

## **Response to Home Office Border Agency consultation ‘The Path to Citizenship: Next Steps in Reforming the Immigration System’**

### **1. Introduction**

The United Nations High Commissioner for Refugees (UNHCR) is a non-political, humanitarian organisation mandated by the United Nations to lead and co-ordinate international action for the worldwide protection of refugees and resolution of refugee problems. Alongside refugees, other persons of concern to UNHCR include asylum seekers, stateless persons and in certain circumstances, internally displaced persons<sup>1</sup>. International protection of refugees is the core mandate of UNHCR, the basis for which is set out in UNHCR’s Statute<sup>2</sup> and the 1951 Convention relating to the Status of Refugees (the ‘1951 Convention’). Under Article 35 of the 1951 Convention, UNHCR has the foundation of supervising the application of the provisions of the 1951 Convention, and it is in this role that UNHCR would like to offer the following comments in relation to the current consultation on “The Path to Citizenship: Next Steps in Reforming the Immigration System.”

### **2. General Comments**

In UNHCR’s view secure legal residence is of utmost importance to the successful integration of refugees and other persons with international protection. Secure residential status has a psychological impact which is conducive to integration. It enables beneficiaries of international protection to focus unequivocally on a future and to work towards integration in their host communities on an equal basis with other legally residing third-country nationals. This premise is emphasized in Article 34 of the 1951 Convention, which states that “The Contracting States shall as far as possible facilitate the assimilation and naturalisation of refugees. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and cost of such proceedings.”<sup>3</sup>

Given that refugees may be considered vulnerable persons lacking an effective nationality, consideration should be given to facilitating naturalisation, especially as regards certain conditions for naturalisation which may prove too difficult or indeed impossible for individual refugees to meet. UNHCR considers, as a matter of best practice the required period of residency in order to be eligible for naturalisation should

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<sup>1</sup> Returnees are also persons of concern to UNHCR in some circumstances

<sup>2</sup> See the Statute of the Office of the UNHCR annexed to Resolution 428 (v) adopted by the General Assembly on 14 December 1950.

<sup>3</sup> <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>

not exceed 5 years for refugees. This is in order to restore an effective nationality to refugees and promote their full integration into society<sup>4</sup>.

The proposals for the reform of the immigration system advocate for a simple process that will provide an incentive for migrants to complete the journey to citizenship. In our view the new system complicates the process by requiring that migrants and refugees pass through an additional stage “probationary citizenship” before becoming eligible for citizenship. While the new processes are intended to encourage people to apply for citizenship, there is a risk that the complexity of the process and the requirements involved (including processing fees) will in fact deter or prevent refugees from becoming citizens. Moreover, Information on the route to citizenship including eligibility requirements should be made widely available to refugees through refugee community organisations as well as the UK Borders Agency in a format that is clear and comprehensible to refugee groups.

### **3. *Five year active review***

With regard to the progression of refugees from temporary residence to probationary citizenship the proposal states that they will have to show that they are still in need of protection. The grant of temporary leave to remain for five years is not in itself inconsistent with the 1951 Convention, provided the review of refugee status is conducted in accordance with the cessation clauses contained in the 1951 Convention taking into account UNHCR’s recommendations and guidance on this issue<sup>5</sup>.

As part of UNHCR’s comments on the UK Government’s five year strategy for asylum and immigration: ‘Controlling our borders: Making migration work for Britain’, UNHCR emphasised that the cessation clauses should be applied strictly<sup>6</sup>. Once an individual is determined to be a refugee, their status is maintained unless they fall within the terms of the cessation clauses or their status is cancelled or revoked. Under Article 1C of the 1951 Convention, refugee status may cease either through the actions of the refugee (contained in sub-paragraphs 1 to 4), such as by re-establishment in his or her country of origin, or through fundamental changes in the objective circumstances in the country of origin upon which refugee status was based (sub-paragraphs 5 and 6). The latter are commonly referred to as the “ceased circumstances” or “general cessation” clauses. These Guidelines are concerned only with the latter provisions.

