

**Annual Tripartite Consultations on Resettlement
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Discussion Paper

Breakout Group: Challenges and Opportunities in Family Reunification

1. The principle of family unity

A fundamental principle of refugee protection, the unity of the family, derives directly from the universally recognised right of the family to State protection. UNHCR's promotion of the unity of the family is supported by the principle, set forth in both the Universal Declaration of Human Rights of 1948 (Article 16) and the International Covenant on Civil and Political Rights of 1966 (Article 23), that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State."¹ The same principle is embodied in the 1989 Convention on the Rights of the Child, which states:

*The family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.*²

Although the 1951 Convention Relating to the Status of Refugees does not include provisions on family reunification, the Conference of Plenipotentiaries, which adopted the Convention, unanimously agreed in its Final Act that the unity of the family is an essential right of the refugee, and the rights granted to the refugee extend to her/his family members. Considering that the unity of the family is constantly threatened, the Conference urged Governments to take necessary measures to protect the refugee's family, especially with a view to ensuring the maintenance of family unity in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country.³

The Executive Committee of the High Commissioner's Programme (ExCom) has adopted a number of Conclusions on family reunification.⁴ The ExCom Conclusion on Children at Risk of 2007 recommends that States, UNHCR and other relevant agencies and partners "take a flexible approach to family unity, including through consideration of concurrent [resettlement] processing of family members in different locations, as well as to the definition of family members in recognition of the preference to protect children within a family environment with both parents."⁵

¹ The principle of family unity is also protected by the right to not be subjected to arbitrary or unlawful interference; see International Covenant on Civil and Political Rights of 1966 (Article 17). The need to promote the reunification of dispersed families was also underlined by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts of 1977; Article 74 of Protocol I Additional to the Geneva Convention of 1949.

² The 1989 Convention on the Rights of the Child; Articles 9 and 10 of this Convention concern children separated from their families and emphasize that the reunification of children with their parents should be dealt with in a "positive, humane and expeditious manner." See also Articles XXIII and XXV of the 1990 African Charter on the Rights and Welfare of the Child.

³ The Final Act of the Conference of Plenipotentiaries also recommended Governments to take necessary measures for the protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption.

⁴ See also, for example, Executive Committee Conclusions Nos. 1, paragraph (f); 9; 15 paragraph (e); 24; 84 paragraph (b); 85 paragraphs (k), (u), (v), (w), (x); 88; 100 paragraph (d); 101 paragraph (n), 103 (n) paragraph; 104 paragraph (n) (iv); 105 (k), (n) paragraphs.

⁵ UN High Commissioner for Refugees, Conclusion on Children at Risk, 5 October 2007. No. 107 (LVIII) 2007. Online. UNHCR Refworld, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=471897232>. The Conclusion also urges States to "recognize UNHCR's role in the determination of the best interests of the child which should inform resettlement decisions including in situations where only one parent is being resettled and custody disputes remain unresolved due to the

UNHCR has a mandate responsibility to protect refugees and to promote and facilitate the reunification of refugee families; that is, to assist family members of a refugee to join her or him in the country of asylum / resettlement. Except for certain special programmes, eligibility for UNHCR assistance with family reunification requires that at least one person within the family unit to be reunited be a refugee under UNHCR's mandate or a person otherwise of concern to the Office (*Resettlement Handbook*; Chapter 4.6.4). A 'person otherwise of concern' may include someone whose refugee status was determined by a competent government authority (i.e. through its asylum procedures) and not directly by UNHCR under its mandate, or the refugee's family members in their country of origin. In cases where a non-refugee is being assisted to join a refugee family member, UNHCR considers the refugee to be the recipient of the Office's assistance. If one family member is being considered for resettlement (e.g. on protection grounds), UNHCR will seek to ensure, where possible and in line with the principle of family unity, that all of her / his family members, including dependent family members, are resettled together.

2. Challenges in family reunification

Recognising the vital role of families in building cohesive and protective communities underpins UNHCR's resettlement guidelines on family reunification.⁶ UNHCR aims to reunite family members through resettlement and by promoting a liberal and practical rather than formalistic definition of the family. UNHCR's policy and practice is guided by the principle of family unity, and UNHCR thus urges States to adopt generous and flexible policies to facilitate family reunification. A number of States have specific migration programmes for this purpose without the direct involvement of UNHCR, but UNHCR's definition of family is more inclusive than that used by many resettlement States, so ensuring family unity through resettlement can be challenging, both in the context of initial resettlement and subsequent family reunification.

