

**GUIDELINES ON INTERNATIONAL PROTECTION:
“Internal Flight or Relocation Alternative” within the Context of
Article 1A(2) of the 1951 Convention and/or 1967 Protocol
relating to the Status of Refugees**

UNHCR issues these Guidelines pursuant to its mandate, as contained in *the Statute of the Office of the United Nations High Commissioner for Refugees*, and Article 35 of the *1951 Convention relating to the Status of Refugees and/or its 1967 Protocol*. These Guidelines supplement the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (1979, re-edited, Geneva, January 1992). They further supersede UNHCR's Position Paper, *Relocating Internally as a Reasonable Alternative to Seeking Asylum – (The So-Called “Internal Flight Alternative” or “Relocation Principle”)* (Geneva, February 1999). They result, *inter alia*, from the Second Track of the Global Consultations on International Protection which examined this subject at its expert meeting in San Remo, Italy, in September 2001 and seek to consolidate appropriate standards and practice on this issue in light of recent developments in State practice.

These Guidelines are intended to provide interpretative legal guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff carrying out refugee status determination in the field.

“Internal Flight or Relocation Alternative” in the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees

I. INTRODUCTION

1. Internal flight or relocation alternative is a concept that is increasingly considered by decision-makers in refugee status determination. To date, there has been no consistent approach to this concept and consequently divergent practices have emerged both within and across jurisdictions. Given the differing approaches, these Guidelines are designed to offer decision-makers a more structured approach to analysis of this aspect of refugee status determination.

2. The concept of an internal flight or relocation alternative is not a stand-alone principle of refugee law, nor is it an independent test in the determination of refugee status. A Convention refugee is a person who meets the criteria set out in Article 1A(2) of the *1951 Convention and/or 1967 Protocol relating to the Status of Refugees* (hereinafter “1951 Convention”). These criteria are to be interpreted in a liberal and humanitarian spirit, in accordance with their ordinary meaning, and in light of the object and purpose of the 1951 Convention. The concept of an internal flight or relocation alternative is not explicitly referred to in these criteria. The question of whether the claimant has an internal flight or relocation alternative may, however, arise as part of the refugee status determination process.

3. Some have located the concept of internal flight or relocation alternative in the “well-founded fear of being persecuted” clause of the definition, and others in the “unwilling ... or unable ... to avail himself of the protection of that country” clause. These approaches are not necessarily contradictory, since the definition comprises one holistic test of interrelated elements. How these elements relate, and the importance to be accorded to one or another element, necessarily falls to be determined on the facts of each individual case.¹

4. International law does not require threatened individuals to exhaust all options within their own country first before seeking asylum; that is, it does not consider asylum to be the last resort. The concept of internal flight or relocation alternative should therefore not be invoked in a manner that would undermine important human rights tenets underlying the international protection regime, namely the right to leave one’s country, the right to seek asylum and protection against *refoulement*. Moreover, since the concept can only arise in the context of an assessment of the refugee claim on its merits, it cannot be used to deny access to refugee status determination procedures. A consideration of internal flight or relocation necessitates regard for the personal circumstances of the individual claimant and the conditions in the country for which the internal flight or relocation alternative is proposed.²

5. Consideration of possible internal relocation areas is not relevant for refugees coming under the purview of Article I(2) of the *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969*. Article I(2) specifically clarifies the definition of a refugee as follows: “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order *in either part or the whole of his country of origin or nationality*, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality”.³

¹ For further details, see UNHCR, “Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees”, Geneva, April 2001, (hereafter UNHCR, “Interpreting Article 1”), para. 12.

² *Ibid.*, paras. 35–37.

³ (Emphasis added.) The *1984 Cartagena Declaration* also specifically refers to Article I(2) of the OAU Refugee Convention.

