alert UN agencies if there is evidence of militarisation of camps or settlements.
- Lobby for security in the camp—including guards—and for relief workers and convoys.
- Provide education about and work to eliminate harmful traditional practices.
- Encourage the appropriate authorities to investigate and prosecute people who commit crimes against the refugees.

For dispersed asylum seekers and refugees

- Make sure dispersed asylum seekers have access to concerned authorities and organisations. That is the first step towards protecting them.
- Help regularise the legal status of asylum seekers by informing the appropriate authorities and UNHCR of their existence. Ensure that asylum seekers know of the need to go through the refugee status determination procedure.
- Monitor refugees for possible rights violations. This is especially important in remote areas or in places where UNHCR and NGOs may have little or no presence.
- Assess the refugees' social needs, such as education and support for the elderly.

If you want to know more about...

PROTECTING REFUGEES IN ASYLUM COUNTRIES: see An Introduction to the International Protection of Refugees, Training Module, published by UNHCR; Handbook for Emergencies, Chapter 2 - Protection, published by UNHCR; The State of the World's Refugees 1997-98, Chapter 2 - Defending refugee rights, published by Oxford University Press; The State of the World's Refugees 1997-98, Chapter 2.1 - Urban refugees, published by Oxford University Press; visit UNHCR's web site (www.unhcr.ch).

Solutions

International protection is a temporary substitute for the normal safeguards of national protection. International protection includes seeking solutions to refugee problems. The best solution is voluntary repatriation: refugees freely choosing to return home. When voluntary repatriation is not feasible, other solutions must be explored, usually local integration or resettlement in a third country.

In mass refugee movements, it is important to analyse the particular circumstances and protection needs of individual refugees regularly and comprehensively. Often, a combination of solutions is required to meet the needs of the refugee population, as a whole, and to achieve a lasting resolution to the refugee situation.

VOLUNTARY REPATRIATION

The issue of **voluntariness** is central to refugee repatriation. Refugees should not be compelled to return to their countries of origin, nor should they be prevented from returning. (In some situations, groups in the country of asylum may try to prevent refugees from repatriating because of economic interests; in other cases, refugee leaders or self-proclaimed leaders may try to force the rest of the refugee community to repatriate or, alternatively, to remain in the country of asylum for political or other reasons.) UNHCR and NGO staff should meet with refugees who are considering return, talk to them about their decision, and request written confirmation that the decision has been made freely and with full awareness of the conditions they will find in their home country. Repatriation that is voluntary is far more likely to be lasting and sustainable than repatriation that is coerced.

Voluntary repatriation means that, after reviewing all available information about conditions in their country of origin, refugees decide freely to return home. People usually decide to return when there is no longer any risk of persecution in their country of origin. Others may decide to return for political or family reasons even though the situation in their country of origin has not changed.

UNHCR endorses a comprehensive approach to voluntary repatriation. The agency assesses the root causes of refugee flight, institutions in the country of origin and the sustainability of the return before promoting voluntary repatriation to refugees. **Essentially, refugees must be able to return in safety and with dignity.**

Return in safety means that refugees return in conditions of legal safety (such as amnesties or public assurances of personal safety, integrity, non-discrimination and freedom from fear of persecution or punishment upon return), physical security (including protection from armed attacks, and mine-free routes or at least demarcated settlement sites), and material security, including access to land or a means of livelihood.

Return with dignity means, in practice, that refugees must not be manhandled; that they can return unconditionally and that if they are returning spontaneously (see page 63), they can do so at their own pace; that they are not arbitrarily separated from family members; and that they are treated with respect and full acceptance by their national authorities, including having their rights fully restored.

According to its Statute, UNHCR may promote or facilitate voluntary repatriation. **UNHCR promotes voluntary repatriation when certain essential preconditions are met:**

- There must be an overall, general improvement in the situation in the country of origin so that return in safety and with dignity becomes possible for the large majority of refugees.
- All parties must be committed to respect fully the voluntary character of the repatriation.
- The country of origin must have provided a formal guarantee, or adequate assurances for the safety of repatriating refugees, as appropriate.

- UNHCR must have free and unhindered access to refugees and returnees.
- The basic terms and conditions of return should, if possible, be incorporated in a formal repatriation agreement between UNHCR and the authorities concerned.

The ink

wasn't dry on the 1991 peace agreement ending more than 15 years of fighting in Cambodia when some 350,000 Cambodians who had been living in exile in Thailand for most of that time started returning home. Says a UNHCR field officer involved in the repatriation, "We couldn't provide the buses as quickly as they wanted to get home." UNHCR conducted a major registration programme in which refugees were asked, in confidence, whether they wished to return. All information was recorded in databases; and a network of reception centres in Cambodia was established. Refugees stayed in these centres for up to three days before they were transported home, often by train. Returnees were given identity cards, household items, such as buckets and tools, kits to help reconstruct houses, and rice for one year (distributed in 12 installments). Returnees were also offered kits to help re-start small businesses; but most returnees opted for a cash grant (US\$50 per adult; US\$20 per child), instead.

The repatriation worked effectively thanks to close coordination among UNHCR and the many NGOs working in the area. Some US\$10 million worth of Quick Impact Projects helped increase the absorption capacity, or the ability to accept the returnees, in the return areas. These community-based, small-scale assistance programmes included road-building, de-mining, and well-digging activities, as well as the construction of school buildings and pharmacies. Both local and returnee populations participated in the programmes. Individuals working on projects earned US\$30 a month, which went a long way toward easing their reintegration. Says the UNHCR field officer, "It was a lifeline to have that cash in pocket. It was immediately visible in the way these communities changed."

There can be two kinds of voluntary repatriation: organised and spontaneous. Voluntary repatriation promoted by UNHCR usually results in an **organised repatriation**. Organised repatriations are characterised by:

- a resolution of the conflict which prompted refugees to flee;
- repatriation agreements concluded among the countries of asylum and origin and UNHCR;
- encouragement of repatriation by UNHCR;
- registration of returnees by UNHCR;
- transportation for the returnees provided by UNHCR; and
- a UNHCR presence in the regions of return.

Spontaneous repatriations often occur

- without any formal agreements;
- before the cessation of hostilities;
- without registration procedures; and
- without organised international assistance.

When refugees indicate a strong desire to return voluntarily and/or they have begun to do so on their own initiative, UNHCR may facilitate their return, even if UNHCR does not consider it safe for them to return and is not promoting repatriation.

In these circumstances, UNHCR must be satisfied that the refugees' wish to return is voluntary and not coerced. The agency's decision to facilitate this kind of return is based on its intent to ensure the safety of the refugees/returnees and to provide assistance for the return movement. Clearly, refugees repatriating spontaneously could face grave security problems if they are returning to an area in which fighting is still raging. In some cases, UNHCR declines to participate in such returns.

Fourteen years

of armed conflict in Afghanistan caused enormous population displacement. Up to six million Afghans, roughly one-third of the country's population in 1978, fled the country to find refuge in Iran or Pakistan. Though Soviet troops withdrew from the country in February 1989, the regime there did not fall until April 1992, by which time 80 percent of the country's rural areas was controlled by the Mujahideen.

Many of the nearly 3 million refugees in Pakistan anticipated the political changes in Afghanistan; and during the first quarter of 1992, they exchanged their Government of Pakistan/UNHCR ration books for a repatriation allowance of about US\$130. During the first half of that year, nearly half a million Afghans returned home, more than were estimated to have returned during the previous three years combined. More than 100,000 returned in a single week that July. By the end of 1992, some 1.2 million Afghans had returned from Pakistan—many riding in trucks piled high with household possessions, livestock, and as many other goods as they could transport to assist them in the difficult work of rebuilding their lives.

UNHCR and NGOs should try to maintain a presence in the areas of return to monitor the situation and try to prevent human rights abuses. They should also promote a dialogue between the conflicting parties as a way of helping to minimise the security risks for the returnees.

What NGOs do

- Help gather information on conditions in the country of origin and inform and/or create campaigns to inform refugees of those conditions.
- Include cross-border monitoring as part of all assistance programmes.
- Share information on suspected rights abuses with appropriate authorities, UNHCR, the United Nations High Commissioner for Human Rights and/or other human rights NGOs.

C H E C K L I S T

Voluntary repatriation

- Provide updated factual information on conditions in the country of origin to the refugees.
- Assist authorities in protecting refugees in camps. Ensure that refugees are not being forced out of camps or settlements.
- Talk with the refugees to determine the “voluntariness” of the repatriation. All members of the refugee community, including women and the elderly, should be canvassed to ascertain that they have decided freely to return home.
- Launch information campaigns about conditions in the areas of return to ensure that the decision to return is well-informed; and launch confidence-building campaigns among the refugees.
- Help coordinate cross-border monitoring of returning refugees.
- Report any protection concerns to UNHCR, the United Nations High Commissioner for Human Rights and/or other human rights organisations.

REFUGEES WHO DO NOT WANT TO REPATRIATE

What happens if a refugee does not want to repatriate? Arrangements for voluntary return must always be accompanied by contingency plans for those refugees who want to remain in the country of asylum. Some refugees may not feel the security situation in their country has changed sufficiently for them to return; some may still be haunted by traumatic experiences before or during flight.

Unless the cessation clause of the 1951 Refugee Convention has been invoked, a person’s refugee status remains unchanged. The **cessation clause** stipulates that international protection is no longer justified when the circumstances that led to recognition of refugee status no longer exist because of significant changes in the country where persecution was feared. In these cases, a person can no longer refuse to avail him/herself of the protection of his/her country of origin.

If a person does not want to repatriate, the reasons for his/her position must be assessed to ascertain whether he/she is in need of international protection.

After many years of exile, there may be especially vulnerable individuals, such as elderly or seriously handicapped refugees, who have lost all contact with their country of origin and who have no family support. For these refugees, the country of asylum has become home. UNHCR and NGOs should work closely with the host government to seek a solution, on humanitarian grounds, for these persons, though they may no longer need international protection as refugees.

Refugees can also be referred for resettlement, if the relevant criteria apply (see pages 77-81).

C H E C K L I S T

Refugees who do not want to repatriate

- Determine the reasons why a person does not want to return.
- Ensure continued protection during his/her stay in the country of asylum if there are valid reasons for not returning.
- Help ensure access to individual status determination procedures for those persons admitted to the country of asylum as prima facie refugees.

What NGOs do

- Remain alert to signs of pressure on the refugees to return home when assisting refugees in the country of asylum.
- Raise concerns of duress with authorities in the country of asylum and with UNHCR.
- Monitor returnees in their country of origin.

