

Refugee Family Reunification

UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC)



From Dadaab to Cork: a Somali mother reunited with her children and sister after six years of separation. Photo: UNHCR/Rory Gavin.

Introduction

The European Commission published on 15 November 2011 a Green Paper (“Green Paper”)¹ to launch public consultations on the right to family reunification of third country nationals living in the European Union. The Green Paper raises a number of questions on Council Directive 2003/86/EC on the right to family reunification (“Family Reunification Directive” or “the Directive”).² UNHCR welcomes this opportunity to respond to the European Commission’s public consultation and to provide observations on a number of challenges and issues concerning family reunification for beneficiaries of international protection in the European Union. UNHCR stresses the important role that family plays in the

¹ European Commission, *Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC)*, 15 November 2011, COM (2011)735 final, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0735:FIN:EN:PDF>.

² Council of the European Union, *Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification*, 3 October 2003, 2003/86/EC, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:en:PDF>.

**UNHCR
mandate on
family
reunification**

specific situation of refugees. Family reunification is a fundamental aspect of bringing normality back to the lives of persons who have fled persecution or serious harm and have lost family during forced displacement and flight.

UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions to refugee problems.³ Paragraph 8 of UNHCR's Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,⁴ whereas Article 35 of the 1951 Refugee Convention⁵ and Article II of the 1967 Protocol relating to the Status of Refugees⁶ oblige States Parties to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR's duty of supervising the application of the provisions of the 1951 Convention and 1967 Protocol.

UNHCR's supervisory responsibility extends to each EU Member State, all of whom are States Parties to these instruments. UNHCR's supervisory responsibility is reflected in European Union law, including pursuant to Article 78 (1) of the Treaty of the Functioning of the European Union,⁷ which stipulates that a common policy on asylum, subsidiary protection and temporary protection must be in accordance with the 1951 Convention. This role is reaffirmed in Declaration 17 to the Treaty of Amsterdam, providing that "consultations shall be established with the United Nations High Commissioner for Refugees ... on matters relating to asylum policy."⁸

While the 1951 Convention is silent on the question on family reunification and family unity, the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons recommends that Member States "take the necessary measures for the protection of the refugee's family, especially with a view to (...) [e]nsuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the

³ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

⁴ *Ibid.*, paragraph 8(a).

⁵ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series No. 2545, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>.

According to Article 35(1) of the 1951 Convention, UNHCR has the "duty of supervising the application of the provisions of this Convention."

⁶ UN General Assembly, *Protocol Relating to the Status of Refugees*, 30 January 1967, United Nations Treaty Series No. 8791, vol. 606, p. 267, available at: <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>.

⁷ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF>.

⁸ European Union, *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities; Declaration on Article 73k of the Treaty establishing the European Community*, 2 September 1997, [OJ C 340, 10.11.1997], available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/DCL/17:EN:HTML>.

necessary conditions for admission to a particular country.”⁹ UNHCR’s Executive Committee (“ExCom”) has adopted a series of conclusions that reiterate the fundamental importance of family unity and reunification and call for facilitated entry on the basis of liberal criteria of family members of persons recognized in need of international protection.¹⁰ In addition, UNHCR has emphasized that family reunification is an important element for the integration of beneficiaries of international protection in their host societies. ExCom Conclusion No. 104 in particular notes the potential role of family members in promoting the smoother and more rapid integration of refugee families given that they can reinforce the social support system of refugees. UNHCR therefore has a direct interest in and competence to advise Member States and EU institutions in relation to policy issues which have a direct effect on the lives of its persons of concern including in relation to family unity and family reunification.

**Family
reunification
the way to
family unity**

It is a generally agreed fact that the family is the fundamental unit of society entitled to protection by society and the State.¹¹ Following separation caused by forced displacement such as from persecution and war, family reunification is often the only way to ensure respect for a refugee’s right to family unity. Separation of family members during forced displacement and flight can have devastating consequences on peoples’ well-being and ability to rebuild their lives. At the moment of flight, persons are forced to leave often without ensuring or knowing if their families are safe. Once in safety, refugees are in many cases unaware of the whereabouts of their family. Others have to make difficult decisions about leaving their family behind to find safety in another country.