II. SUBSTANTIVE ANALYSIS

A. Part of the holistic assessment of refugee status

6. The 1951 Convention does not require or even suggest that the fear of being persecuted need always extend to the *whole* territory of the refugee's country of origin.⁴ The concept of an internal flight or relocation alternative therefore refers to a specific area of the country where there is no risk of a well-founded fear of persecution and where, given the particular circumstances of the case, the individual could reasonably be expected to establish him/herself and live a normal life.⁵ Consequently, if internal flight or relocation is to be considered in the context of refugee status determination, a particular area must be identified and the claimant provided with an adequate opportunity to respond.

7. In the context of the holistic assessment of a claim to refugee status, in which a well-founded fear of persecution for a Convention reason has been established in some localised part of the country of origin, the assessment of whether or not there is a relocation possibility requires two main sets of analyses, undertaken on the basis of answers to the following sets of questions:

I. The Relevance Analysis

- a) *Is the area of relocation practically, safely, and legally accessible to the individual?* If any of these conditions is not met, consideration of an alternative location within the country would not be relevant.
- b) *Is the agent of persecution the State?* National authorities are presumed to act throughout the country. If they are the feared persecutors, there is a presumption in principle that an internal flight or relocation alternative is not available.
- c) *Is the agent of persecution a non-State agent?* Where there is a risk that the non-State actor will persecute the claimant in the proposed area, then the area will not be an internal flight or relocation alternative. This finding will depend on a determination of whether the persecutor is likely to pursue the claimant to the area and whether State protection from the harm feared is available there.
- d) *Would the claimant be exposed to a risk of being persecuted or other serious harm upon relocation?* This would include the original or any new form of persecution or other serious harm in the area of relocation.

II. The Reasonableness Analysis

- a) *Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship?* If not, it would not be reasonable to expect the person to move there.

Scope of assessment

8. The determination of whether the proposed internal flight or relocation area is an appropriate alternative in the particular case requires an assessment over time, taking into account not only the circumstances that gave rise to the persecution feared, and that prompted flight from the original area, but also whether the proposed area provides a meaningful alternative in the future. The forward-looking assessment is all the more important since, although rejection of status does not automatically determine the course of action to be followed, forcible return may be a consequence.

B. The relevance analysis

9. The questions outlined in paragraph 7 can be analysed further as follows:

⁴ See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (1979, Geneva, re-edited 1992), (hereinafter "UNHCR Handbook"), para. 91.

⁵ For issues concerning the burden of proof in establishing these issues see section III.A below.

Is the area of relocation practically, safely, and legally accessible to the individual?

10. An area is not an internal flight or relocation alternative if there are barriers to reaching the area which are not reasonably surmountable. For example, the claimant should not be required to encounter physical dangers en route to the area such as mine fields, factional fighting, shifting war fronts, banditry or other forms of harassment or exploitation.

11. If the refugee claimant would have to pass through the original area of persecution in order to access the proposed area, that area cannot be considered an internal flight or relocation alternative. Similarly, passage through airports may render access unsafe, especially in cases where the State is the persecutor or where the persecutor is a non-State group in control of the airport.

12. The proposed area must also be legally accessible, that is, the individual must have the legal right to travel there, to enter, and to remain. Uncertain legal status can create pressure to move to unsafe areas, or to the area of original persecution. This issue may require particular attention in the case of stateless persons or those without documentation.

Is the agent of persecution the State?

13. The need for an analysis of internal relocation only arises where the fear of being persecuted is limited to a specific part of the country, outside of which the feared harm cannot materialise. In practical terms, this normally excludes cases where the feared persecution emanates from or is condoned or tolerated by State agents, including the official party in one-party States, as these are presumed to exercise authority in all parts of the country.⁶ Under such circumstances the person is threatened with persecution countrywide unless exceptionally it is clearly established that the risk of persecution stems from an authority of the State whose power is clearly limited to a specific geographical area or where the State itself only has control over certain parts of the country.⁷

14. Where the risk of being persecuted emanates from local or regional bodies, organs or administrations within a State, it will rarely be necessary to consider potential relocation, as it can generally be presumed that such local or regional bodies derive their authority from the State. The possibility of relocating internally may be relevant only if there is clear evidence that the persecuting authority has no reach outside its own region and that there are particular circumstances to explain the national government's failure to counteract the localised harm.