The cessation clauses contained within the 1951 Convention are based on the premise that international protection may no longer be justified or required because of the

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<sup>4</sup> Legal and Protection Policy Research Series ‘Rights of Refugees in the Context of Integration: Legal Standards and Recommendations,’ Division of International Protection Services, UNHCR, June 2006

<sup>5</sup> GUIDELINES ON INTERNATIONAL PROTECTION: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses) 10 February 2004

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=3e50de6b4>

<sup>6</sup> UNHCR’s comments on the Government’s five year strategy for asylum and immigration [http://www.unhcr.org.uk/info/briefings/responding\\_to\\_policy/documents/050600\\_UKgovt5yearstrategy\\_asylumandimmigration.pdf](http://www.unhcr.org.uk/info/briefings/responding_to_policy/documents/050600_UKgovt5yearstrategy_asylumandimmigration.pdf)

reasons for a person becoming a refugee have ceased to exist as a result of changes in the country of origin or habitual residence. A strict approach is taken to their application, motivated by the need to provide refugees with the assurance that their status will not be subject to constant review in the light of temporary changes – not of a fundamental character – in the situation prevailing in their country of origin.

UNHCR also recommends that a separate body from that of caseworkers is responsible for decisions regarding whether or not a fundamental change has occurred in a country of origin. UNHCR emphasizes that in accordance with our guidelines on cessation, the burden of proof is on the State to demonstrate that there has been a fundamental, stable and durable change in the country of origin so that the application of Articles 1C(5) or (6) of the 1951 Convention is appropriate.

With regard to cases concerning long term residents, UNHCR's Executive Committee Conclusion No. 69 recommends that States consider appropriate arrangements" for persons "who cannot be expected to leave the country of asylum, due to a long stay in that country resulting in strong family, social and economic links". In such situations, countries of asylum are encouraged to provide, and often do provide, the individuals concerned with an alternative residence status, which retains previously acquired rights, though in some instances with refugee status being withdrawn. Adopting this approach for long-settled refugees is not required by the 1951 Convention per se, but it is consistent with the instrument's broad humanitarian purpose and with respect for previously acquired rights, as set out in the aforementioned Executive Committee Conclusion No. 69 and international human rights law standards<sup>7</sup>.

#### **4. Residency Requirements Should not Exceed 5 years for refugees**

According to the Green Paper, the minimum length of time that it will take for a refugee or an individual with Humanitarian Protection (HP) to obtain British citizenship is 6 years.

UNHCR considers, as a matter of best practice the required period of residency in order to be eligible for naturalisation should not exceed 5 years for refugees and those with HP. This is in order to restore an effective nationality to refugees (and those with HP) and promote their full integration into society<sup>8</sup>.

Moreover, the period of time that a refugee (or individual with HP) spends in the country of asylum prior to receiving their asylum decision should be taken into account in the eligibility criteria for permanent residence and/or naturalisation, such that recognized refugees (and those with HP) are either (i) eligible for naturalisation within a maximum of 5 years of their total period of residence (legal stay) in the country, or (ii) after a

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<sup>7</sup> GUIDELINES ON INTERNATIONAL PROTECTION: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses) 10 February 2004

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=3e50de6b4>

<sup>8</sup> Legal and Protection Policy Research Series 'Rights of Refugees in the Context of Integration: Legal Standards and Recommendations,' Division of International Protection Services, UNHCR, June 2006

maximum of 5 years of permanent residency in the host country when they have been granted permanent residency status automatically upon recognition<sup>9</sup>.

A five year period which includes the duration of the asylum procedures as well as any period on temporary protection ensures that individuals who have been faced with delays in the asylum procedure are treated fairly. Such an approach is in line with a proposed amendment to the European Directive on Long Term Residency, and is based on the fact that the main criterion for acquiring the status of long-term resident should be the duration of residence in the country. Provided the individual has had continuous legal residence in the country he/she can demonstrate that he has put down roots in a country.

UNHCR suggests that temporary protection status (such as any period of discretionary leave) should also be taken into account if the person has later been recognized as a refugee or granted HP, independently of whether he applied for asylum before, during or immediately after the application of the temporary protection regime. This would not only take into account the continued international protection needs, but also acknowledge the steps towards integration during the temporary protection. In addition, for persons who resided legally in a state prior to lodging their asylum claim, any period of legal residence on other grounds should also be included for the purpose of calculating five years of legal residence<sup>10</sup>.

With regard to the question of whether those who choose to become permanent residents rather than British Citizens should be required to spend longer as probationary citizens, there may be a whole host of reasons why refugees (and those with HP) do not wish to become British. Some may wish to retain the nationality of their country of origin in the hope that one day they may be able to return home, and others may wish to apply for citizenship but can not afford the application fee. In view of the fact that refugees (and those with HP) may have many individual and personal reasons for not wishing to apply for citizenship, there should be no distinction between the time periods that they are required to spend as probationary citizens.