The reality for many refugees coming to Europe is therefore that they have lost track of their families or have had to leave them behind. The family however plays an essential role to help persons rebuild their lives and can provide critical support to adapt to new and challenging circumstances. Restoring families can also ease the sense of loss that accompanies many refugees who, in addition to family, have lost their country, network and life as they knew it. Family support in this sense goes beyond any traditional and cultural understanding of a family but will include those who rely and depend on each other. It is with this in mind that UNHCR advocates for family reunification mechanisms which are swift and efficient in order

⁹ UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1, available at: <http://www.unhcr.org/refworld/docid/40a8a7394.html>.

¹⁰ See in particular, ExCom Conclusions on Family Reunion, No. 9 (XXVIII), 1997 and No. 24 (XXXII), 1981; ExCom Conclusion on Refugee Children and Adolescents, No. 84 (XLVIII), 1997; and ExCom Conclusion on the Protection of the Refugee’s Family, No. 88 (L), 1999. All ExCom Conclusions are compiled in UNHCR, *Thematic Compilation of Executive Committee Conclusions*, June 2011, Sixth edition, available at: <http://www.unhcr.org/refworld/docid/4e8006a62.html>.

¹¹ See, UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 16(3) available at: <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>; and UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 23(1), available at: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>.

to bring families together as early as possible.

Many practical obstacles require more flexibility

UNHCR welcomed the adoption of more favourable rules for refugees in the Family Reunification Directive,¹² in particular the possibility for refugees to reunite with their family as soon as they have been granted international protection status, and the exemption from meeting the requirements of income, accommodation and health insurance.¹³ Despite these more favourable provisions, UNHCR observes, throughout Europe, many practical obstacles in the family reunification process leading to prolonged separation, significant procedural costs and no realistic possibility of success.

UNHCR welcomes the discussion launched in the Commission's Green Paper on Family Reunification and hopes that it will generate a better understanding of the obstacles currently faced by many refugees and how family separation impacts negatively also on refugee integration. The Directive provides sufficient possibilities for Member States to ensure the right to family life and family reunification for refugees. UNHCR however calls for a change in approach on the part of a number of Member States in order to apply the more positive clauses of the Directive.

UNHCR notes that there are no reliable figures for family reunification to the EU for beneficiaries of international protection, but the numbers are low. The European Commission has included in the Green Paper valuable Eurostat-based statistics on residence permits issued to third country nationals joining family members.¹⁴ This data shows that the share of legal migration to Europe for the purpose of family reunification overall is only 20.6% in 2010. In order to understand family reunification for those with protection status, it would however be necessary to break down this data according to the type of residence permit of the sponsor. UNHCR estimates that there are around 1.5 million beneficiaries of international protection in Europe.¹⁵ The share of family members being reunited with beneficiaries of international protection is therefore a very small part of overall migration to Europe.

UNHCR has identified nine areas where current practice leads to real obstacles, at least in some Member States. They concern the restrictions in scope and time; limited family definition, difficulty in tracing relatives; insufficient information about the procedure; difficulties accessing embassies to lodge an application; difficulties documenting family links and dependency; problems securing travel documents

¹² Family Reunification Directive, Chapter V, see footnote 2.

¹³ See in particular Family Reunification Directive, Article 12, see footnote 2.

¹⁴ Green Paper, Annex, see footnote 1.

¹⁵ According to UNHCR statistics, there were an estimated 1,5 refugees in the EU in 2010. See UNHCR, *UNHCR Global Trends 2010*, June 2011, available at: <http://www.unhcr.org/refworld/docid/4e01b00e2.html>. According to Eurostat, there were 32.5 million migrants living in the EU in 2010 including 20.2 million third country nationals, see Eurostat, *6.5% of the EU population are foreigners and 9.4% are born abroad*, Statistics in Focus No. 34/2011, available at: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-11-034/EN/KS-SF-11-034-EN.PDF. The share of refugees is therefore a small proportion of third-country nationals living in the EU and family reunification with refugees would therefore also be relatively small.

and visa from remote or insecure areas; financing travel and meeting integration requirements.

In the observations below, UNHCR responds to the questions raised by the Green Paper and provides recommendations on how to address gaps in national practice in these nine areas of concern. A better and more protection-oriented implementation of the Directive could be achieved through the provision of guidance on specific issues, better Member State cooperation, and the provision of European and national funding to facilitate family reunification for beneficiaries of international protection.