Is the agent of persecution a non-State agent?

15. Where the claimant fears persecution by a non-State agent of persecution, the main inquiries should include an assessment of the motivation of the persecutor, the ability of the persecutor to pursue the claimant in the proposed area, and the protection available to the claimant in that area from State authorities. As with questions involving State protection generally, the latter involves an evaluation of the ability and willingness of the State to protect the claimant from the harm feared. A State may, for instance, have lost effective control over its territory and thus not be able to protect. Laws and mechanisms for the claimant to obtain protection from the State may reflect the State's willingness, but, unless they are given effect in practice, they are not of themselves indicative of the availability of protection. Evidence of the State's inability or unwillingness to protect the claimant in the original persecution area will be relevant. It can be presumed that if the State is unable or unwilling to protect the individual in one part of the country, it may also not be able or willing to extend protection in other areas. This may apply in particular to cases of gender-related persecution.

⁶ See Summary Conclusions – Internal Protection/Relocation/Flight Alternative, Global Consultations on International Protection, San Remo Expert Roundtable, 6–8 September 2001 (hereinafter "Summary Conclusions – Internal Protection/Relocation/Flight Alternative"), para. 2; UNHCR, "Interpreting Article 1", paras. 12–13.

⁷ See also paragraphs 16, 17 and 27 of these Guidelines.

16. Not all sources of possible protection are tantamount to State protection. For example, if the area is under the control of an international organisation, refugee status should not be denied solely on the assumption that the threatened individual could be protected by that organisation. The facts of the individual case will be particularly important. The general rule is that it is inappropriate to equate the exercise of a certain administrative authority and control over territory by international organisations on a transitional or temporary basis with national protection provided by States. Under international law, international organisations do not have the attributes of a State.

17. Similarly, it is inappropriate to find that the claimant will be protected by a local clan or militia in an area where they are not the recognised authority in that territory and/or where their control over the area may only be temporary. Protection must be effective and of a durable nature: It must be provided by an organised and stable authority exercising full control over the territory and population in question.

Would the claimant be exposed to a risk of being persecuted or other serious harm upon relocation?

18. It is not sufficient simply to find that the original agent of persecution has not yet established a presence in the proposed area. Rather, there must be reason to believe that the reach of the agent of persecution is likely to remain localised and outside the designated place of internal relocation.

19. Claimants are not expected or required to suppress their political or religious views or other protected characteristics to avoid persecution in the internal flight or relocation area. The relocation alternative must be more than a “safe haven” away from the area of origin.

20. In addition, a person with an established fear of persecution for a 1951 Convention reason in one part of the country cannot be expected to relocate to another area of serious harm. If the claimant would be exposed to a new risk of serious harm, including a serious risk to life, safety, liberty or health, or one of serious discrimination,⁸ an internal flight or relocation alternative does not arise, irrespective of whether or not there is a link to one of the Convention grounds.⁹ The assessment of new risks would therefore also need to take into account serious harm generally covered under complementary forms of protection.¹⁰

21. The proposed area is also not an internal flight or relocation alternative if the conditions there are such that the claimant may be compelled to go back to the original area of persecution, or indeed to another part of the country where persecution or other forms of serious harm may be a possibility.

C. The reasonableness analysis

22. In addition to there not being a fear of persecution in the internal flight or relocation alternative, it must be reasonable in all the circumstances for the claimant to relocate there. This test of “reasonableness” has been adopted by many jurisdictions. It is also referred to as a test of “undue hardship” or “meaningful protection”.

23. The “reasonableness test” is a useful legal tool which, while not specifically derived from the language of the 1951 Convention, has proved sufficiently flexible to address the issue of whether or not, in all the circumstances, the particular claimant could reasonably be expected to move to the proposed area to overcome his or her well-founded fear of being persecuted. It is not an analysis based on what a hypothetical “reasonable person” should be expected to

⁸ See UNHCR Handbook, paras. 51–52.