2.1 Definition of family and the concept of dependency

While States and UNHCR agree on the need to respect the principle of family unity, the definition of the family in the context of resettlement is an area where UNHCR and States have not necessarily seen eye to eye. There is no single, universally agreed-upon definition as to what constitutes a family; in some jurisdictions and cultures the term 'family' is interpreted relatively broadly to include extended relatives, spouses in polygamous marriages, same sex or common law couples, but in others, the term is restricted to 'nuclear' family members, spouses and minor children. Almost all national and international authorities have accepted that the members of the nuclear family, that is, the spouse and dependent children are included in the concept of "family".

UNHCR aims to respect the culturally diverse interpretations of family membership, as long as they are in accordance with human rights standards. Its definition of family for the purposes of resettlement includes the *concept of dependency*. Unlike some resettlement States, UNHCR includes as part of the family unit individuals who are engaged to be married, who have entered into a customary marriage, or who have otherwise established long-term partnerships (including same-sex partnerships). UNHCR's definition also includes persons who may be dependent on the family unit, particularly economically, but also socially or emotionally dependent. This includes children who have reached 18 years of age or who are




unavailability or inaccessibility of competent authorities, or due to the inability to obtain official documents from the country of origin as this could jeopardize the safety of the refugee or his/her relatives."

⁶ *UNHCR Resettlement Handbook, Department of International Protection, Geneva, 1997, revised March 2007, sections 4.6.6, 4.6.8 (see also UNHCR "Guidelines on Reunification of Refugee Families", July 1983; and, "Procedural Standards for Refugee Status Determination under UNHCR's Mandate" section 5.1.2.).*

married (if they remain dependent on the family unit) or children or older people under foster care or guardianship arrangements, but are not biologically related.

The criteria and policies set out in UNHCR's *Resettlement Handbook* (Section 4.6) are to be followed by UNHCR staff in managing family reunification and determining the family composition on resettlement cases. However, UNHCR's policy may not always correspond with those applied by the State to which the case is submitted. Resettlement States decide whom to admit on the basis of national policies and requirements, which may narrowly interpret the term family for migration purposes, or impose certain requirements that limit resettlement admissibility by some members of the family. The discrepancy between UNHCR's interpretation of family for the purposes of resettlement and the somewhat more restrictive approach of many resettlement States constitutes a protection gap that limit access to resettlement by some refugees and their family members. UNHCR therefore urges States to take relations of dependency into account when interpreting family membership and to adopt flexible policies and procedures to protect the family unity.


Questions

-  *Why do some resettlement countries require adult family members who are dependent on the principal refugee applicant in a case to apply separately for resettlement?*
-  *Do the policies and practices of resettlement States contribute to the separation of family members?*
-  *What steps can be taken to respect a broad and inclusive interpretation of family unity in resettlement programmes?*

2.2. Restrictions on family members

Family reunification and restoring supportive relationships within families is a key factor for effective integration. The separation of family units through resettlement can be traumatic and lead to considerable hardship both for persons who remain behind and for those resettled; thus, ensuring family unity and a humanitarian approach to family reunification will enable the protection of refugee families and facilitate their integration in receiving communities. Some resettlement States may, however, impose additional restrictions on the family members of refugees that increase the risk of separation, that can have far reaching negative social and economic consequences for resettled refugees, and that can impede integration.⁷ For example, some States will require adult or married family members, other than the spouse of the principal applicant, to apply separately for resettlement. In some cases States may impose the same conditions on family members as they do on regular migrants, such as requiring them to have financial capacity and adequate housing upon their arrival in the resettlement country.

Question

-  *The advantage of having separate programmes for family reunification is that places under the refugee resettlement programme remain available for refugees in priority need of protection. What are the downsides of this approach and how can these be remedied?*

⁷ UNHCR, *Refugee Resettlement - An International Handbook to Guide Reception and Integration*, September 2002, p. 84

2.3 Status of family members

In principle, family members should be able to enjoy the same protection, or refugee status, as the main applicant or family member with whom they are reuniting. UNHCR is, however, concerned that restrictions on family reunification results in reunited family members sometimes not being granted the same status and benefits as the family members they are joining. Furthermore, UNHCR believes that family members of refugees should not be subject to the same restrictions that are applied to regular migrants, as refugees do not have the option to reunite elsewhere with their families. Similarly, UNHCR considers that refugees and their family members, in appropriate circumstances, should be able to submit an application for family reunification in the country of resettlement or asylum rather than having to return to the country of origin merely to file the application; such requirements not only infringe on the principle of family unity but also the spirit of the 1951 Convention.

