

**United Nations High Commissioner for Refugees (UNHCR)****House of Lords Briefing:  
Legal Aid, Sentencing and Punishment of Offenders Bill, Second Reading****Introduction**

UNHCR has been charged by the United Nations General Assembly with responsibility for providing international protection to refugees and other persons within its mandate and for seeking permanent solutions to the problem of refugees by assisting governments and private organizations.<sup>1</sup> As set forth in its Statute, UNHCR fulfils its international protection mandate by, *inter alia*, "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto."

In view of the Office's supervisory role under its Statute and Article 35 of the 1951 Convention relating to the Status of Refugees,<sup>2</sup> UNHCR's interpretation of the provisions of the 1951 Refugee Convention and 1967 Protocol relating to the Status of Refugees<sup>3</sup> are generally considered an authoritative view which should be taken into account by States when deciding on questions of refugee law. UNHCR therefore welcomes the opportunity to comment on the Legal Aid, Sentencing and Punishment of Offenders Bill.

**General comments**

Although the safeguarding of asylum seekers' access to legal aid is welcomed, UNHCR's concerns centre on the way in which the Bill limits access to legal aid for families of refugees who seek to join their refugee family member(s) in the United Kingdom.<sup>4</sup> It is noted that the current proposals exclude legal aid for family members of persons who have been recognised as refugees or people who have been granted humanitarian protection.

In UNHCR's view, reunification of the family unit plays an important role in ensuring the protection and well-being of individual members of a refugee family. Respect for the right to family unity requires not only that States refrain from action which would result in family separations, but also that all States pro-actively and, in a humanitarian spirit, take measures to maintain the unity of the family

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<sup>1</sup> See Statute of the Office of the United Nations High Commissioner for Refugees, GA Res. 428(V), Annex, UN Doc. A/1775, paras 1, 6 (1950)

<sup>2</sup> UN General Assembly, Convention Relating to the Status of Refugees (28 July 1951) 189 UNTS 137

<sup>3</sup> UN General Assembly, Protocol Relating to the Status of Refugees (30 January 1967) 606 UNTS 267

<sup>4</sup> UNHCR asks that it be noted that the lack of comments on the other provisions of the Bill does not mean that UNHCR endorses these provisions. Rather UNHCR has chosen to focus its comments on issues most relevant to its mandate.

and reunite members who have been separated. UNHCR's Executive Committee, of which the United Kingdom is a member, has repeatedly drawn attention to the importance of family unity as an essential right of refugees.<sup>5</sup>

Family members can reinforce the social support system for refugees by assisting refugees better integrate into UK society and culture. UNHCR would like to emphasize that the social and cultural dimension of local integration requires refugees to make conscientious efforts to adapt to the local environment and respect and understand new cultures and lifestyles, taking into consideration the values of the local population, and requires the host community to accept refugees into its socio-cultural fabric. In this respect, UNHCR considers that refugees with strong family links in the UK can reinforce their integration into life in the UK.

It is in this context that UNHCR remains concerned that the withdrawal of legal aid for family reunion cases could prohibit access to family unity, as without legal aid, refugees in the United Kingdom may not be able to afford legal representation. Legal aid is an important way of ensuring that refugees who would not be able to act as litigants in person due to restrictions of language and literacy, as well as an inability to navigate the complex procedures, rules and regulations, might access their rights.

Furthermore, UNHCR would like to highlight the difficulties refugees would face in gathering the requisite evidence for entry clearance purposes which is complex and detailed and also includes the need to obtain DNA tests, without the support of legal advisors. UNHCR notes that these costs of evidence-gathering or private legal fees would be in addition to the cost borne by the refugee for flights and related travel costs to the United Kingdom.

In addition to the above concerns, UNHCR notes that the exclusion of legal aid for family reunion cases has further adverse consequences. Even though the Government's response during the consultation stage was that family reunion applications are "generally straightforward" and that an alternative for family members is to claim asylum in their own right,<sup>6</sup> UNHCR remains concerned since the refugee's family members are still outside the UK they cannot claim asylum without travelling to the United Kingdom. Consequently, to deny legal aid for family reunion applications

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<sup>5</sup> UN High Commissioner for Refugees, Thematic Compilation of Executive Committee Conclusions, January 2010. Online. UNHCR Refworld, available at: [www.unhcr.org/refworld/docid/4bace8f62.html](http://www.unhcr.org/refworld/docid/4bace8f62.html) (see pages 208 to 213).

<sup>6</sup> Reform of Legal Aid in England and Wales: the Government Response (Paragraph 90, page 28) - [www.justice.gov.uk/downloads/consultations/legal-aid-reform-government-response.pdf](http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-government-response.pdf)

without providing viable alternative options increases the risk that some family members outside the United Kingdom might be motivated to enter the United Kingdom in an irregular manner.

UNHCR respectfully requests that legal aid is maintained for family reunification applications with a refugee component.

**UNHCR London**

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