1. Application of more favourable clauses for beneficiaries of international protection

More favourable clauses for beneficiaries of subsidiary protection

Beneficiaries of subsidiary protection are not included in the scope of the Directive pursuant to Article 3(2)(b). Some Member States accordingly provide less favourable rights for family reunification to beneficiaries of subsidiary protection fleeing serious harm than to refugees who are fleeing persecution. UNHCR observes that while beneficiaries of subsidiary protection are not explicitly excluded in law from being reunited with their families, in a number of Member States they do not benefit from the more favourable conditions of the Directive which exempt refugees from meeting the requirements set in Article 7 to provide evidence of accommodation, sickness insurance and stable and regular resources. Beneficiaries of subsidiary protection will however face the same difficulties as refugees in fulfilling these conditions as they may have spent lengthy periods of time in asylum reception waiting for the outcome of the asylum procedure with limited access to the labour market.

UNHCR considers that the humanitarian needs of persons benefiting from subsidiary protection are not different from those of refugees and differences in entitlements are therefore not justified in terms of the individual's flight experience and protection needs. There is also no reason to distinguish between the two as regards their right to family life and access to family reunification. Furthermore, recent UNHCR study has shown wide divergence in how Member States grant either refugee status or subsidiary protection to persons with the same profiles.¹⁶

UNHCR welcomes the fact that despite the exclusion of beneficiaries of subsidiary protection from the scope of the Directive, several Member States nevertheless apply the Directive under the same conditions as refugees to beneficiaries of subsidiary protection.¹⁷ UNHCR observes that the Directive and

¹⁶ UNHCR, *Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence*, 27 July 2011, available at: <http://www.unhcr.org/refworld/docid/4e2ee022.html>.

¹⁷ European Commission, *Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification*, 8

the Member States' implementation allow enough flexibility to provide family reunification to all beneficiaries of international protection under the same conditions. UNHCR welcomes this flexible approach and invites all Member States to take into account the particularities of the situation of beneficiaries of subsidiary protection by applying the same favourable rules for family reunification to beneficiaries of subsidiary protection as to refugees.

Three months – a difficult time limit

The European Commission identifies Article 12(1), last indent, of the Directive as another provision allowing Member States to limit family reunification for refugees. Article 12(1) provides that Member States may require refugees to meet the same conditions as other third country nationals if the application for family reunification is not submitted within three months after the granting of their status.¹⁸ UNHCR agrees with the European Commission that this limitation does not take sufficiently into account the particularities of the situation of beneficiaries of international protection or the special circumstances that have led to the separation of refugee families, and may prove to be a serious obstacle to family reunification for refugees. Refugees may not be aware if their family members are still alive, or of their whereabouts if they were separated during flight. Tracing of family members is a lengthy process which exceeds three months in many cases. Refugees also face more difficulties in providing the documentation required for family reunification as documents may have been lost or destroyed during flight, and family members are unable to approach the authorities of their country of origin for documents due to risks of persecution.

UNHCR has observed that in practice few Member States use the possibility offered by Article 12(1). UNHCR welcomes this approach by the majority of Member States in recognition of the specific circumstances of refugees, and calls on all Member States not to apply such time limits to the more favourable conditions granted to refugees. As a minimum, time limits should only apply for the introduction of an application for family reunification and should not require that the applicant and family member provide all the documents needed within the three month period.

Recommendations:

- ✓ UNHCR recommends that all Member States provide beneficiaries of subsidiary protection access to family reunification under the same favourable rules as those applied to refugees.
- ✓ UNHCR encourages Member States not to apply time limits to the use of the more favourable conditions granted to refugees (Article 12(1) last indent), in recognition of their specific situation.

October 2008, COM(2008)610 final, p.4-5, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0610:FIN:EN:PDF>.

¹⁸ Green Paper, Section 4.2, p.4-5, see footnote 1.

2. Definition of family members

UNHCR definition of family

While there is no single, universally agreed definition of what constitutes a family, UNHCR promotes cultural sensitivity and underlines that flight may lead to separation and loss of extended family members in close relationships of dependency. Accordingly, UNHCR encourages States to adopt a more inclusive definition, beyond what is known as the traditional “nuclear family”, including for the purpose of family reunification. UNHCR’s ExCom Conclusion No. 24 notes in this respect that: “It is hoped that countries of asylum will apply liberal criteria in identifying those family members who can be admitted with a view to promoting a comprehensive reunification of the family.”¹⁹

UNHCR considers that a nuclear family is generally accepted as consisting of spouses and, their minor or dependent, unmarried children and minor siblings.²⁰ This would include adopted children, whether adopted legally or on a customary basis. Moreover, not only legally-recognized spouses (including same-sex spouses), but also individuals who are engaged to be married, who have entered a customary marriage (also known as “common-law” marriages), or who have established long-term partnerships (including same-sex partners), are to be considered as spouses.²¹

Besides this notion of the nuclear family, UNHCR stresses that the element of dependency²² among family members, physical and financial, as well as psychological and emotional, should find its appropriate weight in the final

¹⁹ ExCom No. 24, para. 5, see footnote 10.