EVACUATION OR RETURN UNDER DIFFICULT CONDITIONS

Despite almost universal recognition that refugee repatriation should be voluntary, the reality is often very different. **For many refugees, the decision to return home is made under some kind of political or material pressure or in the face of threats to the refugee's security.** The government of the country of asylum or the local community there may pressure the refugees to return to their country of origin or may force the refugees to return, thus violating the principle of non-refoulement. A deterioration in conditions in the country of asylum—whether as a result of social or political violence, declining economic opportunities or reductions in international assistance—may also force refugees to return home.

In 1996,

UNHCR spearheaded an operation to evacuate tens of thousands of people from around the Kisangani area of then-Zaire. They had fled refugee camps in eastern Zaire, when those camps were overrun by rebels who were trying to overthrow the government of Zaire, and sought refuge in the dense rainforests to the west of the camps. But when the refugees emerged from the rainforests around Kisangani, many were killed. Return to Rwanda meant return to a very uncertain future.

'I dialed the High Commissioner directly in Geneva—the first time I had done so in 10 years,' said Filippo Grandi, a UNHCR staff member operating out of the town of Kisangani. 'Conditions were so awful, I asked her whether we should just pull out. We brainstormed. We agreed to stay. We could make the big gesture by withdrawing. But our withdrawal would have doomed more people to die.'

- from Refugees Magazine, no. 110/Winter 1997,
published by UNHCR)

If efforts to allow the refugees to remain in the country of asylum fail, then UNHCR and NGOs often decide to work to ensure the safe reception and reintegration of returnees in their country of origin. Organisations sometimes negotiate with the country of origin for guarantees of safe passage out of the country so asylum and/or resettlement can be arranged elsewhere. These are humanitarian interventions that do not in any way contradict or compromise the principles of voluntary repatriation.

Nonetheless, these returns pose serious moral dilemmas for UNHCR and NGOs. They must decide whether to offer assistance in what are often essentially imposed returns. **In these cases, the risk of undermining the principle of voluntariness must be weighed against the ability to save people's lives.**

C H E C K L I S T

Evacuation and return under difficult conditions

- Raise concerns of duress with authorities in the country of asylum and with UNHCR.
- Provide information about conditions in the areas of return to the refugees.
- Seek resettlement (see pages 77-81) for those refugees who have been forcibly returned to their country of origin.

If you want to know more about...

VOLUNTARY REPATRIATION: see Voluntary Repatriation: International Protection, a Handbook produced by the General Legal Advice Section of UNHCR; The State of the World's Refugees 1997-98, Chapter 4 - Return and reintegration, published by Oxford University Press; An Introduction to the International Protection of Refugees, Chapter 5 - Practical protection, a Training Module produced by UNHCR; visit UNHCR's web site (www.unhcr.ch); consult the REFWORLD CD-ROM.

CESSATION CLAUSES: see Convention and Protocol relating to the Status of Refugees, Article 1, Section C - in booklet form, produced by UNHCR, or through UNHCR's web site (www.unhcr.ch).

RETURNEES

The principle of return in safety and with dignity applies even after the movement home is completed. Returnees, therefore, should be monitored until conditions in the country of origin can be considered stable, national protection is again available and returnees are reintegrated.

The country of origin is responsible for the protection of returnees. But UNHCR and NGOs should monitor returnees to ensure that amnesties or guarantees offered by the government of the country of origin are fulfilled and that returnees enjoy the same human rights and fundamental freedoms as their fellow citizens.

The objective in monitoring returnees is to help ensure a successful and lasting repatriation, including a durable relationship between the citizen and the State and the early and full restoration of national protection. Returnee monitoring is not meant to provide returning refugees with privileges or to elevate their standard of living above that of the local population. Rather, it seeks to ensure that all returnees' human rights are respected and that returnees are not targeted for harassment, intimidation, punishment, violence, or denial of access to public institutions or services or discriminated against in the enjoyment of any basic right.

Information gathered through monitoring the re-integration of returnees also helps refugees in countries of asylum make informed decisions about whether or not to return home. In many instances, this information addresses refugees' specific concerns, such as security conditions in the areas of return, availability of land, access to private property, access to social services, the condition of schools and infrastructure, etc.

Monitoring is also essential when **access to land** is an issue. Returnees should have the right to use or to acquire legal ownership of a plot of land for either residential or agricultural purposes. Access to land can be a very contentious issue, especially following conflict. For that reason, the interests and legitimate rights of returnees must be protected. Special attention in this area must be given to returning female heads of households. If necessary, UNHCR or NGOs must intervene with the authorities of the country of origin to ensure that returnee female heads of households have access to land on an equal footing as returnee men.

Assistance is part of protection. Returns will be durable if social and economic conditions in the areas of return help ease reintegration. Repairing or replacing infrastructure, restoring the social order (by providing access to education, women's organisations, or skills training for adolescents) and offering income-generating schemes when necessary can help build confidence among the returnee community and foster a sense of belonging. **Any assistance provided to the returnees should also benefit the local community.** That will help prevent feelings of resentment toward the returnees among the local population.

What NGOs do

- Include monitoring for rights abuses as part of assistance programmes.
- Ensure assistance programmes for returnees also benefit the local community.
- Share information gathered through monitoring with other NGOs, UNHCR and with counterparts in the country of origin and the country(ies) of asylum.

C H E C K L I S T

Returnees

- Monitor returnees to ensure their rights are respected and they are not subjected to discrimination. If any protection concerns arise, notify UNHCR or human rights agencies.
- Conduct training sessions on human rights both for the returnees and for local authorities and the local population.
- Help register the returnees.
- Assist in mine-awareness/mine-clearing activities.
- Verify that amnesties and guarantees offered by the country of origin are fulfilled.
- Ensure that returnees have access to
 - land,
 - their property,
 - fair trial,
 - education and social services,
 - methods for settling disputes, and
 - documentation (such as national identity cards).
- Assess returnees' needs and launch social and economic projects to aid reintegration. Reconciliation and confidence-building programmes should also be organised. Returnees and members of the local population should be involved in all stages of the planning and maintenance of reintegration and reconciliation projects; and both communities should benefit from the projects.
- Advise returnees of their rights and responsibilities under the law of the country of origin. Laws may have changed following conflict, so it is important to have a good understanding of the laws, both old and new, of the country of origin.
- Share information regularly with appropriate authorities, UNHCR and other NGOs. That will help ensure that acceptable standards of returnee protection are maintained.

Identify and help build and strengthen local capacities that will help the reintegration process. This can be done through training, disseminating information, etc.

If you want to know more about...

REINTEGRATION OF RETURNEES: see Voluntary Repatriation: International Protection, Chapters 6, 8 and 9, a Handbook produced by the General Legal Advice Section of UNHCR; The State of the World's Refugees 1997-98, Chapter 4 - Return and reintegration, published by Oxford University Press; An Introduction to the International Protection of Refugees, Chapter 5 - Practical protection, a Training Module produced by UNHCR; Returnee Monitoring Guidelines, published by UNHCR's Division of International Protection; EXCOM Conclusion no. 40 (available through UNHCR's web site); visit UNHCR's web site (www.unhcr.ch); consult the REFWORLD CD-ROM.

LOCAL INTEGRATION

Although voluntary repatriation is the preferred outcome for most refugees and countries of asylum, other durable solutions should not be overlooked. Local integration in the country of asylum is one such solution. But **local settlement can only be achieved with the consent and active participation of the government concerned.**

More than

200,000 Guatemalans, most from indigenous groups, fled a civil war and counter-insurgency campaign in their own country in the early 1980s. Many arrived in Mexico, where some 46,000 were officially registered by the Mexican government. Though first settled in camps on the border with Guatemala, the refugees were later relocated further away from the border. The Mexican government was keen to pursue a policy of self-sufficiency and local integration for these refugees. With support from UNHCR and donor governments, the refugees were given land, seeds and tools. Although in some cases the land provided was of poor quality, the refugees were able to attain a degree of self-sufficiency through crop diversification and specialised training.

By 1997, tens of thousands of Guatemalans had repatriated, encouraged by the peace agreement between the Guatemalan government and the country's rebel movement. But some 27,000 remained in Mexico; and most of them indicated they wanted to stay. The Mexican government expanded its local integration programme by agreeing to provide the refugees with documents needed to stay in Mexico indefinitely and to provide them with a secure legal status. Of the Guatemalan refugees remaining in Mexico, some 20,000 are expected to apply for permanent residency, more than half of whom are children who were born in Mexico. Mexico, too, has benefitted from local integration: in the states of Campeche and Quintana Roo, refugees constitute nine percent of the population, but are responsible for 12 percent of agricultural production.

Usually, developing States will not welcome large numbers of refugees for local integration given the economic, environmental and demographic problems they face. Industrialised countries, too, may balk at settling refugees given the high cost of welfare services needed to help integrate the refugees.

For local integration to work as a durable solution, certain conditions must be in place:

- the host government must fully agree to and actively support efforts to integrate refugee populations;
- the local population in the area in which the refugees are to be settled must support the refugees' long-term presence;
- local integration must be economically viable, that is, agricultural land must be available to rural refugee communities, as well as access to markets, employment and income-generating opportunities;
- there must be sufficient external financial support, especially in the initial stages of integration; local integration must be voluntary; and
- refugees must be fully incorporated into their new society, which means, among other things, that they have the opportunity to acquire national citizenship and to exercise all the rights that citizenship confers.

It is important to remember, however, that **local integration should not be used as a pretext to limit the right of refugees to return to their country of origin.** This is a particular danger in situations where people have become refugees as a result of expulsions on ethnic or communal grounds, and where authorities in the country of origin are opposed to the refugees' return.

C H E C K L I S T

Local integration

- Support authorities of the host community by reinforcing the socio-economic infrastructure where large numbers of refugees are being integrated.
- Work with government authorities, UNHCR, other NGOs and the refugees to develop a plan for phased assistance. The goal should be self-reliance and self-sufficiency.
- Identify all options for income generation and other self-reliance activities. Help ensure that refugees have full access to these opportunities.
- Promote community development.

What NGOs do

- Help reinforce the socio-economic infrastructure where large numbers of refugees are to be integrated.
- Coordinate with government authorities, UNHCR, other NGOs and the refugees, themselves, to develop plans for phased assistance.
- Promote self-reliance and community development.
- Help prevent local resentment.

RESETTLEMENT

Resettlement is a vital tool of international protection and a durable solution to the problems of refugees. Resettlement under UNHCR auspices is primarily geared to the special needs of refugees whose lives, liberty, safety, health or other fundamental human right is at risk in the country in which they sought refuge. It is also considered a solution, in particular circumstances, for refugees who do not have immediate physical protection concerns.

