

9.2 Summary Conclusions: family unity

Expert roundtable organized by the United Nations High Commissioner for Refugees and the Graduate Institute of International Studies, Geneva, Switzerland, 8–9 November 2001



The second day of the Geneva Expert Roundtable addressed the issue of family unity, based on a discussion paper by Kate Jastram and Kathleen Newland, entitled ‘Family Unity and Refugee Protection’. Participants were also provided with written contributions from Judge Katelijne Declerk of the Belgian Permanent Appeals Tribunal for Refugees, Ninette Kelley, a Canadian legal practitioner, Dr Savitri Taylor, La Trobe University, Victoria, Australia, and the Refugee Immigration and Legal Centre, Melbourne, Australia. Participants included twenty-eight experts from eighteen countries, drawn from governments, NGOs, academics, the judiciary, and the legal profession. Professor Vitit Muntarbhorn, from Chulalongkorn University, Thailand, moderated the discussion.

The following summary conclusions do not necessarily represent the individual views of participants or of UNHCR, but reflect broadly the understandings emerging from the discussion.

General considerations

1. A right to family unity is inherent in the universal recognition of the family as the fundamental group unit of society, which is entitled to protection and assistance. This right is entrenched in universal and regional human rights instruments and international humanitarian law, and it applies to all human beings, regardless of their status. It therefore also applies in the refugee context. A small minority of participants, while recognizing the importance of the family, did not refer to family unity as a right but as a principle.
2. The right to family unity is derived from, *inter alia*, Article 16 of the Universal Declaration of Human Rights 1948, Article 8 of the European

Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Article 16 of the European Social Charter 1961, Articles 17 and 23 of the International Covenant on Civil and Political Rights 1966, Article 10 of the International Covenant on Economic, Social and Cultural Rights 1966, Article 17 of the American Convention on Human Rights 1969, Article 74 of Additional Protocol 1 of 1977 to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Times of War 1949, Article 18 of the African Charter on Human and Peoples' Rights 1981, Articles 9, 10, and 22 of the Convention on the Rights of the Child 1989, and Articles XXIII and XXV of the African Charter on the Rights and Welfare of the Child 1990.

3. Although there is not a specific provision in the 1951 Refugee Convention and its 1967 Protocol, the strongly worded Recommendation in the Final Act of the Conference of Plenipotentiaries reaffirms the 'essential right' of family unity for refugees. Moreover, refugee law as a dynamic body of law, is informed by the broad object and purpose of the 1951 Convention and its 1967 Protocol, as well as by developments in related areas of international law, such as international human rights law and jurisprudence and international humanitarian law. In addition, Executive Committee Conclusions Nos. 1, 9, 24, 84, 85, and 88, each reaffirm States' obligations to take measures which respect family unity and family reunion.
4. The obligation to respect the right of refugees to family unity is a basic human right which applies irrespective of whether or not a country is a party to the 1951 Convention.
5. Respect for the right to family unity requires not only that States refrain from action which would result in family separations, but also that they take measures to maintain the unity of the family and reunite family members who have been separated. Refusal to allow family reunification may be considered as an interference with the right to family life or to family unity, especially where the family has no realistic possibilities for enjoying that right elsewhere. Equally, deportation or expulsion could constitute an interference with the right to family unity unless justified in accordance with international standards.
6. The right to family unity is of particular importance in the refugee context, not least in providing the primary means of protection for individual members of the family unit. Maintaining and facilitating family unity helps to ensure the physical care, protection, emotional well-being, and economic support of individual refugees and their communities. The protection that family members can give to one another multiplies the efforts of external actors. In host countries, family unity enhances refugee self-sufficiency, and lowers social and economic costs in the long-term. In addition, giving effect to the right to family unity through family

reunification may help to reduce the number of, and dangers associated with, unauthorised or spontaneous arrivals, as well as to reduce unnecessary adjudication of claims for refugee status. Family unity can promote the sustainability of durable solutions for refugees (that is, voluntary repatriation, local integration, and resettlement).

7. The object and purpose of the 1951 Convention implies that its rights are in principle extended to the family members of refugees. In some jurisdictions, this is referred to as derivative status. Thus, family members of a refugee should be allowed to remain with him or her, in the same country and to enjoy the same rights. In addition, in light of increased awareness of gender-related persecution and child-specific forms of harm, each family member should be entitled to the possibility of a separate interview if he or she so wishes, and principles of confidentiality should be respected.
8. International human rights law has not explicitly defined 'family' although there is an emerging body of international jurisprudence on this issue which serves as a useful guide to interpretation. The question of the existence or non-existence of a family is essentially a question of fact, which must be determined on a case-by-case basis, requiring a flexible approach which takes account of cultural variations, and economic and emotional dependency factors. For the purposes of family reunification, 'family' includes, at the very minimum, members of the nuclear family (spouses and minor children).

Family reunification

9. The circumstances in which refugees leave their countries of origin frequently involve the separation of families. Consequently, family reunification is often the only way to ensure respect for a refugee's right to family unity. A review of State practice demonstrates that family reunification is generally recognized in relation to refugees and their families, and that practical difficulties related to its implementation in no way diminish a State's obligations thereto.
10. Implementing the right to family unity through family reunification for refugees and other persons in need of international protection has special significance because of the fact that they are not able to return to their country of origin.
11. Requests for family reunification should be dealt with in a positive, humane, and expeditious manner, with particular attention being paid to

the best interests of the child. While it is not considered practical to adopt a formal rule about the duration of acceptable waiting periods, the effective implementation of obligations of States requires that all reasonable steps be taken in good faith at the national level. In this respect, States should seek to reunite refugee families as soon as possible, and in any event without unreasonable delay. Expedited procedures should be adopted in cases involving separated and unaccompanied children, and the applicable age of children for family reunification purposes would need to be determined at the date the sponsoring family member obtains status, not the date of the approval of the reunification application.

12. The requirement to provide documentary evidence of relationships for the purposes of family unity and family reunification should be realistic and appropriate to the situation of the refugee and the conditions in the country of refuge as well as the country of origin. A flexible approach should be adopted, as requirements that are too rigid may lead to unintended negative consequences. An example was given where strict documentation requirements had created a market for forged documents in one host country.

Asylum seekers

13. As regards asylum seekers, since a decision has not yet been made as to their legal status, it may not be possible to determine where they should enjoy this right or which State bears responsibility for giving effect to it. It is, therefore, important to expedite decision-making particularly in cases where separation causes particular hardship, where the 'best interests' of the child come into play, or where there is a likelihood of a positive determination being made. Preparation for possible family reunification in the event of recognition should, in any event, begin in the early stages of an asylum claim, for instance, by ensuring that all family members are listed on the interview form.

Mass influx

14. The right to family unity also applies during situations of mass influx, and temporary evacuation. From an operational perspective, it is important to take practical measures to prevent family separations and ensure family reunification as early as possible in these situations. Otherwise, chances of reunification diminish as time goes by.

Voluntary repatriation and reintegration

15. The right to family unity and family reunification also applies, and is particularly important, in the context of voluntary repatriation and reintegration. A unified family unit is better able to re-establish itself in the country of origin and contribute to the rebuilding of the country.