## **5. *Exceptions to Integration Requirements for Refugees (and those with HP)***

The integration of third country nationals who are long-term residents is a key element in promoting economic and social cohesion<sup>11</sup>. As a result countries may require third country nationals to comply with certain integration conditions in accordance with national law. Such integration requirements should not result in unreasonably high obstacles for refugees and those with HP, taking into account their vulnerability compared to other legal migrants. If, as a result of their backgrounds, which may include

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<sup>9</sup> Legal and Protection Policy Research Series 'Rights of Refugees in the Context of Integration: Legal Standards and Recommendations,' Division of International Protection Services, UNHCR, June 2006

<sup>10</sup> UNHCR Observations on the Commission Proposal for a Council Directive Amending Directive 2003/109/EC Establishing a Long-Term Residence Status to Extend its Scope to Beneficiaries of International Protection 29 February 2008

<sup>11</sup> Recital 4 of the Long Term Residency Directive (2003/109/EC) emphasizes that the *integration* of third-country nationals who are long-term residents of Member States is a key element in promoting economic and social cohesion and a fundamental objective of the Community as stated in the Treaty.

traumatizing experiences, their situations are such that they cannot be expected to meet integration requirements, they should be exempted. UNHCR recommends that the Home Office critically reviews the proposed integration requirements for refugees and those with HP and allows exemptions on an individual basis<sup>12</sup>. There should be clear procedures and standards for determining when it is appropriate for exemptions to apply.

In this regard, UNHCR is pleased that the Green paper acknowledges that refugees arriving in the UK under the Gateway Protection Programme should receive permanent residence upon arrival. The majority of refugees who are resettled to the UK under the Gateway Protection Programme have been recognised as refugees by UNHCR for at least five years. They have often spent decades residing in refugee camps, and have been identified for resettlement because they are unable to integrate in their country of asylum, or return to their country of origin. Accordingly, the objective of resettlement is to provide these refugees with a durable and permanent solution. The grant of permanent residence upon arrival to the UK is therefore fundamental to ensuring their security and wellbeing, as well as their prospects for successful integration. Moreover, it would not be realistic, or even useful, to consider revoking the status of Gateway refugees who have passed through such comprehensive selection and integration procedures. UNHCR notes that the Green paper specifies that those with permanent residence can remain in the UK indefinitely, but can progress to British citizenship if they meet the criteria (p27). UNHCR seeks clarification on the criteria that Gateway refugees will have to fulfil to progress to citizenship, it is understood that they will not be required to fulfil the conditions required at the probationary citizenship stage, but it is not clear whether they will be required to pass a language test in order to progress to citizenship, or how long they must remain as permanent residents before they are eligible to progress to citizenship. In UNHCR's view there should be room for exceptions to any testing requirements for Gateway refugees for the reasons set out below at (i) relating to language testing.

In the Green paper three other categories of person have been identified who automatically retain a direct route to permanent residence (those discharged from HM Forces who have completed 4 years of service, victims of domestic violence who were admitted as a partner of a British citizen or permanent resident, and Bereaved partners). Sound compassionate reasons for retaining the right to permanent residence have been cited as the basis for this exception. Similarly there may be sound compassionate reasons why some individual refugees (and individuals with HP) can not be expected to earn their citizenship by passing through the probationary citizenship stage.

(i) Language testing

UNHCR agrees that language is fundamental to integration and cohesion for communities. Research undertaken in this area has found that employment, ESOL and vocational training were crucial functional elements to refugees and their dependents aspirations for integration as well as being important to achieving a sense of belonging

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<sup>12</sup> UNHCR Observations on the Commission Proposal for a Council Directive Amending Directive 2003/109/EC Establishing a Long-Term Residence Status to Extend its Scope to Beneficiaries of International Protection 29 February 2008

and equality in the UK<sup>13</sup>. Proficiency in English is a necessary requirement for most types of employment, and is essential to enable refugees (and those with HP) to build a new life in the UK.

Refugees (and those with HP) should not be subjected to stringent language testing requirements to become citizens unless they have access to English language classes in the UK. In this regard it is important to highlight the difference between refugees (and those with HP) and other migrants concerning the application of sanctions for non-fulfilment of integration obligations, such as language tests. Prior to their arrival in the UK, refugees, those with HP and their families are likely to have had less access to English language training institutions and basic education facilities than regular migrants. Many will have fled from communities that have been torn apart by conflict; spent years in makeshift refugee camps; or lived in remote areas of the world where education facilities are minimal and access to specialized English language training as well as the Internet is limited.