²⁰ For UNHCR position of the definition of family members see, *inter alia*: UNHCR, ExCom Conclusions Nos. 15 (1979), 24 (1981), 85 (1998) and 88 (1999), see footnote 10; UNHCR, *Note on Family Reunification*, 18 July 1983, available at: <http://www.unhcr.org/refworld/docid/3bd3f0fa4.html>; UNHCR, *Protecting the Family: Challenges in Implementing Policy in the Resettlement Context*, June 2001, available at: <http://www.unhcr.org/refworld/docid/4ae9aca12.html>; UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.unhcr.org/refworld/docid/4f33c8d92.html>; UNHCR, *UNHCR Resettlement Handbook*, July 2011, available at: <http://www.unhcr.org/refworld/docid/4ecb973c2.html>; Cambridge University Press, *Summary Conclusions: Family Unity*, June 2003, available at: <http://www.unhcr.org/refworld/docid/470a33bed.html>; UNHCR, *Family Protection Issues*, 4 June 1999, EC/49/SC/CRP.14, available at: <http://www.unhcr.org/refworld/docid/4ae9aca00.html>.

²¹ *Ibid.*, UNHCR, *Note on Reunification of Refugee Families*, Article 5(a); UNHCR, *Resettlement Handbook*, p. 271.

²² Dependency infers that a relationship or a bond exists between family members, whether this is social, emotional or economic. The relationship or bond between the persons in question will normally be one which is strong, continuous and of reasonable duration. Dependency does not require complete dependence, such as that of a parent and minor child, but can be mutual or partial dependence, as in the case of spouses or elderly parents.

determination:

“Dependency may usually be assumed to exist when a person is under the age of 18 years, but continues if the individual (over the age of 18) in question remains within the family unit and retains economic, social and emotional bonds. Dependency should be recognized if a person is disabled and incapable of self-support, either permanently or for a period expected to be of long duration. Other members of the household may also be dependents, such as grandparents, single/lone brothers, sisters, aunts, uncles, cousins, nieces, nephews, grandchildren; as well as individuals who are not biologically related but are cared for within the family unit.”²³

Dependent family members

UNHCR therefore welcomes Article 4(2) of the Family Reunification Directive which allows for reunification with the parents of an adult applicant or his/her spouse's, and adult unmarried children where they are dependent, as well as specifically Article 10(2) which takes into account the specificity of refugee families by authorizing their family reunification with other dependent family members. UNHCR is however concerned that a number of Member States do not offer refugees the possibility to reunite with other dependent family members in practice and would call on all Member States to apply the possibility provided by Article 4(2) and Article 10(2). UNHCR is also concerned that Member States providing the possibility for refugees to reunite with other dependent family members apply a very strict interpretation and require a very high level of dependency. Divergences exist between Member States in assessing dependency and UNHCR would recommend the adoption of guidelines on the concept of dependency consistent with UNHCR's recommendations.

Unmarried partners, customary marriage

UNHCR is also concerned that the definition of a family members is interpreted too narrowly by Member States and, together with a strict requirement for documenting family links,²⁴ may exclude reunification for refugee families where customary marriages or long-term relationships are not recognized. In this respect, UNHCR regrets that a large number of Member States do not allow family reunification with unmarried partners, apply a very strict definition of unmarried partners requiring that the relationship was formalized through registration, or do not apply the more favourable clauses foreseen for refugees which exempt them from providing evidence of accommodation, sickness insurance and stable and regular resources for family reunification with unmarried partners. This is particularly damaging for beneficiaries of international protection who often are in customary marriages. Moreover, it can prove impossible for beneficiaries of international protection to have their long-term relationships formally recognized in countries where marriage certificates themselves are not regularly provided. These limitations may be insurmountable for refugees and could preclude the possibility to be reunited with the person

²³ UNHCR, *Resettlement Handbook*, p.178 and p. 273. Also see: UNHCR, *Note on Reunification of Refugee Families*, para. 5(b) and (c), see footnote 20.

²⁴ See section 6.

they have always considered as their spouse and with whom they may have children.