Normally, when a refugee is recognized, his or her family is granted what is called ‘derivative status;’ meaning that, because they are with the principal applicant in the same country, they are deemed to be refugees who derive their status from the main claimant. This approach is meant to protect the right to family unity and to protect family members who may be at risk of persecution based on their link to the principal claimant. Ideally, family members who have an individual claim for refugee status in addition to the derivative elements should be afforded an individual refugee status recognition.

Derivative status or separate refugee status may not be granted to all family members because of their personal status; for example, if they are citizens of the host country or another country, they will not be given derivative status unless they have their own refugee claim. Even in such cases, however, UNHCR may intervene because one member of the family is considered to be a refugee.

2.4 Polygamous marriages

Polygamous marriages, where a husband has more than one wife (polygyny), or more rarely, a wife has more than one husband (polyandry), raise other policy challenges. Many States have national laws that prohibit such marriages and they therefore refuse to admit such cases for resettlement. Polygamous marriages also raise concerns from an international human rights law perspective about abuse or serious discrimination. Despite these serious concerns and resettlement challenges, where a relationship of dependency exists, particularly when children are concerned and when the marriage has been validly contracted according to the laws of the country of origin or asylum, UNHCR has respected the unity of the family.⁸ In some cases, States have accepted such cases if the family is split between two or more separate resettlement cases; meaning that husbands (or wives) are forced to choose one spouse and divorce the other(s), which gives rise to other complications (e.g. protecting the rights of the child, necessitating best interests determinations and custody arrangements) and can result in family separation because there is no guarantee each case will be granted resettlement. States, however, have become increasingly less willing to accept such cases even after divorce, although the legal basis for refusal is not always clear. Consequently, one/some of the spouses and her children may be left behind in the first country of asylum which not only leads to family separation and violation of CRC Art. 9 rights, but may also put the woman at risk of abuse, violence and exploitation, exclusion from society. Indeed, such cases appear to be commonly subject to the restrictive ‘informal criteria’ sometimes imposed by resettlement States.

Questions

- ✚ *Do resettlement countries have national laws that specifically declare polygamous marriages illegal and refuse to admit such cases for resettlement? How do the laws apply to asylum-seekers?*
- ✚ *Do resettlement countries have national laws that specifically prohibit the resettlement of individuals who previously had a polygamous marriage but no longer do so? How do the laws apply to regular migrants, such as business or skilled worker migration?*
- ✚ *What steps can be taken to ensure linked cases are considered consistently by resettlement States with full consideration for the need to ensure family unity?*

2.5 DNA testing and anti-fraud

Resettlement States are also concerned about fraud related to family composition. While UNHCR does all it can to verify family composition, States sometimes require documentation that is difficult, or even impossible, for refugees to obtain. States increasingly rely on DNA tests, which are usually taken as conclusive, to confirm family relationships. However, such testing raises serious concerns, including the right to privacy, confidentiality and informed, voluntary consent. The results of DNA tests can also inflict emotional harm on individuals, such as a father who discovers that his child is not biologically his or children who discover that they were conceived by a rape that their mother never acknowledged. Pre-and post-test counselling is therefore important.

While fraud in family composition is a serious concern, UNHCR has encouraged States to be flexible in their requirements of documentary proof for purposes of family reunification. It has sought to highlight that DNA testing, where relied upon, should be only one factor among many – such as the dependency of non-biological members of the household – in determining family composition. UNHCR has further advocated that no testing be undertaken without a refugee’s informed, voluntary consent and counselling.

Questions

- ✚ *How can resettlement countries ensure a humanitarian approach is taken when DNA results do not support the claim of the applicant?*
- ✚ *In order to confirm a biological parental relationship to a child, have resettlement States considered restricting DNA tests to establish only the maternal link?*

Successful refugee resettlement is measured by how States, UNHCR and partners protect refugee *families*. Recognising that family reunification and restoring supportive relationships within families are key factors in effective integration, UNHCR urges resettlement States and partners to enhance the resettlement of refugee families through flexible and humanitarian approach to family reunification and defining the “family.”