It would not be reasonable to expect refugees or those with HP and their families to pass the same language tests as other migrants in order to become citizens, unless they are provided with assistance for language classes. Cuts in the availability of funding for ESOL classes implemented in 2007 have made it more difficult for many refugees and asylum seekers to learn English in the UK. UNHCR appreciates the proposal to provide probationary citizens with access to ESOL further education courses at the 'home rate', however, refugees (and those with HP) should also be considered as a priority group for ESOL funding in general, regardless of which stage of the citizenship process they are at. UNHCR recommends that language training is made available to all asylum seekers, refugees and those with HP, from the start of the asylum procedure (unless it is reasonably foreseen that the asylum seeker will stay in the country for a period not exceeding a few weeks).

The introduction of stringent language tests is likely to penalize certain categories of refugees, in particular elderly, illiterate or female dependents. According to the UN Millennium Development Goals Report 2007, based on enrolment data, about 72 million children of primary school age were not in school in 2005; 57 percent of them were girls<sup>14</sup>. Girls are still excluded from education more often than boys and may face discrimination in schools which means that they would be disadvantaged when taking such a test. Those in need of international protection are also more likely to have experienced traumatic events and have more mental health problems than other migrants<sup>15</sup>. Persecution, exposure to violence, displacement and forced separation from family and friends are all factors that can have a serious impact on mental health, and may lead to post traumatic stress. These factors may also affect the capacity to learn, and may fuel despondency.

The Green paper sets out that there may be some limited exceptions to the language testing requirements during the transition to probationary citizenship and full citizenship

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<sup>13</sup> Refugee Council and University of Birmingham policy report on "Refugees' Experiences of Integration Policy related findings on employment ESOL and vocational training." November 2007

<sup>14</sup> UN Millennium Development Goals Report 2007 <http://www.un.org/millenniumgoals/documents.html>

<sup>15</sup> At least 35% of the world's refugee population have been subjected to severe physical torture and/or psychological violation, Refugee Resettlement; An International Handbook to Guide Reception and Integration UNHCR 2002.

(Para142). UNHCR urges the Home Office to consider making further exceptions for groups of vulnerable and traumatised.

(ii) Active Citizenship

In relation to the Green paper proposals that individuals must earn their citizenship by actively participating in community activities, UNHCR also urges the Home Office to consider making exceptions to this requirement for refugees (and individuals with HP) who are unable to participate, or are limited in the manner in which they are able to participate in community activities. It should be borne in mind that some categories of refugees may have faced persecution in the past relating to forced labour, exploitation and other forms of human rights abuses. Therefore, depending on the history/background of the individual concerned, it may not be appropriate to expect them to undertake mandatory community activities. Moreover, some individuals may find it difficult to undertake volunteering opportunities due to sickness, disability or age. In some cases individuals may be able to participate based on what is realistically possible in their situation, in other cases individuals may be entirely prevented from participating. In such circumstances, it would not be fair to expect the individuals concerned to spend three years as probationary citizens, increasing the total period of time before they become eligible for citizenship to eight years.

(iii) Self Sufficiency

Article 34 of the 1951 Convention recommends that “States... shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and cost of such proceedings.” UNHCR is concerned that a self sufficiency requirement for refugees (and those with HP) fails to take into account their particular circumstances based on the fact that they have been forced to flee persecution and/or serious human rights violations and may have suffered physical harm or traumatizing experiences and suffer from Post Traumatic Stress Disorder or other illnesses as a consequence. Refugees (and those with HP) may not always be able to meet the economic means requirements<sup>16</sup>. Furthermore, restrictions to the right to employment applied during the asylum procedure, place refugees and those with HP in the UK in a situation which is not comparable to other third-country nationals. It is therefore unreasonable to require from these groups stable and regular resources as a precondition for permanent residence or citizenship. In some instances it may also not be reasonable to expect them to pay a large processing fee for a citizenship application and/or British passport.

In this regard UNHCR is pleased to see that the Green Paper acknowledges that refugees should continue to have access to benefits throughout their time in the UK (Para 191). UNHCR understands that as a consequence, it would be unreasonable and unfair to require that refugees (and those with HP) prove that they are self sufficient in order to progress to citizenship. Clarification is sought on this issue.