The strict interpretation of the family definition by some Member States is also a cause for concern where it does not take into account the particular situation of refugee families including cases where non-biological children, nieces and nephews have become part of the family as a consequence of persecution or forced displacement. This is particularly damaging in some cases where children are left behind in the country of origin or alone as refugees under the protection of UNHCR but without family support.

Family relationships formed prior to entry to the EU

UNHCR shares the European Commission's assessment that Article 9(2) of the Directive which allows Member States to confine application to family relationships formed prior to the entry of the refugee in the European Union does not sufficiently take into account the specific situation of refugees.²⁵ In reality, many beneficiaries of protection have spent many years in exile in their region of origin or in a Member State prior to being recognized as a refugee and may have formed a family.

Reunification with siblings

Another main area for concern is the absence of siblings in the definition of family members for the purpose of family reunification. UNHCR is worried that as a result very few Member States provide for reunification between siblings. This prevents orphaned unaccompanied minor children from being reunited with their siblings where it is in their best interest. It may also prevent young adults who were previously the head of the household in their country of origin to reunite with brothers and/or sisters who were dependent on them. Some Member States provide for the possibility of reunification with siblings where they are dependent or for medical reasons. UNHCR welcomes this flexible approach and would recommend that Member States use the possibility to reunite refugees with other dependent relatives including in the case of siblings.

Un-accompanied children

Article 10(3) of the Family Reunification Directive specifically provides that refugee unaccompanied children should be reunited with their parents, and where no parent can be traced, with a guardian or any other Member of the family. In addition, Article 5(5) of the Directive obliges Member States to take into account the best interest of the child. UNHCR advises that "an unaccompanied minor child should be reunited as promptly as possible with his or her parents or guardians as well as with siblings."²⁶ UNHCR welcomes the fact that all Member States provide for the possibility for unaccompanied children to reunited with their parents as provided by article 10(3)(a). UNHCR would however caution against practices which make this possibility extremely difficult in practice for children over 16. UNHCR also regrets that many Member States do not provide for the possibility for unaccompanied children to reunite with other family members as authorized by article 10(3)(b) of the Directive, or impose strict limitations including that previous custody was proved or that legal guardianship

²⁵ Green Paper, Section 4.2, see footnote 1.

²⁶ UNHCR, Note on Family Reunification, July 1983, para. 5(a)(iii).

was recognized. Where a child has lost his/her parents during conflict or due to persecution by the government, it may be impossible to formalize legally the fact that s/he has since been taken care of by an uncle or a grandparent. UNHCR would recommend to all Member States, as part of the examination of the best interest of minor children,²⁷ to consider and provide the possibility for refugee children to be reunited with other family members or guardians where their parents in direct ascending line cannot be traced.

Recommendations:

- ✓ UNHCR encourages Member States to apply liberal criteria in identifying family members in order to promote the comprehensive reunification of families including with extended family members when dependency is shown between such family members.
- ✓ UNHCR recommends the adoption of guidelines defining clearly what is understood as dependency in relation to a sponsor for the purpose of family reunification.
- ✓ Where the family is formed after the entry into a Member State, beneficiaries of international protection should be afforded the same treatment as other legally residing third-country nationals.

3. Tracing

Family tracing is an essential component of family reunification for beneficiaries of international protection. Tracing is of particular importance in the case of unaccompanied minors for whom every effort should be made to trace parents and other relatives as soon as possible where it is in their best interest.²⁸

The conditions and length of separation of refugee families often lead to lengthy tracing procedures. This may be problematic where beneficiaries of international protection have to apply for family reunification within a certain timeframe. UNHCR recommends that where such time limits are applied, these only apply to the initial application and do not include the time needed to trace family members.²⁹

Family tracing services are available in most European Member States either through the authorities, national Red Cross or NGOs. Tracing services in Europe could be improved through better coordination between authorities and other

²⁷ Family Reunification Directive, Article 5(5).

²⁸ See in particular Article 22(2) of the Convention on the Rights of the Child which provides that: "States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family." UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations Treaty Series, vol. 1577, p. 3, available at:

<http://www2.ohchr.org/english/law/crc.htm>.

²⁹ See Section 1 above.

actors involved, clear procedures for family tracing, the provision of funding for tracing services, and better information on the availability of family tracing to beneficiaries of international protection.