Refugees may be denied basic human rights in a country of refuge; their lives and freedom may be threatened by local elements driven by racial, religious or political motives, or by attacks and assassinations directed from the outside. The authorities in the country of refuge may be unable or unwilling to provide effective protection; or the refugees may be threatened with refoulement. In these circumstances, resettlement becomes a principal objective.

Resettlement may also meet special needs of a refugee that cannot be adequately addressed in the country of refuge. In these cases, resettlement is used as an instrument of international protection for refugees who survived torture and violence, the disabled and other injured or severely-traumatised refugees who need specialised treatment unavailable in their country of refuge. Resettlement is often the only way to reunite refugee families who, through no fault of their own, find themselves divided by borders or by entire continents. In addition, resettlement can also provide a solution for refugees who are unable to return home in the foreseeable future and who have no prospects for local integration within the country of refuge.

Third-country resettlement involves the transfer of refugees from the country in which they sought refuge to another State that has agreed to admit these people. They will usually be granted asylum or some other form of long-term residence rights; in many cases, they will also be given the opportunity to become naturalised citizens.

“The description of resettlement as a ‘last resort’ should not be interpreted to mean that there is a hierarchy of solutions and that resettlement is the least valuable or needed among them. For many refugees, resettlement is, in fact, the best—or perhaps, only—alternative.”

-Sadako Ogata, United Nations High Commissioner for Refugees

Individual countries use a wide range of criteria for determining who is eligible for resettlement in their country. **UNHCR has its own resettlement criteria and related considerations that help identify refugees in need of resettlement.** (These criteria, along with practical information on phases of resettlement, can be found in the UNHCR Resettlement Handbook, produced by UNHCR’s Division of International Protection.) The identification of refugees in need of resettlement and the assessment of cases should be an active and systematic process involving, as appropriate, NGOs and government authorities.

“In five days

I’ll be 28, but my life is in ruins. Since my late teens I was indirectly involved in the activities of my parents, brother and sister in opposition to the regime at home. Six years ago my sister was arrested; one year later, my parents and brothers. I never heard of any of them again. Following their disappearance, I took up the struggle for democracy. One night, as I was leaving the bakery where I worked, I was grabbed and pushed into a waiting car. I tried to escape at a traffic light, but was shot in the leg. I was blindfolded and taken to prison. There I was interrogated and beaten continuously for four or five hours.

When I started to lose consciousness, I was thrown into a cell with my hands tied behind my back. My torturers continued to beat me with electric cables on the soles of my feet. At last, I was given an injection and left alone. The following day... they took me to another room, tied me to a cross and poured petrol all over me. I was left there for hours on end under threat of being burned alive... Two days later, my kidneys stopped working and I was hospitalised. As my legs had been broken in several places, they had to put steel rivets in to hold the bones together.

When I was a little better, I was taken back to prison... Day after day the torture continued. When I was again sent back to hospital, I realised that they did not want to kill me, just to destroy me mentally and physically.” — from an account by one Middle Eastern refugee.

A hospital nurse helped this refugee flee the country, traveling by night, hiding by day. Three days after this interview, the narrator was resettled on emergency grounds in a European country. There, the refugee underwent surgery and received specialised psychotherapy for torture survivors.

Among cases to be promoted for resettlement, priority should be given to those refugees with acute legal and physical protection needs and, in particular, to women-at-risk and unaccompanied children for whom resettlement has been found to be in their best interests. Refugees can be said to need acute legal and physical protection particularly when they face:

- an immediate or long-term threat of refoulement to the country of origin or expulsion to another country from which they may be refouled;
- a threat of arbitrary arrest, detention or imprisonment; and/or
- a threat to physical safety or human rights in the country of refuge analogous to that considered under the refugee definition, making asylum untenable.

NGOs play a significant role in providing various resettlement services. The role and function of NGOs vary from country to country; but in many cases, these organisations act as liaisons between the refugee, UNHCR and the receiving Government. In many resettlement countries, NGOs are in the forefront of advocating for refugee protection and assistance with their Governments, the public and other organisations. Advocacy can take the form of individual casework for specific refugees or working more broadly with officials and politicians to promote positive and expedited admission decisions.

In countries of asylum, NGOs help counsel and assist refugees who may be eligible for resettlement. Their pre-screening work is often used by officials of resettlement countries in the first step towards determining a refugee's eligibility for resettlement.

In resettlement countries, NGOs are the primary providers of services to the arriving refugee.

Depending on the social welfare system of the resettlement country, NGOs can assist refugees in gaining access to medical care and education; they may also provide language and skills training and help in finding employment. NGOs also work to assure that any special needs (such as counselling for victims of torture or rape) are met and help refugees and their families make new friends and contacts so they adjust successfully to their new environment.

"For purposes of resettlement, UNHCR considers women-at-risk those refugee women or women of concern to UNHCR who have protection problems and find themselves without the support of traditional protection mechanisms. Special needs of refugee women in such circumstances could derive from persecution

as well as from particular hardships sustained either in their country of origin, during flight or in their country of refuge."

What NGOs do

- Consider resettlement as an option for persons in need of special and/or urgent protection and a durable solution.
- Share information that may help support a refugee's eligibility for resettlement with UNHCR.
- In receiving countries, help refugees who are resettled adjust to their new environment, their new lives.

C H E C K L I S T

Resettlement

- Help identify refugees with special protection needs who may be in need of resettlement.
- Work with UNHCR to assess cases according to resettlement criteria. Medical NGOs can help provide documentation to support eligibility for possible resettlement of those requiring special medical treatment.
- Be transparent and consistent in proposing cases to UNHCR for possible referral to resettlement countries. Use UNHCR's resettlement criteria as guidelines.
- NGOs in receiving countries can assist refugees once they have arrived. Differences in culture and language pose challenges to refugees as they adapt to their new environment. Services provided by NGOs can help ease their transition into a new life.

If you want to know more about...

RESETTLEMENT: see UNHCR Resettlement Handbook, produced by the UNHCR Division of International Protection (a binder version of the Handbook is available in English, French and Spanish upon request. Contact e-mail: hqrs@unhcr.ch); consult the REFWORLD CD-ROM; visit UNHCR's web site (www.unhcr.ch), in which there is a separate Resettlement page.

Special Protection Issues

Issues

Protecting Refugee Women

Women share the protection problems experienced by all refugees. Just like other refugees, they need protection against forced return to their countries of origin; security against armed attacks and other forms of violence; protection from unjustified and unduly prolonged detention; a legal status that accords them adequate social, economic and legal rights; and access to basic necessities such as food, shelter, clothing and medical care.

But in addition, **refugee women and girls have special protection needs**. They need protection against manipulation, sexual and physical abuse and exploitation, and protection against discrimination in the delivery of goods and services.

Protection problems can follow refugee women through all stages of their lives as refugees. Refugee women may endure

- physical and sexual attacks and abuse before and during flight;
- physical and sexual attacks and abuse in countries of asylum;
- spouse abuse and abandonment;
- armed conflict and coerced recruitment into armed forces;
- sexual exploitation and prostitution;
- lack of recognition as a person and lack of documentation; and/or
- physical and sexual attacks and abuse after repatriation.

The rights of refugee women are spelled out not only in the 1951 Refugee Convention and its 1967 Protocol, but in many other relevant international legal texts, such as

- the Universal Declaration of Human Rights (1948);
- the Geneva Conventions (1949) and the two Additional Protocols (1977);
- the International Covenant on Civil and Political Rights (1966);
- the International Covenant on Economic, Social and Cultural Rights (1966);
- the Convention on the Elimination of All Forms of Discrimination Against Women (1979);
- the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974);
- the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962);
- the Convention on the Nationality of Married Women (1957); and

- the Convention on the Rights of the Child (1989).

While these documents may not be signed by every State, they provide a framework of international human rights standards that supports protection and assistance activities related to refugee women.

National laws and policies in the country of asylum also govern the protection of refugee women. These include laws and policies that determine what legal status an individual receives, where she will live, and what assistance she will receive. Many offenses perpetrated against women, such as rape and physical attack, are punishable under national laws.

But international protection goes beyond adherence to legal principles. **The protection of refugee women requires planning and a great deal of common sense** in establishing programmes and priorities that ensure their safety and well-being. Refugee women who are unable to feed, clothe and shelter themselves and their children will be more vulnerable to manipulation and to physical and sexual abuse in order to obtain such necessities. Refugee women who are detained among strangers and/or where traditional social protection systems no longer exist, will face greater dangers than those living among family and friends. Refugee women who must bribe guards to obtain food, water or other essential goods will be more susceptible to sexual harassment. Refugee women who formerly had a means of expressing their views in the community may find themselves unable to do so through the camp leadership, which is often composed of men.

Since a large proportion of refugees are women, many of them solely responsible for their dependent children, it is essential that they be involved in planning and delivering assistance. Programmes that are not planned in consultation with the beneficiaries, nor implemented with their participation, cannot be effective. And **participation, itself, promotes protection**. Protection problems are often due as much to people's feelings of isolation, frustration, lack of belonging to a structured society and lack of control over their own future as they are to any other form of social problem. This may be particularly evident in overcrowded camp conditions. Refugee participation helps build the values and sense of community that help reduce protection problems.

Protection problems are also often the result of a misunderstanding of the needs and resources of refugee women. Sometimes aid workers feel they cannot regard women as decision-makers since, they believe, those women probably had a very limited role in decision-making in their country of origin. But the reality is often very different from the perception. Prior to flight, women typically have opportunities to express their concerns and needs, sometimes through their husbands, sometimes through traditional support networks. Indeed, women often make the key decisions in daily life. In refugee camps, however, many of these traditional systems of communication and decision-making have broken down. It is essential, then, that initiatives are created to ensure that women's voices are heard and that their perspectives are included in decision-making.

Early assessment of protection issues affecting refugee women is crucial. Refugee women may be particularly vulnerable to protection violations as they cross the border into an asylum country. The sooner aid workers can assess the dangers these women face, the sooner protection problems can be addressed. During refugee emergencies, early decisions about such fundamental matters as camp layout and food distribution—decisions that involve the refugee women, themselves—can help create an environment in which women are well protected and feel secure.

It can be difficult obtaining information about the protection needs of refugee women. Refugee women may not have the authority or willingness to speak for themselves; and their protection problems often involve sensitive issues, such as sexual assault, which they may be reluctant to reveal. **It is important, if not essential, to use female staff when trying to elicit information from female refugees.**

It is essential, too, to **encourage the organisation of women's committees**. These not only become sources of information about refugee women's needs and concerns, but they provide welcome fora in which women can discuss their concerns among themselves. In doing so, women not only foster a sense of self-worth and self-reliance, they also help each other through informal counselling. Information about women's needs and concerns can also be gathered from other NGO

staff workers, country-of-asylum ministries of health, education and social services, and from direct, on-the-spot observations.