Moreover, for the same reasons it may also be difficult for refugees (and those with HP) who have become British Citizens to fulfil self sufficiency requirements when sponsoring

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<sup>16</sup> UNHCR Observations on the Commission Proposal for a Council Directive Amending Directive 2003/109/EC Establishing a Long-Term Residence Status to Extend its Scope to Beneficiaries of International Protection 29 February 2008

family members to join them in the UK (Para153). Although refugees (and those with HP) who have become British citizens will have spent some years in the UK, in some circumstances it may be unfair to expect them to demonstrate that they have sufficient funds to support their family members. An exemption from the self sufficiency requirement for those refugees (and individuals with HP) sponsoring family members to come to the UK would be consistent with the current family reunification policy included in the immigration rules.

Lastly, UNHCR is concerned that the proposed fund to manage the transitional impact of migration requiring those entering via the family route to pay an additional financial contribution may create a further obstacle to those refugees seeking to be reunited with family members in the UK.

## **6. Criminal Activity**

UNHCR welcomes the Home Office's assurance that individuals who have committed crimes in the UK will not be deported in contravention to the 1951 Convention or the ECHR (Para162).

Refugees (and those with HP) who have committed crimes and are still deserving of international protection should not be disproportionately punished through a permanent ban on permanent residence and/or British Citizenship. While it may be appropriate to delay the progression of an individual to permanent residence where he/she has committed a crime, in most cases an absolute ban is unlikely to be proportionate. Barring a refugee (or an individual with HP) from progressing to permanent residence or British Citizenship will have a seriously negative impact on her/his integration potential and will not encourage community cohesion.

UNHCR disagrees with the proposal that parents whose children commit a criminal offence will be prevented from progressing to permanent residence or citizenship. According to international legal standards, an individual should not be punished for a crime that he has not committed.<sup>22</sup> Penalising a parent for the actions of his/her child may also expose the child to mistreatment and abuse within the family unit.

On a related matter, UNHCR also wished to stress that Article 31 of the 1951 Convention protects asylum seekers and refugees from being penalised for illegally entering or remaining illegally in the UK. Section 31 of the Immigration and Asylum Act 1999 represents Parliament's interpretation of what is required by Article 31 of the 1951

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<sup>22</sup> Article 33 Fourth Geneva Convention 1949 governing the treatment of civilians at times of war.

<sup>26</sup> Legal and Protection Policy Research Series 'Rights of Refugees in the Context of Integration: Legal Standards and Recommendations,' Division of International Protection Services, UNHCR, June 2006

Convention. UNHCR is concerned that the terms of the consultation do not make it sufficiently clear that persons who come to the UK illegally and who are in need of international protection should not be penalised. UNHCR urges UKBA, to respect its obligations under the 1951 Convention when “making it much harder for those people who are here illegally” (p. 45 of the Consultation),

## **7. *The Impact on the Right to Family Life***

Naturalisation should be facilitated for the children of recognized refugees (and those with HP) and other close family members, as a common citizenship can help safeguard the principle of family unity.<sup>26</sup>

Under the second route to citizenship British Citizens and permanent residents will be entitled to sponsor elderly parents, children less than 18 years and partners and other dependent relatives on their route to citizenship. UNHCR is concerned that this route does not entitle children who are British citizens or permanent residents to be reunited with their parents or other relatives in accordance with the right to family life.

Also, in relation to family reunification, the proposals mention that dependents of refugees who accompanied the main resident on arrival and remained with them will also need to comply with the same requirements to become eligible for citizenship (see Para 154). UNHCR seeks clarification on whether refugees (and those with HP) with temporary residence will be entitled to apply for entry clearance for family members who did not originally travel with them to the UK. In the event that refugees (and those with HP) are prevented from applying for family reunification while they have temporary residence (the initial five year period), this will be a serious departure from current family reunification entitlements and would amount to a severe breach of the right to family life.

In addition (as mentioned above under section 3 (iii)), the financial requirements for refugees (and those with HP) sponsoring family members under the family route may interfere with the right to family reunification in some instances. Refugees (and who had HP) who have become British citizens may find it difficult to demonstrate that they have sufficient funds to support their entire family, and a fund to manage the transitional impact of migration which requires those entering via the family route to pay an additional financial contribution may create a further obstacle to those refugees (and individuals with HP) seeking to be reunited with family members in the UK.