4. Information on family reunification

While information on family reunification is provided in all Member States by authorities, the Red Cross, NGOs and others, UNHCR is concerned that in some cases beneficiaries do not receive adequate information in a language that they understand. Other problems include the absence of information in writing, of necessary detail or excessively complex presentation of information, or the fact that information is only given upon request and may not be specific to the situation of refugees. This is of particular concern as beneficiaries of international protection may not receive information about the more favourable conditions afforded to refugees and, where applicable, the necessity to apply for family reunification within a certain deadline in order to benefit from these more favourable conditions.

Recommendation:

- ✓ UNHCR encourages Member States to ensure that beneficiaries of international protection receive appropriate information on family reunification in a timely manner including on the favourable conditions and in a manner they understand.

5. Access to family reunification

Access to embassies abroad

In the majority of Member States, applications for family reunification have to be submitted by the family member at an embassy in their country of origin or residence. Family members of refugees however face specific problems in accessing embassies abroad and this may represent a practical obstacle to family reunification. Where the family of a refugee is still in his/her country of origin, approaching a foreign embassy can in some cases pose a risk to their safety. However, more commonly, family members of refugees are themselves refugees outside their country of origin and travelling to an embassy may be difficult or impossible. The remoteness of refugee camps or the lack of embassies in their country of origin or asylum are typical obstacles refugees face. Due to this, family members may have to travel long distances at great cost, sometimes to another country, to reach an embassy and with risks to their personal security. Some Member States require that the application is made in the country where the family member has legal residence; however refugees often have no official legal recognition of residence in their first country of asylum. In addition, in the majority of Member States, family reunification forms are not adapted to the specific needs of beneficiaries of international protection. For example, the form may not provide for the possibility to choose “refugee

status” among the different possible statuses of the sponsor.

In order to address these practical obstacles for refugee families in accessing family reunification procedures, UNHCR recommends the possibility that the application for family reunification can be also submitted by the sponsor in his/her European country of asylum. Where applicable, Member States should waive the requirement for the family member to confirm the application in an embassy and/or the requirement that family members should have legal residence in their country of residence to apply for family reunification.

Recommendations:

- ✓ UNHCR invites Member States to facilitate refugees’ access to family reunification by providing for the possibility for the sponsor to apply in his/her country of asylum.
- ✓ UNHCR recommends that Member States make available specific family reunification application forms adapted to the specific needs of beneficiaries of international protection.

6. Documenting family links

Rejection of family reunification based on lack of documentary evidence

UNHCR’s Executive Committee Conclusion No. 24 calls for facilitated entry on the basis of liberal criteria of family members of persons recognized in need of international protection, and in particular underlines that “the absence of documentary proof of the formal validity of a marriage or of the filiation of children should not per se be considered as an impediment.”³⁰ UNHCR welcomes that this recommendation is reflected in Article 11(2) of the Family Reunification Directive which sets out that: “Where a refugee cannot provide official documentary evidence of the family relationship, the Member States shall take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. **A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.**”³¹ [Emphasis added]

UNHCR notes however that in a number of Member States only official documents are accepted to prove family links either in law or in practice. UNHCR is thus concerned that the requirements to prove family links are exceptionally high and that family members are required to return to situations of danger to retrieve official documents (e.g. marriage, birth certificates). Little weight is afforded to other types of evidence. As a result, DNA testing is increasingly used when there are no official documents, or when the authorities have doubts about the credibility of the family link.

DNA testing

UNHCR considers that while DNA testing may be one of the available means to verify the family relationships, it should only be resorted to where serious

³⁰ ExCom Conclusion No. 24 (XXXII), see footnote 10.

³¹ Family Reunification Directive, Article 11(2), see footnote 2.

doubts remain after all other types of proof have been examined, or where there are strong indications of fraudulent intent and DNA testing is considered as the only reliable recourse to prove or disprove fraud.³² However, it should be kept in mind that DNA testing cannot prove marriage and extended or dependent family members and is not always affordable or available in locations accessible to refugees. UNHCR considers benefits in developing clear procedural guidelines and training as well as a common understanding of what types of evidence can be considered when establishing family links.

Length of family reunification procedures

UNHCR is concerned that on average, family reunification procedures for beneficiaries of international protection take more than six months in the majority of Member States. These long delays add to a situation of further prolonged separation, which may have started many months or years earlier. From the time of flight, after awaiting recognition of status in the asylum procedure sometimes for years, refugees can find that they are simply at the beginning of another long process. This delay can affect the benefits of family reunification as an important element in rebuilding a new life leading towards successful integration. Beneficiaries of international protection have expressed that they find it challenging to learn a new language or adapt to life in their country of asylum when they are constantly worried about the well-being and safety of their family left behind.³³ UNHCR therefore encourages Member States to simplify family reunification procedures in order to reduce the timeframes for family reunification for refugees and to ensure reunification within a reasonable timeframe.