Protecting Refugee Women in Camps and Settlements

Sensitivity to the special protection problems of refugee women and common sense can help prevent protection problems from arising in refugee camps and settlements. Too often refugee women face dangers stemming from poor camp design: communal housing that provides no privacy for women; location of basic services, such as latrines, at unsafe distances from where refugee women are housed; poor lighting. In many refugee situations, strangers are thrown together while no efforts are made to restore traditional communities; unaccompanied women and female-headed households may be intermixed with single men; traditional mechanisms for ensuring order within the community may be broken down. Women may not have equal access to food and other distributed items in camps; they may have to walk great distances alone to obtain water and firewood; they may not have equal access to health care, education and skills training and income-generating activities.

Some very practical steps can be taken to avoid these problems. Among them:

- **talk to the women** about how to improve their security;
- **ensure that basic services/facilities at the site are located in easily accessible places** so women are not vulnerable to attack when they use these services/facilities;
- **improve lighting** where possible;
- **designate refugee women as the initial point of contact for emergency and longer-term food distribution.** (This will also help reduce the diversion of food supplies to military forces.);
- **monitor the nutritional status of women and children** to identify problems in food distribution;
- **consult with refugee women about the type and location of water points** and the kinds of containers preferred for carrying water;
- **consult with refugee women about the location and means of collecting fuel** for cooking and heating;
- **involve refugee women in the design of health programmes** that are appropriate for them and that guarantee that women have equal access to health services, including reproductive health;
- **integrate a full range of reproductive health services into the primary health care programme;** include awareness campaigns about sexually transmitted and other diseases, HIV/AIDS, and the medical consequences of harmful traditional practices, such as female genital mutilation;
- **develop programmes for the recruitment and training of refugee women as health workers;**
- **institute counseling and mental health services for refugee women,** particularly for victims of torture, rape and other physical and sexual abuse;
- **ensure that refugee girls have equal opportunities as boys to obtain a primary education;**
- **ensure that refugee women have equal access as men to educational programmes** (including high school programmes, university scholarship programmes, adult education courses and skills training classes);
- **ensure equal access to programmes designed to increase economic self-sufficiency.** (There is a direct relationship between access to adequate income and the protection of refugee women.)

Protecting Dispersed Refugee Women

Refugee women living in urban environments or villages, under the jurisdiction of national laws, may also need protection against rights abuses. When working with dispersed refugee women, ensure they have

- **proper refugee documentation;**
- **access to education;**
- **access to training and income-generating activities;**
- **access to own or lease property;**
- **access to social services; and**
- **information about the medical consequences of harmful traditional practices,** such as female genital mutilation.

If necessary, lobby the government to amend its laws concerning refugees and refugee women, in particular.

What NGOs do

- Involve refugee women in assessing needs and designing responses.
- Integrate measures to protect women and women's rights awareness in all programme activities.
- Offer skills-training projects that foster economic independence.
- Sensitise local authorities and all members of the refugee community to the special protection problems faced by women.
- Offer special counselling and medical services to female victims of violence and sexual abuse.

Share information about refugee women's protection problems with other NGOs, appropriate authorities and UNHCR.

CHECKLIST

Protecting refugee women

- Assess and make necessary changes in the physical design and location of refugee camps to promote greater physical security.
- Help ensure that refugee women have proper documentation and have access to whatever registration process is used to determine eligibility for assistance.
- Include refugee women in decisions affecting their security.
- Talk directly with refugee women to identify their protection needs and those who are victims of physical violence and sexual abuse (whenever possible, female staff should be appointed to conduct these interviews); offer these women counselling and medical assistance.
- Help ensure that the needs and rights of refugee women are integrated in all programmes for refugees.
- Promote awareness of women's protection issues and women's rights among all members of the refugee community.
- Share information about refugee women's protection concerns with other NGOs, appropriate authorities and UNHCR.
- Identify refugee women with serious protection problems who may be eligible for resettlement under the Women-at-Risk programme.

If you want to know more about...

PROTECTING REFUGEE WOMEN: see Guidelines on the Protection of Refugee Women, produced by UNHCR; Sexual Violence against Refugees - Guidelines on Prevention and Response, produced by UNHCR; The State of the World's Refugees 1997-98, Chapter 4.3 - Women in war-torn societies, published by Oxford University Press; the UNHCR Resettlement Handbook, produced by the Division of International Protection at UNHCR; Women as Asylum Seekers – A Legal Handbook, published by Immigration Law Practitioners' Association and Refugee Action, 1997; Reproductive Health in Refugee Situations – An Inter-agency Field Manual, published by UNHCR, 1999; contact the Reproductive Health for Refugees Consortium via the Women's Commission for Refugee Women and Children, New York, New York; visit UNHCR's web site (www.unhcr.ch); visit the web site of the United Nations High Commissioner for Human Rights (www.unhchr.ch); consult the REF WORLD CD-ROM.

Protecting Refugee Children and Adolescents

About half of the world's refugees are children. **In refugee emergencies around the world, children are increasingly becoming not only accidental victims of refugee movements, but deliberate targets.**

Because of their dependence, their vulnerability and their developmental needs, all children, including refugee children, require special protection and care to realise their potential. In certain circumstances, adolescent refugees are more vulnerable to some human rights violations than are other age groups. For example, in times of combat, adolescents are often forcibly recruited. (The *Report on the Impact of Armed Conflict on Children*, by Graça Machel, offers the most comprehensive analysis of the issue ever compiled.) Younger children are dependent upon their parents or other adults to provide the basic necessities for survival. If these necessities are difficult to obtain, younger children are physically more vulnerable than adolescents or adults to illness and malnutrition. When resources are scarce, young children are the first to die.

Life as a refugee is a life of trauma for children. They can suffer acutely from

- the persecution of family members, the parental anxiety and distress, or the generalised violence that is associated with refugee flight;
- the very act of leaving home, usually suddenly and incomprehensibly;
- leaving behind family, friends and all that is familiar to them;
- separation from one or both parents during flight;
- the assumption of adult responsibilities if one parent is missing;
- a forced interruption of education;
- a lack of time or place for play;
- pressure from the military or armed groups who want to recruit them.

Refugee girls often face even greater protection problems than refugee boys. In some cultural and social contexts, girls are less valued than boys and so may be subject to neglect and abuse. Their participation in education programmes is often cut short; and they are victims of sexual abuse, assault and exploitation in greater numbers than are boys.

Among refugee children, **the most vulnerable are those who have been separated from their parents or usual guardian or care giver.** Sometimes, they travel with other relatives, family friends or others. When separated children travel alone, they are referred to as **unaccompanied minors.** But just because a child is "accompanied" does not mean he/she is protected. Special protection measures are required to ensure these children's rights are respected, to keep them safe from physical harm, and to help trace their family. If there are no special efforts to monitor and protect their well-being, the basic needs of separated and unaccompanied minors may go unmet and their rights may be violated.

Basic health care, nutrition and education are generally recognised as necessary for the physical and intellectual development of children. But basic programming for education not only ensures that the right to education is addressed; it also protects against human rights violations, such as child recruitment. Registration at birth not only protects the child when he/she is a refugee, but when he/she returns to the country of origin.

Healthy development also depends on the nurturing and stimulation children receive as they grow, and on the opportunities they have to learn and master new skills. For refugee children, healthy development also requires coping with the multiple traumas of loss, uprooting and, often, even more damaging experiences.

The grounds for special action on behalf of refugee children are well established in both national and international law.

Refugee children share certain universal rights with all other people, have additional rights as children, and particular rights as refugees, including entitlement to international protection and the assistance of UNHCR.

The international treaty that sets the most comprehensive standards concerning children is the 1989 **Convention on the Rights of the Child (CRC)**. The CRC is the most widely adopted of any international treaty; almost every country in the world has ratified it. Because its standards are universally recognised, the CRC can be used as a powerful tool for advocacy. When a State is a signatory to the CRC but not to any refugee treaty, the CRC may be used as the primary basis for protecting refugee children. Even if a State has signed the Refugee Convention, the CRC can be used to protect refugee children as children.

While the CRC is not a refugee treaty, refugee children are covered by the provisions of the Convention because all CRC rights are granted to all persons under 18 years of age (under Article 1 of the Convention) without discrimination of any kind (Article 2). That means that all children, including refugee and displaced children, within the jurisdiction of a State party to the CRC, are covered by the CRC's provisions. The CRC requires States parties to take appropriate measures to ensure that a child who is seeking refugee status or is considered a refugee receives appropriate protection and humanitarian assistance (Article 22).

Virtually every aspect of a child's life is covered in the Convention, from health and education to social and political rights. These social welfare rights are not just principles or abstract goals. **Because they are rights, and because there is a prohibition against discrimination, whatever benefits a State gives to the children who are its citizens must be given to all children—including those who are refugees or even those who are illegal—on its territory.**

Three main themes underpin the CRC: the "best interests" rule, non-discrimination and participation. According to the Convention, States must make "**the best interests of the child** a primary consideration" (Article 3). In other words, States must analyse how each course of action—whether in budget allocations, law-making or administration of the government—may affect children. The "best interests" rule also applies when a decision is being made about an individual child, such as in cases of abuse or neglect or adoption.

The **non-discrimination** article of the CRC (Article 2) stipulates that every child within a State's jurisdiction holds all CRC rights regardless of his/her citizenship, immigration status or any other status. Refugee children, asylum seekers and rejected asylum seekers are entitled to all the rights encoded in the CRC.

The theme of **participation** is also prominent throughout the CRC. Participation can take many forms: social participation in the family and in community life, participation of those with special needs, such as disabled children, and participation in decision-making. When children participate in decision-making, adults can make better choices because they take into consideration the thoughts, feelings and needs of children.

Participation in the context of the CRC goes beyond the right to expression. The CRC states that the views of the child be given due weight in accordance with the age and maturity of the child (Article 12). Participation also meets children's developmental needs: children learn decision-making skills and gain the confidence to use those skills by contributing to the decision-making process.

The CRC defines the word "child" as anyone "below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier" (Article 1). Eighteen is the widely accepted age of legal majority, or the age at which a person

assumes the legal rights of adults. In some societies, however, adolescents under the age of 18 perform many of the same roles as adults—in marriage, child rearing, work or combat. But although adolescents may have adult bodies and perform adult roles, they generally have not yet fully developed the emotional maturity and judgment, nor achieved the social status, of adults.

Refugee adolescents, like all adolescents, are still developing their identities and learning essential skills; but they must do so in unfamiliar surroundings, facing an uncertain future, while often threatened with sexual abuse/exploitation or military recruitment.