## **8. *Stateless Persons***

The 1954 Convention relating to the Status of Stateless Persons is the primary international instrument adopted to date to regulate and improve the legal status of stateless persons and to ensure to stateless persons fundamental rights and freedoms without discrimination. The Convention was adopted to cover those stateless persons who are not refugees and who are not, therefore, covered by the 1951 Convention relating to the Status of Refugees. In accordance with the 1954 Convention Contracting State shall as far as possible facilitate the assimilation and naturalisation of stateless persons. The State shall in particular make every effort to expedite naturalisation proceedings including reduction of charges and costs wherever possible.

The 1961 Convention on the Reduction of Statelessness aims to provide 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 nationals, and for the retention of nationality for those who will be made stateless should they inadvertently lose the State's nationality.

Developments in the area of human rights, State practice, case law and arbitral decisions relating to nationality have been extensive in the years since embodiment of the principles outlined above in the 1961 Convention. The Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and other international instruments regarding women, children and civil and political rights, indicate there is a right to a nationality. Case law of the Permanent Court of International Justice and of the International Court of Justice, treaties adopted in State succession, and State practice itself indicate a right to a nationality and guiding principles in the acquisition or loss of nationality.

UNHCR is concerned that provision for the naturalisation of stateless persons is not mentioned in the proposals contained in the Green Paper, and urges the Home Office to implement mechanisms to recognise, where appropriate, a link between the individual and the State in an effort to avoid the statelessness of individuals living in the UK<sup>27</sup>.

## **9. Simplifying the System and Reforming the Law**

On the simplification process generally, UNHCR wishes to point out that it has responded to the consultation on simplification specifically launched by the Government of June 2007, entitled "*Simplifying Immigration Law: an initial consultation*" in August 2007.<sup>28</sup> UNHCR welcomes the mention of the government's commitment to meeting obligations under the 1951 Convention under the "protection" heading (Para 240).

- (i) The exercise of discretion/exceptions in cases concerning refugees and individuals with HP

UNHCR notes that one of the aims of simplifying the system is to reduce concessions outside the normal rules (Para 223). The Green paper does acknowledge that there should be clearly defined scope for positive discretion to grant permission in exceptional cases where a person does not qualify under the immigration rules, and UKBA is considering further how best to set this out in the law. In UNHCR's opinion it is important to retain space for the exercise of discretion when dealing with refugees, those with HP and their families. Refugees, those with HP, and their family members each have very individualized reasons for leaving their countries of origin. They face individual difficulties, and increased vulnerability, due to the fact that they are forced to flee their countries in fear of persecution, or human rights abuses. For example, refugees may find themselves, in remote locations without documentation, and may be forced to use illegal travel routes.

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<sup>27</sup> For more information on Statelessness please visit <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=statelessness>

<sup>28</sup> [http://www.unhcr.org.uk/info/briefings/responding\\_to\\_policy/documents/UNHCRresponsetoInitialSimplificationConsultation.pdf](http://www.unhcr.org.uk/info/briefings/responding_to_policy/documents/UNHCRresponsetoInitialSimplificationConsultation.pdf)

Cases in which refugees can provide documentation will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents<sup>29</sup>. Family members of refugees may not have the documentation required to lodge a family reunion application. For instance, they may not have passports, birth certificates, or death certificates, and they may be unable to travel to neighbouring countries to lodge entry clearance applications. A borders system which recognizes the individual difficulties including the practical obstacles that refugees and their families may face is crucial to refugee protection and the right to family reunion.

UNHCR is concerned that the recently introduced re entry ban for individuals who have breached UK immigration rules may impact on the right to family reunion (for refugees and those with HP). During a House of Lords enquiry on the proposal to introduce a re-entry ban in 2006 UNHCR suggested that any re-entry ban be the subject of an individual examination and be discretionary. Furthermore, UNHCR recommended setting clearer rules for determination and for remedies available against the imposition of a re-entry ban, its withdrawal and suspension. A process for withdrawal of a re-entry ban needs to be available at border posts as well as at consular posts abroad. UNHCR also recommended that the possibility to seek withdrawal in cases related to family circumstances, or situations of humanitarian need, should be provided.

We understand that the re-entry ban will not apply where excluding someone from the UK would breach the Human Rights Act based on their right to respect for family life. The UKBA also has the discretion to depart from the rules, in exceptional or compassionate circumstances. UNHCR strongly recommends that the simplification of the system allows UKBA exercises its discretion to waive rules, such as the re entry ban, in cases where the application of the rules will impact on the rights of refugees, those with HP, and their families.