⁹ A more general right not to be returned to a country where there is a risk of torture or cruel or inhuman treatment is found, either explicitly or by interpretation, in international human rights instruments. The most prominent are Article 3 of the Convention against Torture 1984, Article 7 of the International Covenant on Civil and Political Rights 1966, and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

¹⁰ See UN docs. EC/50/SC/CRP.18, 9 June 2000 and EC/GC/01/18, 4 September 2001.

do. The question is what is reasonable, both subjectively and objectively, given the individual claimant and the conditions in the proposed internal flight or relocation alternative.

Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship?

24. In answering this question, it is necessary to assess the applicant's personal circumstances, the existence of past persecution, safety and security, respect for human rights, and possibility for economic survival.

Personal circumstances

25. The personal circumstances of an individual should always be given due weight in assessing whether it would be unduly harsh and therefore unreasonable for the person to relocate in the proposed area. Of relevance in making this assessment are factors such as age, sex, health, disability, family situation and relationships, social or other vulnerabilities, ethnic, cultural or religious considerations, political and social links and compatibility, language abilities, educational, professional and work background and opportunities, and any past persecution and its psychological effects. In particular, lack of ethnic or other cultural ties may result in isolation of the individual and even discrimination in communities where close ties of this kind are a dominant feature of daily life. Factors which may not on their own preclude relocation may do so when their cumulative effect is taken into account. Depending on individual circumstances, those factors capable of ensuring the material and psychological well-being of the person, such as the presence of family members or other close social links in the proposed area, may be more important than others.

Past persecution

26. Psychological trauma arising out of past persecution may be relevant in determining whether it is reasonable to expect the claimant to relocate in the proposed area. The provision of psychological assessments attesting to the likelihood of further psychological trauma upon return would militate against finding that relocation to the area is a reasonable alternative. In some jurisdictions, the very fact that the individual suffered persecution in the past is sufficient in itself to obviate any need to address the internal relocation issue.

Safety and security

27. The claimant must be able to find safety and security and be free from danger and risk of injury. This must be durable, not illusory or unpredictable. In most cases, countries in the grip of armed conflict would not be safe for relocation, especially in light of shifting armed fronts which could suddenly bring insecurity to an area hitherto considered safe. In situations where the proposed internal flight or relocation alternative is under the control of an armed group and/or State-like entity, careful examination must be made of the durability of the situation there and the ability of the controlling entity to provide protection and stability.

Respect for human rights

28. Where respect for basic human rights standards, including in particular non-derogable rights, is clearly problematic, the proposed area cannot be considered a reasonable alternative. This does not mean that the deprivation of any civil, political or socio-economic human right in the proposed area will disqualify it from being an internal flight or relocation alternative. Rather, it requires, from a practical perspective, an assessment of whether the rights that will not be respected or protected are fundamental to the individual, such that the deprivation of those rights would be sufficiently harmful to render the area an unreasonable alternative.

Economic survival

29. The socio-economic conditions in the proposed area will be relevant in this part of the analysis. If the situation is such that the claimant will be unable to earn a living or to access

accommodation, or where medical care cannot be provided or is clearly inadequate, the area may not be a reasonable alternative. It would be unreasonable, including from a human rights perspective, to expect a person to relocate to face economic destitution or existence below at least an adequate level of subsistence. At the other end of the spectrum, a simple lowering of living standards or worsening of economic status may not be sufficient to reject a proposed area as unreasonable. Conditions in the area must be such that a relatively normal life can be led in the context of the country concerned. If, for instance, an individual would be without family links and unable to benefit from an informal social safety net, relocation may not be reasonable, unless the person would otherwise be able to sustain a relatively normal life at more than just a minimum subsistence level.