Although the CRC gives individual rights to children, it also emphasises children's relationships with others. The CRC recognises that the family is "the fundamental group of society" and places children's rights in the context of parental rights and duties. In its own Policy on Refugee Children (1993), UNHCR declares that "preserving and restoring family unity are of fundamental concern" and asserts that "actions to benefit refugee children should be directed primarily at enabling their primary care givers to fulfil their principal responsibility to meet their children's needs." In other words, **the best way to promote the well-being of refugee children is to support their families; and one of the best ways to help families is to help the community.**

What NGOs do

- Promote child rights among government authorities and other relief agencies.
- Incorporate activities to assess, monitor and address the needs of children in all refugee programmes.
- Coordinate efforts with other NGOs, the International Committee of the Red Cross (ICRC), UNICEF and UNHCR to trace members of families that have been separated during flight.
- Publicly condemn the recruitment of refugee children to be soldiers.
- Promote primary and secondary education for refugee children.
- Promote peace education, reproductive health education, skills training and other activities for adolescent refugees.
- Share information about child rights violations and about unaccompanied minors with UNICEF, appropriate authorities, other NGOs and UNHCR.

C H E C K L I S T

Protecting refugee children and adolescents

- Familiarise yourself with the Convention on the Rights of the Child.
- Keep children informed about all decisions made on their behalf. Seek and consider their opinions.

In the country of asylum

- Verify that children are not placed in detention. If they are, ensure that it is in accordance with the law, that they are protected from physical abuse, that they are kept with their families, that they have access to education and play. If conditions are substandard, alert government authorities and UNHCR.
- Help ensure that children have access to appropriate refugee status determination procedures in accordance with their needs and with international law and practice.

In camps and settlements

- Verify that all children have access to potable water, shelter, basic health care and primary education.
- Verify that all children are receiving adequate quantities and quality of food.
- Be alert to signs of physical or sexual abuse of children.
- Be alert to efforts to recruit children as soldiers. Alert UNICEF, UNHCR, the Special Representative for the Secretary-General on Children and Armed Conflict and other NGOs if this practice comes to your attention. Make a concerted effort with these other bodies to address the issue. Where appropriate, encourage your organisation to publicly condemn the practice.
- Verify that children are registered at birth and that parents are given birth certificates.

Separated minors

- Talk to families caring for children to ensure that all the children are their own and none are children who are separated from their parents or usual guardian or care giver.
- Identify separated minors. Keep detailed records of these children and share information with UNICEF, UNHCR and other NGOs. Information is key to tracing family members.
- Help coordinate an effective family tracing operation.
- Try to keep siblings, as well as children who have developed close ties, together.
- Seek and consider children's opinions about their placement and care under guardians.

- Monitor children living with families other than their own. Be alert to signs of abuse, neglect or exploitation and intervene when necessary and possible.
- Help arrange for placement of unaccompanied minors with families from the children's own community, if possible. This will help ensure continuity of language and culture. Always leave open the possibility of family reunions.
- Avoid creating orphanages and other institutional placements. Children's developmental needs are best served within a family context.
- Ensure that unaccompanied minors have access to the same schools, health services and other facilities used by refugees of the same age. They should not be isolated in special programmes.
- Continue to monitor unaccompanied children after they repatriate, integrate locally or are resettled to ensure they are adequately cared for.

If you want to know more about...

PROTECTING REFUGEE CHILDREN AND ADOLESCENTS: see *Refugee Children: Guidelines on Protection and Care*, published by UNHCR; *Training Modules* prepared for the Action for the Rights of Children (ARC) project; the *Convention on the Rights of the Child*, at the web site of the United Nations High Commissioner for Human Rights (www.unhcr.ch); *Implementation Handbook for the Convention on the Rights of the Child*, published by UNICEF; *Report on the Impact of Armed Conflict on Children*, by Graça Machel, published by UNICEF (and accessible via the UNICEF web site: www.unicef.org).

Protecting Older Refugees

How old is an “older” refugee? Ages can range from the mid-forties in some African countries to the mid-seventies and above in some Latin American nations. But while ages may be relative, older refugees everywhere share some common problems: they often have reduced access to training and employment opportunities; they often lack information about their rights and the services and facilities available to them; and they risk neglect or abandonment by family members who are unable to provide care.

There is a widely held assumption that older persons, and older refugees, in particular, are passive and dependent. That assumption has been repeatedly proven wrong. Many older persons want to contribute actively to the well-being of their next-of-kin. They become dependent only in the final stages of disability or illness. **The tragedy of older people who have been forcibly displaced is not so much that they become dependent on others, but that they have been robbed of the means to provide for others in the manner they would wish.**

Invariably, **elderly persons are put at risk when families separate.** Separation can occur at any stage of the refugee experience:

- pre-flight: during genocides, younger people are killed while the elderly are left as internally displaced persons or refugees without support; younger people flee, leaving the elderly behind as “remainees” in the country of origin.
- local integration: elderly are left behind in camps or collective centres while younger people depart in search of greater security or employment; long-staying refugees face old age in the country of asylum without family support.
- resettlement: younger people resettle while elderly persons are left behind, either because they are excluded under discriminatory criteria (they may not pass medical screenings, for example) or because they do not want to leave.
- repatriation: long-staying refugees have lost touch with their country of origin and do not want to or are unable to return; elderly persons repatriate alone, leaving younger generations behind in exile.

Everywhere in the world, the elderly have been the population group most affected by social disintegration. Social disintegration is usually caused by economic decline, resulting in drastic reductions of living standards for the poorest people (with refugees among the hardest hit) and the separation and dispersal of families as a result of war, flight and economic or security pressures. This results in a rise in the number of unaccompanied elderly persons in need. In addition, traditional support networks in many developing countries are eroding. Elderly persons in some of these countries no longer command the same authority, respect and support as they used to. As a result, unaccompanied elderly refugees in some developing countries face situations of utmost misery and destitution. The poorest among them may live marginalised lives as beggars and may never even come to the attention of aid agencies or UNHCR. Bad nutrition, appalling living conditions and lack of medical attention makes them susceptible to illness; their life expectancies plummet.

In many refugee camps and collective centres, those who are young and healthy are the first to leave while the more vulnerable members of the community—the sick, the handicapped, single mothers with children and the elderly—stay behind. Often, in the end, a core group of elderly persons is left with nowhere to go and no one to care for them. This can then lead to **chronic dependency** for those elderly refugees who have not found solutions to their problem and are unable to secure State benefits or family support. In some instances, elderly refugees have become dependent on UNHCR for long periods of time.

The protection problems most associated with elderly refugees are:

- **lack of information about rights, entitlements and claims procedures;**
- **a need for expert legal advice or representation** to deal with specific issues;
- **lack of access to important documentation**, especially documents left behind in the country of origin;
- **lack of mobility** (which, in camp settings, can be alleviated by sympathetic camp design); and
- **access to medical and health care**, which may be more critical than for other refugee groups.

Often, elderly refugees are not even aware that UNHCR protection officers, legal support agencies or UNHCR-sponsored local lawyers are present to assist them. Even if they know about such services, the elderly may not be mobile or feel confident enough to seek their help.

Since many already feel isolated and alone, elderly refugees should not be segregated from the rest of the refugee community in programmes and/or living centres of their own. Rather, they should be included in community development projects. Regular contact with children can help elderly refugees—and refugee children—feel part of a larger community and feel less alone and uncared for.

What NGOs do

- Consider the needs of older refugees when developing refugee assistance programmes.
- Include older refugees in community development projects.
- Coordinate with other NGOs in different sectors – i.e., health, training, law — to help ensure that older refugees are adequately cared for.
- Coordinate efforts with other NGOs, the International Committee of the Red Cross and UNHCR to trace members of families that have been separated during flight.

CHECKLIST

Protecting older refugees

- Seek out and identify older refugees in need of legal advice. Older refugees may not be aware of the services available to them to help them regularise their status and secure access to benefits and entitlements; or they may be unable or reluctant to approach agencies. Active outreach is often the only way of finding these refugees and helping them.
- Include older refugees in all community service initiatives.
- Share information about older refugees with other NGOs and with UNHCR to ensure their needs are met.
- Include older refugees in education, training and income-generation activities, both as recipients and as providers. Try to match their interests and abilities with appropriate projects.
- Devise projects that bring older refugees together with refugee children.

Protecting Internally Displaced Persons

Internally displaced persons are defined as

" **...persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border**" (from Guiding Principles on Internal Displacement).

In general, internally displaced persons have many of the same protection needs as refugees, but they have not crossed an international border and sought refuge in another country.

UNHCR's Statute does not entrust the organisation with any specific legal obligations towards internally displaced persons. But an article in the Statute states that the High Commissioner for Refugees may "...engage in such activities...as the General Assembly may determine within the limits of the resources placed at [her] disposal" (Article 9). On the basis of this Article, the General Assembly has, on a number of occasions, either authorised the High Commissioner to act on behalf of internally displaced persons, or supported actions already taken by UNHCR on behalf of internally displaced persons. (However, it is not UNHCR's mandate to act on behalf of persons displaced by natural disasters.)

Still, UNHCR can work on behalf of internally displaced persons only if certain specific criteria, set by the UN General Assembly, are met. UNHCR must

- obtain a specific request for involvement from the General Assembly, the Secretary-General or another principal organ of the United Nations, such as the Economic and Social Council;
- obtain the consent of the concerned State or relevant entity;
- have proven expertise and experience to assist, protect and seek solutions for internally displaced persons in the particular situation; and
- work within the limits imposed by the amount of resources given to the organisation to fund those activities.

The **United Nations Office for the Coordination of Humanitarian Affairs (OCHA)** is mandated to coordinate protection and assistance activities for those humanitarian concerns that fall in the gaps of existing UN agency mandates—including internal displacement. OCHA advocates humanitarian issues with political organs and, through the **Emergency Relief Coordinator (ERC)**, also coordinates humanitarian responses to emergencies, including those involving internal displacement.

The legal framework for the protection of internally displaced persons includes human rights law, humanitarian law and national laws. In April 1998, the Commission on Human Rights adopted the Guiding Principles on Internal Displacement, which consolidate many of the most important international protection principles applied to the protection of internally displaced persons. The Guiding Principles reflect and are consistent with human rights and humanitarian law and draw on relevant precepts of refugee law. They comprehensively address all phases of internal displacement and are intended to provide guidance to States, non-State actors, other authorities and inter-governmental and non-governmental organisations on issues of internal displacement. The document states that

- internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country (Principle 1);
 - these principles are without prejudice to the right to seek and enjoy asylum in other countries (Principle 2);
 - national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction (Principle 3);
 - these Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria (Principle 4);
 - displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected (Principle 8);
 - international humanitarian organisations and other appropriate actors have the right to offer their services in support of the internally displaced (Principle 25); and
- competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country (Principle 28).