(ii) Protection section

UNHCR supports the introduction of the single case owner model together with the aim of achieving “a single comprehensive view of the case” (Consultation, Para. 240). However, in the context of its Quality Initiative Project<sup>30</sup>, UNHCR has expressed concerns that output targets and workloads can affect case owners’ efforts to produce quality decision with anxious scrutiny of every case.<sup>31</sup> Given that it is the government’s stated intention to raise the targets increasingly over the course of the next three years until 2011, UNHCR recommends that a system to carefully monitor the impact of these targets on the quality of decision making throughout the New Asylum Model is established.

UNHCR has commented extensively on the transposition into UK law of the Asylum Procedures Directive as well as the Qualification Directive. UNHCR commends the

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<sup>29</sup> UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (January 1992)

<sup>30</sup> For more on the Quality Initiative Project see <http://www.unhcr.org.uk/what-we-do/Quality-Initiative.html>

<sup>31</sup> Recommendation 45, Second Quality Initiative Report, October 2005.

government's intention to ensure that UK law is EC law compliant with both of the aforementioned Directives.<sup>32</sup>

(iii) Biometrics

UNHCR has previously set out its views on the biometric registration when commenting on Clauses 5 and 7 (2) of the UK Borders Act 2007 (the Act) in June 2007.<sup>33</sup>

UNHCR supports efforts to enhance registration techniques with a view to improve the protection of refugees and asylum seekers. Executive Commission Conclusion 91 of 2001 (2) on the registration of refugees and asylum seekers advises that the registration process should abide by fundamental principles of confidentiality amongst others.

Clause 5 of the Act creates a requirement for all people subject to immigration control to register for a biometric immigration document. Persons subject to immigration control include people of concern to UNHCR such as asylum-seekers, refugees and those granted HP in the UK including children. UNHCR suggested in its comments that the scope of Clause 5, the procedural aspects of the provision and compliance with general principles of confidentiality governing asylum procedures were not clear. If asylum seeking children are to be subjected to any type of biometric testing, it is strongly recommended that the decision to pursue the testing will be made in the best interests of the child.

Clause 7(2) provides a power to the Secretary of State to make regulations to penalise those who do not comply with the requirement to register for biometric immigration documents. The regulations made under this power, enable the Secretary of State, amongst other things, to:

- require or permit an application or claim in connection with immigration to be disregarded or refused
- require or permit the cancellation or variation of leave to enter or remain in the United Kingdom

UNHCR remains concerned that the provision to penalise those who do not comply with the requirement to register for biometric immigration documents might impair effective access to asylum procedures. UNHCR would like to encourage the inclusion of protection safeguards in the system to ensure negative consequences of non-

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<sup>32</sup> UNHCR comments on the transposition into UK of the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who otherwise need International Protection and the Content of the Protection granted (OJ L 304/12 of 30.9.2004), July 2006

[http://www.unhcr.org.uk/info/briefings/responding\\_to\\_policy/documents/QualificationDirectiveUK-UNHCRcomments\\_1.pdf](http://www.unhcr.org.uk/info/briefings/responding_to_policy/documents/QualificationDirectiveUK-UNHCRcomments_1.pdf)

UNHCR Comments on the UK implementation of Council Directive 2005/85/EC of 1 December 2005 laying down minimum standards on procedures in Member States for granting and withdrawing refugee status, October 2007

[http://www.unhcr.org.uk/info/briefings/responding\\_to\\_policy/documents/071024ProceduresDirective.pdf](http://www.unhcr.org.uk/info/briefings/responding_to_policy/documents/071024ProceduresDirective.pdf)

<sup>33</sup> <http://www.unhcr.org.uk/info/briefings/UKBordersBillComments.html>

compliance for reasons related to the specific circumstances of refugees or asylum seekers.

UNHCR has a particular concern about the situation for asylum seeking children. The process for children should be enshrined with specific protection safe guards, not only should the decision to proceed with biometric registration be subject to the consideration of their best interest, other procedural safeguards and guarantees are essential to the pursuit of such an operation. UNHCR recommends therefore that the purpose of the registration is clearly explained to the child, that the confidentiality of the information is guaranteed, and a legal representative or the legal guardian of the child is present during this process in order to safeguard the best interests of the child.

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