Recommendations:

- ✓ UNHCR calls on the European Commission and the Member States to ensure that in law and in practice, family reunification requests for beneficiaries of international protection are not rejected based solely on the lack of documentary evidence (Article 11(2)).
- ✓ Guidelines on the evidence required to establish family links should be developed and training for decision makers should be provided.
- ✓ Member States and the European Commission should consider and implement UNHCR's guidance on the use of DNA testing for the purpose of documenting family links.

³² UNHCR, *UNHCR Note on DNA Testing to Establish Family Relationships in the Refugee Context*, June 2008, available at: <http://www.unhcr.org/refworld/docid/48620c2d2.html>.

³³ See testimonies of refugee women on family reunification in UNHCR, *Protectors, Providers, Survivors: A Dialogue with Refugee Women In Finland*, October 2011, p. 23, available at: <http://www.unhcr.org/refworld/docid/4ec4aa3f2.html>.

7. Travel documents and visas

Obtaining travel documents and visas may be problematic both for family members who have stayed behind in the country of origin as well as for family members who may themselves be refugees. Once an application for family reunification is accepted, obtaining travel documents for the actual travel may therefore constitute another concrete obstacle to family reunification for refugees.

Documents for families in their countries of origin

Family members still residing in the country of origin may face difficulties in obtaining travel documents, in particular in cases where the State authorities are the agents of persecution. UNHCR is aware of cases where this has led to the imprisonment of the family member in the country of origin. This is precarious as alternatives are limited to ICRC emergency travel documents, when available, or national one-way *laissez-passer* when issued by the Member State.

Documents for family members who are refugees

Family members who may themselves be refugees may never have had identity or travel documents, or their documents may have been destroyed or lost during flight. Article 28 of 1951 Convention³⁴ confers an obligation on States to issue and to recognize Convention Travel Documents. UNHCR therefore welcomes that all Member States recognize the difficulties facing refugees in obtaining national passports by accepting *de jure* other travel documents either CTDs or emergency ICRC travel documents. UNHCR underlines that in certain emergency cases, ICRC travel documents may be the only available option and would invite all Member States to consider recognizing these. UNHCR is concerned that in practice, some Member States only give serious consideration to national passports or have not established alternative regimes for the substitution of non-accepted travel documents. This is for instance an obstacle for Somali families whose national travel documents are not internationally recognized.

Issuing one-way *laissez-passer*

UNHCR welcomes that many countries can issue a one-way *laissez-passer* in order to solve the difficulties faced by family members residing in their countries of origin and family members who may be refugees. UNHCR encourages Member States to provide for or make more use of this possibility for the purpose of family reunification.

Visas

Similarly to the application for family reunification, the normal procedure foresees that the family member should apply for a visa for the purpose of family reunification in an embassy in his/her country of residence. As described above, refugees can face great difficulties in accessing embassies abroad. In practice the difficulty in obtaining visas is one of the main obstacles to family

³⁴ 1951 Refugee Convention, Article 28, see footnote 5.

reunification for refugees, or at the least, this leads to significant delays in the family reunification process.

UNHCR regrets that few Member States provide the possibility for the visa to be issued in the country of asylum upon presentation of a valid document, including a *laissez-passer*, and calls on Member States to envisage this possibility in the case of family reunification for beneficiaries of international protection. UNHCR would also encourage Member States to make more use of the possibilities of consular representation offered by Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)³⁵ in order for refugees to have the opportunity to present their visa application for the purpose of family reunification in the embassy of another Member State in cases where there is no embassy of the country of asylum in the country of residence.

Recommendations:

- ✓ UNHCR urges all Member States as a minimum to put in place in law and in practice alternative regimes when national travel documents are not accepted or not available, including the use of CTDs or emergency ICRC travel documents.
- ✓ UNHCR encourages Member States to issue one-way *laissez-passer* to family members who do not have the possibility to obtain national travel documents.
- ✓ UNHCR invites Member States to provide the possibility for visas for family members of beneficiaries of international protection to be issued in the country of asylum upon presentation of a valid travel document.
- ✓ UNHCR encourages Member States to use the possibility for consular representation offered by EU legislation for the issuance of visas for the purpose of family reunification where there is no embassy of the country of asylum in the family member's country of residence.