Protecting internally displaced persons poses complex problems, since those persons remain under the jurisdiction of their country of origin—even though the country in question is unwilling or unable to guarantee the security of its citizens. All too often, relief agencies avoid these difficulties by providing only emergency assistance to displaced persons while neglecting the equally important issue of protection.

But with a concerted, coordinated effort, humanitarian agencies and UNHCR can provide protection to populations that are displaced and threatened with displacement. The very presence of humanitarian organisations can help moderate, if not prevent entirely, human rights abuses, especially if those agencies share information about human rights abuses with other organisations and the media.

In countries in which the structures of government have collapsed and armed conflict is raging, protecting displaced persons becomes even more difficult. Sometimes, the fighting parties may prevent humanitarian organisations from working in conflict zones. Or, if agencies are allowed to operate, their supplies may be plundered to support the war effort or used to sway the civilian population. In these instances, **humanitarian agencies often have to negotiate with the warring parties to gain access to displaced populations.** Sometimes this is accomplished through “relief corridors”—areas through which humanitarian assistance can be transported in relative safety—and “open relief centres”, in which the local population can take refuge when threatened by the fighting. Still, it is often extremely difficult, if not impossible, to provide adequate protection and assistance when parties to the conflict obstruct access to displaced populations.

On some occasions, multinational military forces have been called into areas of armed conflict with the objective of protecting or assisting displaced persons within their country of origin. These forces have been used to protect humanitarian activities and/or to insulate and protect a given geographical area from violence, thereby safeguarding the people who live in or who have returned to that **“safe area”, “safety zone” or “safe haven”.**

Unfortunately, many of these “safe areas” have proved to be anything but safe for the people they are supposed to protect. Sometimes they have been the targets of external attack; sometimes, local military forces continue to operate within them; sometimes, the “safe zones” threaten the principle of asylum and the right of freedom of movement if they are controlled by groups who do not allow people to leave.

Several key principles should govern efforts to protect internally displaced persons:

- **respect, apply and promote the application of the** Guiding Principles on Internal Displacement. Urge States and other authorities to do the same;
- **support “safe areas” only if they serve a primarily protective purpose and can guarantee safety to those residing within them;**

- **ensure that protection activities do not violate the right of people to leave a dangerous situation and seek refuge elsewhere**, whether in another country or another part of their own country;
- **uphold the right of internally displaced persons to return to their previous or usual place of residence**; and
- **ensure that internally displaced persons are not pressured to return to any area against their will**. It is not acceptable for displaced persons to be returned to locations that are still affected by armed conflict. The premature return of people to areas in which their security cannot be guaranteed can cause future population displacements.

What NGOs do

- Integrate protection measures in all programmes designed to assist internally displaced persons.
- Advocate cease-fires, negotiations, and political resolutions among warring parties.
- Work with other agencies and UNHCR to monitor human rights abuses.
- Disseminate the Guiding Principles on Internal Displacement.

C H E C K L I S T

Protecting internally displaced persons

- While providing humanitarian assistance, be alert to human rights abuses.
- Share information about human rights abuses with other NGOs, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the Emergency Relief Coordinator (ERC), the United Nations High Commissioner for Human Rights (UNHCHR), UNHCR and the media.
- Whenever possible, intervene with the authorities concerned if protection problems arise.

If you want to know more about...

INTERNALLY DISPLACED PERSONS: see The State of the World's Refugees 1997-98, Chapter 3 - Internal conflict and displacement, published by Oxford University Press; Guiding Principles on Internal Displacement, produced by the United Nations; REFWORLD CD-ROM; visit UNHCR's web site (www.unhcr.ch); visit the web site of the Office of the High Commissioner for Human Rights (www.unhchr.ch); visit ReliefWeb at the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) web site (www.un.org).

Statelessness

The right to a nationality or citizenship was described by US Supreme Court Justice Earl Warren as “the right to have rights”. Nationality or citizenship forms the legal connection between individuals and the State. In addition to providing a person with a sense of belonging and identity, nationality provides an individual with very specific, very real civil and political rights. **Without nationality, a person has no guarantee that he or she can obtain employment, go to school, have access to public services, participate in the political process, have access to a judicial system, or obtain a passport.** This is what it means to be stateless.

Nationality is usually based on a person's place of birth, his/her parentage or the relationship he/she has established with a country through long-term residence there. These factors provide what is known as a “**genuine and effective link**” or connection between the individual and the State.

A person may be or become stateless

- as a result of an extended stay abroad;
- through marriage to—and subsequent divorce from—a person of different nationality;
- if he/she is a child born to stateless parents;
- because of faulty administrative practices, including the failure or refusal of a state to ensure registration at birth;
- if he/she voluntarily renounces his/her nationality and fails to acquire a new citizenship before that renunciation takes effect;
- if a government amends its citizenship laws and denationalises whole populations;

- when states are formed, a state disintegrates, or a transfer of territory takes place, meaning new laws are adopted; and/or
- during mass expulsions.

In addition, **there are strong links between displacement and statelessness:**

- displacement can cause statelessness (when, for example, a person's displacement is followed or accompanied by a redrawing of territorial boundaries);
- displacement can be a consequence of statelessness (when stateless and denationalised populations are forced to leave their usual place of residence); and
- statelessness can be an obstacle to the resolution of refugee problems (when, for example, countries refuse to readmit former refugees on grounds of statelessness).

Statelessness can seriously affect people's security and the realisation of their human rights. It can also be a source of regional instability and can even become a threat to international peace and security.

Statelessness is a problem that States should resolve. Governments must take steps, both formally and in practice, to ensure they do not withdraw or withhold the benefits of citizenship from whole sections of the population who can demonstrate a genuine and effective link with the country and who, without State action, would otherwise be stateless.

States argue that it is their sovereign right to determine, under their own laws, who are and are not their citizens. International law provides for the sovereign right of each State to determine its citizens. Equally, international law calls upon States to act in accordance with international conventions and customs and the principles of law—a basic tenet of which is the avoidance of statelessness—when addressing issues of nationality.

International documents that cite the right to a nationality include:

- the Universal Declaration of Human Rights (1948),
- the Convention on the Nationality of Married Women (1957),
- the Covenant on Civil and Political Rights (1966),
- the Convention on the Elimination of All Forms of Discrimination Against Women (1979), and
- the Convention on the Rights of the Child (1989).

But the two primary international conventions on Statelessness are the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, both developed under the auspices of the United Nations. **The 1954 Convention relating to the Status of Stateless Persons** helps regulate and improve the status of stateless persons and helps ensure that stateless persons enjoy fundamental rights and freedoms without discrimination. The Convention was adopted to cover those stateless persons who were not refugees and who were not, therefore, covered by the 1951 Convention relating to the Status of Refugees. The Convention's provisions are not a substitute for granting nationality to those born or habitually resident in a State's territory; they do not diminish the necessity of acquiring citizenship. Rather, the Convention sets forth the stateless persons' rights and obligations related to their legal status in the country of residence. Rights include access to courts, property rights and religious freedom. Obligations include conforming to the laws and regulations of the country. The Convention also addresses matters that affect the daily lives of people, such as access to employment, education, public relief, labour legislation and social security.

The 1961 Convention on the Reduction of Statelessness defines ways in which persons who would otherwise be stateless can acquire or retain nationality through an established link with a State through birth or descent. The Convention

covers such issues as the granting of nationality, the loss or renunciation of nationality, deprivation of nationality and transfer of territory. Retention of nationality, once acquired, is also emphasised.

Unfortunately, relatively few states have acceded to either Convention perhaps because, among other reasons, there was no body appointed to supervise and promote these Conventions until relatively recently. It has become clear, however, that **promoting accession to these Conventions is an important way of protecting stateless persons.** Accession to the 1954 Convention provides stateless persons with many of the rights necessary to live a stable life. Accession to the 1961 Convention would help resolve many problems which result in statelessness. It would also serve as a reference point for national legislation.

In 1996, the UN General Assembly called on UNHCR to promote accession to the 1954 and 1961 Conventions on Statelessness and provide governments with technical and legal advice on their nationality legislation. The agency works with governments drafting nationality legislation, helps coordinate emerging legal systems, assists and advises in individual and group cases of statelessness, and helps negotiate treaties related to statelessness. For States, assessing the risk of statelessness and finding ways to avoid it is the first step toward solving the problem of statelessness.

What NGOs do

- Encourage governments to sign and implement the existing 1954 and 1961 international Conventions on Statelessness.
- Intervene with governments to find ways to avoid the creation of statelessness and to grant status in cases where statelessness cannot be easily resolved.
- Raise awareness of the problem of statelessness and act as advocates for stateless persons.

C H E C K L I S T

Assisting stateless persons

- Bring possible cases of statelessness to the attention of UNHCR.
- Help stateless persons gain access to legal assistance/advice.
- Monitor developments and trends related to statelessness and share that information with other NGOs.

If you want to know more about...

STATELESSNESS: see *The State of the World's Refugees 1997-98*, Chapter 6 - Statelessness and citizenship, published by Oxford University Press; Information and Accession Package: *The 1954 Convention relating to the Status of Stateless Persons and The 1961 Convention on the Reduction of Statelessness*, produced by the Division of International Protection, UNHCR; Training Package: *Statelessness and Related Nationality Issues*, produced by the UNHCR Standards and Legal Advice Section; *Protecting Refugees: Questions and Answers*, produced by the Public Information Section, UNHCR; REFWORLD CD-ROM; visit UNHCR's web site (www.unhcr.ch).

Frequently Asked Questions

Questions

Frequently Asked Questions

What is the difference between a refugee and an economic migrant?

Response: A migrant usually leaves his/her country voluntarily, to seek a better life. To a refugee, the economic conditions of the country of asylum are less important than its safety. In practice, the distinction may be sometimes difficult to establish, but it is fundamental: a migrant enjoys the protection of his/her home government; a refugee does not.

Can governments deport persons who are found not to be refugees?

Response: Persons who have been determined, under an equitable procedure, not to be in need of international protection are in a situation similar to that of illegal aliens, and may be deported. However, UNHCR urges that protection also be granted to people who come from countries devastated by armed conflicts or generalised violence.

Can a draft evader be a refugee?

Response: Every country has the right to call on its citizens to bear arms in periods of national emergency. However, citizens should have an equal right to conscientious objection. In cases where the option of conscientious objection is not observed, or where the conflict underway manifestly violates international norms, draft evaders who fear persecution (for example, on the basis of political opinions which authorities could impute to them) may be eligible for refugee status.