30. If the person would be denied access to land, resources and protection in the proposed area because he or she does not belong to the dominant clan, tribe, ethnic, religious and/or cultural group, relocation there would not be reasonable. For example, in many parts of Africa, Asia and elsewhere, common ethnic, tribal, religious and/or cultural factors enable access to land, resources and protection. In such situations, it would not be reasonable to expect someone who does not belong to the dominant group, to take up residence there. A person should also not be required to relocate to areas, such as the slums of an urban area, where they would be required to live in conditions of severe hardship.

D. Relocation and internally displaced persons

31. The presence of internally displaced persons who are receiving international assistance in one part of the country is not in itself conclusive evidence that it is reasonable for the claimant to relocate there. For example, the standard and quality of life of the internally displaced are often insufficient to support a finding that living in the area would be a reasonable alternative to flight. Moreover, where internal displacement is a result of “ethnic cleansing” policies, denying refugee status on the basis of the internal flight or relocation concept could be interpreted as condoning the resulting situation on the ground and therefore raises additional concerns.

32. The reality is that many thousands of internally displaced persons do not enjoy basic rights and have no opportunity to exercise the right to seek asylum outside their country. Thus, although standards largely agreed by the international community now exist, their implementation is by no means assured in practice. Moreover, the *Guiding Principles on Internal Displacement* specifically affirm in Principle 2(2) that they are not to be interpreted as “restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law” and in particular, they are “without prejudice to the right to seek and enjoy asylum in other countries.”¹¹

III. PROCEDURAL ISSUES

A. Burden of proof

33. The use of the relocation concept should not lead to additional burdens on asylum-seekers. The usual rule must continue to apply, that is, the burden of proving an allegation rests on the one who asserts it. This is consistent with paragraph 196 of the *Handbook* which states that

... while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his [or her] disposal to produce the necessary evidence in support of the application.

¹¹ See also W. Kälin, *Guiding Principles on Internal Displacement: Annotations*, Studies in Transnational Legal Policy No. 32, 2000 (The American Society of International Law, The Brookings Institution, Project on Internal Displacement), pp. 8-10.

34. On this basis, the decision-maker bears the burden of proof of establishing that an analysis of relocation is relevant to the particular case. If considered relevant, it is up to the party asserting this to identify the proposed area of relocation and provide evidence establishing that it is a reasonable alternative for the individual concerned.

35. Basic rules of procedural fairness require that the asylum-seeker be given clear and adequate notice that such a possibility is under consideration.¹² They also require that the person be given an opportunity to provide arguments why (a) the consideration of an alternative location is not relevant in the case, and (b) if deemed relevant, that the proposed area would be unreasonable.

B. Accelerated or admissibility procedures

36. Given the complex and substantive nature of the inquiry, the examination of an internal flight or relocation alternative is not appropriate in accelerated procedures, or in deciding on an individual's admissibility to a full status determination procedure.¹³

C. Country of origin information

37. While examination of the relevance and reasonableness of a potential internal relocation area always requires an assessment of the individual's own particular circumstances, well-documented, good quality and current information and research on conditions in the country of origin are important components for the purpose of such examination. The usefulness of such information may, however, be limited in cases where the situation in the country of origin is volatile and sudden changes may occur in areas hitherto considered safe. Such changes may not have been recorded by the time the claim is being heard.

IV. CONCLUSION

38. The concept of internal flight or relocation alternative is not explicitly referred to in the criteria set out in Article 1A(2) of the 1951 Convention. The question of whether the claimant has an internal flight or relocation alternative may, however, arise as part of the holistic determination of refugee status. It is relevant only in certain cases, particularly when the source of persecution emanates from a non-State actor. Even when relevant, its applicability will depend on a full consideration of all the circumstances of the case and the reasonableness of relocation to another area in the country of origin.

¹² See Summary Conclusions – Internal Protection/Relocation/Flight Alternative, para. 7.

¹³ See Summary Conclusions – Internal Protection/Relocation/Flight Alternative, para. 6; Executive Committee Conclusion No. 87 (L), 1999, para. j; and Note on International Protection, 1999, para. 26 (UN doc. A/AC.96/914, 7 July 1999).