8. Financial assistance

High costs of family reunification

Costs of family reunification include application fees, the cost of travel documents and visas (including in certain cases the cost of traveling and accommodation in another country to obtain the documents and visa), exit visa fees in country of residence, the cost of travel to Europe and, where applicable, the cost of DNA tests. In total these can amount to very high costs, on average, in excess of 1,000 EUR per family member.³⁶ As underlined by the European

³⁵ European Union, *Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)*, 15 September 2009, No 810/2009, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:243:0001:0058:EN:PDF>.

³⁶ See European Commission, *Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification*, p. 10, see footnote 17.

Commission, excessive fees can hamper the right to family reunification.³⁷ Beneficiaries of international protection may face particular difficulties in paying these high costs as they may not have had access to the labour market for lengthy periods while waiting for a decision on their status in the asylum procedure and often face difficulties in accessing the mainstream banking systems and private loan schemes. In addition, their family members may themselves be refugees with restrictions on their rights to work. Only a few specialized financial assistance schemes are available to assist beneficiaries of international protection with the cost of family reunification in the European Union. In certain countries NGOs provide assistance but this is often limited to cases of exceptional hardship.

Refugees in need of financial assistance for family reunification

In the absence of financial assistance schemes, UNHCR is concerned that high family reunification costs may put beneficiaries of international in a precarious situation and at increased risk of falling victim to exploitation, high interest loan schemes or becoming unduly dependent on others. UNHCR is also concerned that high costs may in worst case scenarios lead families to choose with which family member to reunite first, leaving other family members behind until they can gather sufficient resources. It may also significantly delay or prevent family reunification altogether. UNHCR would recommend that Member States reduce or waive administrative costs, including visa costs, for beneficiaries of international protection. In addition, Member States could consider making available financial assistance schemes, such as interest free loans, for beneficiaries of international protection to cover the costs of family reunification.

Recommendations:

- ✓ UNHCR calls on Member States to consider reducing or waiving administrative and visa fees for beneficiaries of international protection where such costs may otherwise prevent family reunification.
- ✓ UNHCR recommends that maximum costs of DNA tests for family reunification are regulated and that Member States consider covering such costs where the family relationship is subsequently confirmed.
- ✓ The European Commission and Member States could support financial support schemes for the family reunification of beneficiaries of international protection who do not have sufficient resources to cover the costs. Such schemes could be financed in the future Migration and Asylum Fund under the 2014-2020 Multi-annual Financial Framework

³⁷ Green Paper, p. 8, see footnote 1.

9. Integration

Family reunification facilitates integration

UNHCR sees family reunification as particularly important for refugee integration. Refugees have expressed that they may find it difficult to concentrate on establishing a new life in the host society, or learning a new language, if they are concerned about the well-being of a spouse, children or other family. In addition, the family can provide essential support which will assist beneficiaries of international protection in adapting to their new environment.

Equal and independent status for family members

Smooth and rapid integration of families joining beneficiaries of international protection is another important aspect. UNHCR's ExCom Conclusion No. 24 notes in this respect that: "In order to promote the rapid integration of refugee families in the country of settlement, joining close family members should in principle be granted the same legal status and facilities as the head of the family who has been formally recognized as a refugee."³⁸ UNHCR is therefore concerned that in many EU Member States family members do not have access to the same rights as their sponsors. In addition, the dependency of the rights of the family member on those of his/her sponsor may be a cause for concern where despite a desire to reunite, family unity is no longer viable and issues of domestic violence may occur at some point following the family members' arrival in Europe. It is recommended that the rights of family members should not depend on those of the sponsor.

UNHCR welcomes the fact that, in recognition of their specific situation, family members of refugees are not subject to integration measures. Considering the difference in practices in granting refugee protection and subsidiary protection and the similarity in situation, UNHCR recommends that this is also applied to family members of beneficiaries of subsidiary protection. To give favourable conditions for integration, UNHCR would also recommend that, where available, family members of refugees have access to language and integration courses which are made available to other third country nationals.

³⁸ ExCom Conclusion No. 24 (XXXII), para. 8, see footnote 10.

Recommendations:

- ✓ Efforts should be made to process family reunification applications as quickly as possible.
- ✓ UNHCR recommends that Member States grant the same status, rights and integration entitlements to family members as those granted to beneficiaries of international protection.
- ✓ In order to avoid dependency between family members, in particular for victims of domestic violence, the residence of the family member should be independent of those of the sponsor.

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