Can a criminal be a refugee?

Response: A criminal who has received a fair trial for a common-law offense and who flees his country to escape jail is not necessarily a refugee. However, a person accused of these or other non-political crimes—whether innocent or guilty—may also be persecuted for political or other reasons, and is thus not necessarily excluded from refugee status. Furthermore, people convicted of the “crime” of political activism may well be refugees.

Can a soldier be a refugee?

Response: A refugee is a civilian. A person who continues to pursue armed action against his/her country of origin from the country of asylum cannot be considered a refugee.

Can a woman who fears that she, or her infant daughter, will be genitally mutilated if she returns to her country claim refugee status?

Response: In France, Canada and the United States, it has been officially recognised that genital mutilation represents a form of persecution and that women who fear genital mutilation in their countries do have a real claim to refugee status. In one case, a woman who feared persecution in her country because of her refusal to inflict genital mutilation on her infant daughter was recognised as a refugee.

(For a general discussion of gender-based persecution, see pages 40-41)

Why are resettlement quotas not always filled by UNHCR?

Response: Governments are not always ready to adapt their quotas and criteria to rapidly changing needs, and often establish their quotas in response to domestic interest groups. Thus they may target specific nationalities among whom UNHCR has not detected any pressing need for resettlement. Resettlement countries may also turn down cases such as families with pressing medical problems or other acute needs, who may be more costly in terms of welfare payments, or who may have limited ability to integrate rapidly into the resettlement country. In general, although some countries do accept “difficult to place” hardship cases, most resettlement countries prefer educated refugees with strong family and cultural links, an intact family structure, and a high likelihood of rapid integration. Such families may not always correspond to the pressing protection cases that UNHCR attempts to resettle.

Are there guidelines on stowaways, or people rescued at sea, who claim asylum?

Response: Ships' masters have a fundamental obligation under international law to rescue any persons in distress at sea. In some cases, such as the exodus of Vietnamese boat-people, such persons have been asylum seekers. Ships may also discover that they are carrying clandestine stowaways who may also be asylum seekers. The established international practice is that asylum seekers rescued at sea should be disembarked at the next port of call, where they should always be admitted, at least on a temporary basis, pending determination of their protection needs. Certain flag states of rescuing ships have provided guarantees of resettlement for persons rescued at sea.

There is no binding international convention relating to stowaway asylum seekers, and practice with respect to them varies widely. UNHCR advocates that, wherever possible, stowaways should be allowed to disembark at the first port of call, where their refugee status may be determined by the local authorities. If a port state does not allow a stowaway to disembark, and the ship's next port of call is in a state where the stowaway's life is threatened, then the action is tantamount to refoulement. In such cases, UNHCR officers are instructed to try to arrange for an interview on board. If the asylum seeker is found to be a refugee, he/she will be assisted in finding a durable solution—usually resettlement in a third country.

What rights do stateless persons have?

Response: Stateless persons are entitled to enjoy basic human rights, such as protection against torture and arbitrary detention. While rights granted under the 1954 Convention relating to the Status of Stateless Persons are particularly aimed at ensuring all stateless persons also have a legal status, generally they enjoy only those additional rights that States decide to grant them.

Protection-Related Terms

Glossary

Glossary of Key Protection-Related Terms

Amnesty: a legal guarantee that exempts a person or group of persons from liability for criminal or political offenses. An amnesty can help promote the voluntary repatriation of refugees when it is respected and properly applied.

Assistance: aid provided to address the physical and material needs of persons of concern. This may include food items, medical supplies, clothing, shelter, seeds and tools, as well as the provision of infrastructure, such as schools and roads. “Humanitarian assistance” refers to assistance provided by humanitarian organisations for humanitarian purposes (i.e., non-political, non-commercial, and non-military purposes). In UNHCR practice, assistance supports and complements the achievement of protection objectives.

Asylum: the grant, by a State, of protection on its territory to persons from another State who are fleeing persecution or serious danger. A person who is granted asylum is a refugee. Asylum encompasses a variety of elements, including *non-refoulement*, permission to remain on the territory of the asylum country, and humane standards of treatment.

Asylum-seeker: a person whose request or application for asylum has not been finally decided on by a prospective country of refuge.

Cartagena Declaration on Refugees: a Declaration adopted by a colloquium of experts from the Americas in November 1984. The Declaration enlarges the refugee definition to include “...persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”. While the Cartagena Declaration is not a treaty, its provisions are respected across Central America and have been incorporated in some national laws.

Cessation clauses: legal provisions that indicate when refugee status comes to an end. Cessation clauses are found in Article 1(C) of the 1951 Convention, and in Article 1 (4) of the 1969 OAU Convention.

Convention on the Reduction of Statelessness: a Convention that provides for the acquisition of nationality by those who would otherwise be stateless and who have an appropriate link with the State through birth on the territory or through descent from a national. The Convention also provides for the retention of nationality by those who would become stateless if they were to lose the State's nationality. The Convention was adopted in August 1961 and came into force in December 1975. UNHCR has been mandated with specific functions under Article 11 of the 1961 Convention on the Reduction of Statelessness.

Convention on the Rights of the Child (CRC): a Convention of 1989 that sets comprehensive standards for the protection of the rights of children. Article 2 of the CRC states that the CRC applies to all children without discrimination of any kind. Refugee children are therefore covered by the standards set by the CRC.

Convention relating to the Status of Refugees: a Convention that establishes the most widely applicable framework for the protection of refugees. The Convention was adopted in July 1951 and entered into force in April 1954. Article 1 of the 1951 Convention limits its scope to “events occurring before 1 January 1951”. This restriction is removed by the 1967 Protocol relating to the Status of Refugees. To date, there are 137 States who are parties to the 1951 Convention and/or the 1967 Protocol.

Convention relating to the Status of Stateless Persons: a Convention that provides the definition of a stateless person and establishes a framework by which a stateless person who is lawfully resident in a State can have legal status. The Convention was adopted in September 1954 and entered into force in June 1960.

Convention refugees: persons recognised as refugees by States under the criteria in Article 1 A of the 1951 Convention, and entitled to the enjoyment of a variety of rights under that Convention.

Country of first asylum: a country in which an asylum-seeker has been granted international protection as an asylum-seeker or a refugee.

Customary international law: international laws that derive their authority from the constant and consistent practice of States, rather than from formal expression in a treaty or legal text. In order for State practice to contribute to the formation of customary international law, that practice should be conducted with a sense of legal obligation.

Derivative status: *see* family unity principle

Detention: restriction on freedom of movement, usually through enforced confinement. In UNHCR’s view, detention should not normally be used as a measure to control asylum-seekers.

Durable solutions: any means by which the situation of refugees can be satisfactorily and permanently resolved to enable them to live normal lives. UNHCR traditionally pursues the durable solutions of voluntary repatriation, local integration and resettlement.

Duties of refugees: the obligations refugees must meet in the country of asylum. Under Article 2 of the 1951 Convention, refugees must conform to the laws and regulations of any country in which they find themselves. In particular, refugees must refrain from any acts that jeopardise the safety, security or public order of communities or countries of asylum.

Exclusion clauses: legal provisions that deny the benefits of international protection to persons who would otherwise satisfy the criteria for refugee status. In the 1951 Convention, the exclusion clauses are found in Articles 1D, 1E and 1F. These clauses apply to the following categories: persons who are receiving protection or assistance from UN agencies other than UNHCR; persons who possess the rights and obligations attached to the possession of nationality of their country of residence; and persons in respect of whom there are serious reasons for considering that they have committed a crime against peace, a war crime, a crime against humanity, a serious non-political crime, or acts contrary to the purposes and principles of the United Nations.

Executive Committee of the High Commissioner’s Programme (EXCOM): a Committee charged with advising the High Commissioner on the exercise of her functions. EXCOM is composed of representatives of 53 States with a demonstrated interest in refugee issues, and 43 States with observer status. NGOs have observer status in the Executive Committee.

Executive Committee Conclusions on International Protection: formal texts that embody the results of EXCOM’s annual deliberations on questions of refugee protection. EXCOM conclusions

contribute to the elaboration of principles and standards for the protection of refugees and other persons of concern to UNHCR.

Expulsion: removal of a lawful resident from the territory of a State by government authorities. Under Article 32 of the 1951 Convention, national security and public order are the only permissible grounds for the expulsion of a refugee. The procedures by which a decision for expulsion is reached should be fair and just, and the refugee should be allowed a reasonable time to seek admission into another country.

Family unity principle: a principle that gives effect to the protection of the family as the natural and fundamental group unit of society. Under this principle, refugee status may be granted to the spouse and dependents of a person who meets the refugee criteria. When spouses and dependents acquire refugee status by application of the family unity principle, they are said to enjoy “derivative status”.

Family reunification: any process by which the family unity principle may be implemented. It has a special application in the context of durable solutions, in general, and resettlement, in particular.

Gender-related persecution: persecution that targets or disproportionately affects a particular gender. Under certain factual circumstances, gender-related persecution may come within the refugee definition.

Group determination of refugee status: a practice by which all persons forming part of a large-scale influx are regarded as refugees on a *prima facie* basis. Group determination ensures that protection and assistance needs are met without prior individual status determination.

Guiding Principles on Internal Displacement: a series of principles that articulates standards for protection, assistance and solutions for internally displaced persons. The Guiding Principles were presented to the Commission on Human Rights by the Representative of the Secretary General for Internally Displaced Persons in April 1998. They reflect and are consistent with human rights law, humanitarian law and refugee law, and provide guidance to States, other authorities, intergovernmental, and non-governmental organisations faced with issues of internal displacement.

Human rights: agreed international standards that recognise and protect the dignity and integrity of every individual, without any distinction. Human rights form part of customary international law and are stipulated in a variety of national, regional and international legal documents generally referred to as human rights instruments. The most prominent of these are the United Nations Charter, and the UN Bill of Rights (made up of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic and Social Rights).

Human rights law: the body of customary international law, human rights instruments and national law that recognises and protects human rights. Refugee law and human rights law complement each other.

Humanitarian (status) cases: persons who are formally permitted, under national law, to reside in a country on humanitarian grounds. These may include persons who do not qualify for refugee status.

Income-generating projects: projects designed to create income for persons of concern to UNHCR, and thus help them become self-supporting.

Intergovernmental organisation (IGO): an organisation made up of States members. Examples include the United Nations Organization (UN), the Organization of African Unity (OAU), the Organization of American States (OAS), the European Union (EU), and the Commonwealth of Independent States (CIS).

Internal displacement: involuntary movement of people inside their own country. This movement may be due to a variety of causes, including natural or human-made disasters, armed conflict, or situations of generalised violence.

Internally displaced persons: those persons forced or obliged to flee from their homes, "...in particular as a result of or in order to avoid the effects of armed conflicts, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border" (according to the *Guiding Principles on Internal Displacement*).

Internal disturbance: a situation characterised by acts of violence and disorder, but that falls short of armed conflict.

Internal flight alternative (or the "relocation principle"): a factual determination that an asylum-seeker could have avoided persecution in his country of origin by relocating to another part of the same country. This term is not favoured by UNHCR as it is often used to limit access to status determination procedures or to deny refugee status. UNHCR's position is that the possibility of internal relocation is relevant to status determination only in certain limited cases. Even when it is relevant, its application will depend on a full consideration of all aspects of the refugee claim.

International humanitarian law (or the law of armed conflict): the body of law, regulations and principles that governs situations of international or non-international armed conflict. The core instruments of international humanitarian law are the four Geneva Conventions of 12 August 1949 and their two Additional Protocols of 8 June 1977. Virtually every State is a party to the Geneva Conventions of 1949.

International protection of refugees: interventions by States or UNHCR on behalf of asylum-seekers and refugees to ensure that their rights, security and welfare are recognised and safeguarded in accordance with international standards. Such interventions include: ensuring respect for the principle of *non-refoulement*; admission to safety; access to fair procedures for the determination of refugee status; humane standards of treatment; and the implementation of durable solutions. UNHCR is the only United Nations agency with a mandate for the protection of refugees.

Irregular movement of refugees: the phenomenon of refugees or asylum-seekers moving without formal authorisation from countries in which they have already found protection, in order to seek asylum or permanent settlement in another country.

Local integration: a durable solution to the problem of refugees that involves their permanent settlement in a country of first asylum.

Mandate refugees: persons who are recognised as refugees by UNHCR acting under the authority of its Statute and relevant UN General Assembly resolutions. Mandate status is especially significant in States that are not parties to the 1951 Convention or its 1967 Protocol.

Migrants (economic): persons who leave their countries of origin purely for economic reasons not in any way related to the refugee definition, or in order to seek material improvements in their livelihood. Economic migrants do not fall within the criteria for refugee status and are therefore not entitled to benefit from international protection as refugees.

Minors: persons who are below the legal age of majority and are therefore not legally independent. This term includes adolescents. Under the Convention on the Rights of the Child (CRC), a "child" is a person who is below the age of eighteen, unless the applicable law sets a lower age. The CRC equates "child" with "minor".

National: a person recognised to have the status of a legal bond with a State as provided for under law. Some States use the word "nationality" to refer to this legal bond, while other States use the word "citizenship".

Nationality: the status of being a citizen of a particular nation or country.

Non-governmental organisation (NGO): an organised entity that is functionally independent of, and does not represent, a government or State. This term is normally applied to organisations devoted to humanitarian and human rights causes, many of which implement their refugee-related programmes in partnership with UNHCR and other agencies.

Non-refoulement: a core principle of refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. The principle of *non-refoulement* is a part of customary international law and is therefore binding on all States, whether or not they are parties to the 1951 Convention.

OAU (Organization of African Unity) Convention Governing the Specific Aspects of Refugee Problems in Africa: the regional complement to the 1951 Convention whose refugee definition is broader than that provided in the 1951 Convention. Adopted in 1969, the OAU Convention provides that “the term ‘refugee’ applies to those fleeing from external aggression, occupation, foreign domination or events seriously disturbing public order in either part or whole of the country of origin”.

Partnership in Action (PARinAC): a framework intended to enhance partnership between NGOs and UNHCR and to improve protection and solutions for refugees and others of concern to UNHCR.

Particular social group (membership of a...): one of five possible grounds on which persecution may be established under the 1951 Convention. A particular social group would have distinct characteristics that set the group apart. Persons belonging to the group would share defining characteristics that may be innate or acquired (for example, interests, values, behaviour, or backgrounds). The defining characteristics would be such that relinquishing them would entail violating the basic human rights of the individuals concerned.

People-Oriented Planning in Refugee Situations (POP): a training tool designed to assist refugee workers to ensure that all UNHCR programmes meet the needs of persons of concern, particularly women, by increasing their participation in and access to decision making.

Persecution: generally refers to any severe violation of human rights. In the refugee context, “persecution” refers to any act by which fundamental rights are severely violated for reasons of race, religion, nationality, political opinion or membership of a particular social group.

Persons of concern to UNHCR: a generic term used to describe all persons whose protection and assistance needs are of interest to UNHCR. These include refugees under the 1951 Convention, persons who have been forced to leave their countries as a result of conflict or events seriously disturbing public order, returnees, stateless persons, and, in some situations, internally displaced persons. UNHCR’s authority to act on behalf of persons of concern other than refugees is based on General Assembly resolutions.

Prima facie determination of refugee status: *see* group determination of refugee status

Reception centre: a location with facilities for receiving, processing and attending to the immediate needs of refugees as they arrive in a country of asylum.

Refoulement: the removal of a person to a territory where she/he would be at risk of being persecuted, or of being moved to another territory where she/he would face persecution. *Refoulement* constitutes a violation of the principle of *non-refoulement*, and is therefore a breach of refugee law and of customary international law.

Refugee centres: locations where refugees reside or may gather to receive information, counselling, material assistance or other services.

Refugee law: the body of customary international law and various international, regional, and national instruments that establish standards for refugee protection. The cornerstone of refugee law is the 1951 Convention relating to the Status of Refugees.

Refugee status determination procedures: legal and administrative procedures undertaken by UNHCR and/or States to determine whether an individual should be recognised as a refugee in accordance with national and international law.

Refugees *sur place*: persons who were not refugees when they left their countries of origin, but who become refugees at a later date, owing to intervening events. Refugees *sur place* may owe their fear of persecution to a change in the country of origin, such as through a *coup d'état*, or to *bona fide* political activities undertaken in the country of refuge.

Regional refugee instruments: international legal documents relating to refugees that are adopted by States or intergovernmental organisations within a geographical region or sub-region. Such instruments normally complement the 1951 Convention and reflect the peculiar character of refugee issues within the particular geographical area. Notable examples of regional instruments are the OAU Convention of 1969 and the Cartagena Declaration of 1984.

Reintegration: the process by which refugees resume a normal life in their country of origin. Ideally, reintegration should follow from the durable solution of voluntary repatriation.

Rejection at the border: in the refugee context, the refusal to allow an asylum-seeker entry into a prospective country of asylum. Rejection at the border may result in a violation of the principle of *non-refoulement*.

Resettlement: the transfer of refugees from the country in which they have sought refuge to another State that has agreed to admit them. The refugees will usually be granted asylum or some other form of long-term resident rights and, in many cases, will have the opportunity to become naturalised citizens. For this reason, resettlement is a durable solution as well as a tool for the protection of refugees.

Resettlement country: a country that offers opportunities for the permanent settlement of refugees. This would be a country other than the country of origin or the country in which refugee status was first recognised.

Resettlement selection criteria: criteria by which UNHCR and resettlement countries select candidates for resettlement. Resettlement under the auspices of UNHCR is strictly limited to mandate refugees who have a continued need for international protection and who meet the criteria of the UNHCR Resettlement Handbook. Individual countries use a wide range of resettlement criteria.

Safe areas/safety zones: areas, zones, or locations established to protect civilians during a time of conflict. The terms and conditions of establishing safety zones are governed by the law of armed conflict.

Safe third country: a country in which an asylum-seeker could have found protection as a refugee, and in which he/she has been physically present prior to arriving in the country in which she/he is applying for asylum.

Self-help organisations and projects: organisations and projects initiated, created and managed by refugees and other persons of concern for their own benefit.

Social group: *see* particular social group

Standards of treatment: standards derived from the 1951 Refugee Convention and other international instruments that set the parameters for the treatment of refugees. The 1951 Convention provides for various standards of treatment, depending on the particular rights in question. These are: treatment not less favourable than that generally accorded to aliens in similar circumstances; the most favourable treatment

accorded to nationals of a foreign country in the same circumstances; the same treatment as is granted to nationals; and treatment as favourable as possible.

Stateless person: a person who is not considered a national by any State under the operation of its law.

Statelessness: the condition of not being considered as a national by any State under the operation of its law.

Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR Statute): the document that established UNHCR's mandate, functions and structure and provides the criteria by which persons may come within the competence of UNHCR. Such persons may be recognised as "mandate refugees" by UNHCR acting under the authority of its Statute.

Statutory refugees: persons considered to be refugees under the provisions of the international instruments that were in force before the 1951 Refugee Convention.

Temporary protection: an arrangement or device developed by States to offer protection of a temporary nature to persons arriving en masse from situations of conflict or generalised violence, without prior individual status determination. Temporary protection was applied in some Western European States for the protection of persons fleeing the conflict in the former Yugoslavia in the early 1990s.

Tracing: in the refugee context, efforts to ascertain the whereabouts of family members or close associates of persons of concern to UNHCR. Tracing may be conducted for the purposes of family re-unification, in the context of durable solutions, or simply to facilitate contacts between family members. The International Committee of the Red Cross (ICRC) runs a Central Tracing Agency that has special competence in this area.

Treaty: a formal agreement, principally between States, that creates binding legal obligations between its parties. Treaties are one source of international law.

Unaccompanied minors: persons below the legal age of majority who are not in the company of parents, guardians or primary care-givers.

UNHCR mandate: the role and functions of UNHCR as set forth in the UNHCR Statute and as elaborated in resolutions of the United Nations General Assembly. UNHCR's mandate under its Statute is to pursue protection, assistance and solutions for refugees. UNHCR has an additional mandate concerning issues of statelessness, as it is given a designated role under Article 11 of the 1961 Convention on the Reduction of Statelessness. The Office has also been requested by the General Assembly to promote the 1954 and 1961 statelessness Conventions, and to help prevent statelessness by providing to States technical and advisory services on nationality legislation and practice.

Voluntary repatriation: return to the country of origin based on the refugees' free and informed decision. Voluntary repatriation may be *organised*, (i.e., when it takes place under the auspices of the concerned governments and UNHCR), or *spontaneous* (i.e., the refugees return by their own means with UNHCR and governments having little or no direct involvement in the process of return).

Well-founded fear of persecution: a key phrase in the 1951 Convention's definition of a refugee. This phrase contains a subjective element (fear of persecution) as well as an objective element (the fear must have an objectively justifiable basis). According to the 1951 Convention, persecution must be linked to any one of the five specified grounds: race, religion, nationality, membership of a particular social group and political opinion.

Women-at-risk: female refugees with special protection needs, including those who require resettlement in accordance with the UNHCR Resettlement Handbook.