

# CHAPTER THREE





## CHAPTER THREE REFUGEE STATUS AND RESETTLEMENT

### Introduction

Determination as a refugee under UNHCR's mandate, with very few exceptions, is a precondition for resettlement consideration.

Normally, a decision on the refugee status of an individual should already have been made before durable solutions, including resettlement, are considered. However, there may be a need to review and clarify this decision before resettlement is pursued. In practice, resettlement and other protection staff need to cooperate closely to ensure that individuals have been determined to be refugees, be it individually or *prima facie* as a group, that exclusion factors have been carefully considered, and that cases have been adequately documented before resettlement is pursued.



**Refugee status determination (RSD) procedures:** Legal and administrative procedures undertaken by States and/or UNHCR to determine whether an individual is considered a refugee in accordance with national and international law.

### Purpose

The purpose of this chapter is to provide an overview of:

- the significance of refugee status determination to resettlement;
- refugee status eligibility and key elements of the refugee criteria;
- exclusion clauses and their application; and
- characteristics of a good legal analysis of eligibility for refugee status.

**Chapter 5** will discuss the identification of resettlement as the most appropriate durable solution.

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## 3.1 REFUGEE STATUS AS A PRECONDITION FOR RESETTLEMENT CONSIDERATION

### Preconditions for resettlement consideration

- the applicant is determined to be a refugee by UNHCR;<sup>\*</sup> and
  - the prospects for all durable solutions were assessed, and resettlement is identified as the most appropriate solution.
- \* Exceptions can be made for non-refugee stateless persons for whom resettlement is considered the most appropriate durable solution, and also for the resettlement of certain non-refugee dependent family members to retain family unity.

Resettlement under the auspices of UNHCR is only available to mandate refugees who have a continued need for international protection. It is essential to ensure that each individual referred for resettlement has been determined to fall under UNHCR's mandate.

The few exceptions to the precondition of refugee recognition are non-refugee stateless persons, and certain dependent non-refugee family members of refugees. In the family context, including in cases of family reunification under resettlement provisions, it suffices that one family member has been determined to be a refugee under UNHCR's mandate.

### 3.1.1 Convention status and mandate status

Refugee status at the universal level is governed by the 1951 *Convention Relating to the Status of Refugees* (hereafter the 1951 Convention) and its 1967 Protocol. States parties to the 1951 Convention have assumed specific obligations towards refugees, including establishing procedures to identify who is a refugee and is therefore entitled to rights and protections afforded under the 1951 Convention.

The assessment as to who is a refugee, i.e. the determination of refugee status under the 1951 Convention, is incumbent upon the Contracting State to which the refugee submits an application for refugee status. States therefore have the primary responsibility for determining the status of individuals who arrive on their territory, and in particular for determining whether an individual is a Convention Refugee entitled to international protection.

However, UNHCR may also under certain circumstances conduct refugee status determination (RSD) under its mandate to identify persons of concern.<sup>1</sup> Recognition under UNHCR's mandate has a vital protection function and is the precondition to implementing durable solutions, including resettlement.

<sup>1</sup> Besides asylum-seekers and refugees, "persons of concern to UNHCR" also include returnees, stateless persons and, under certain circumstances, internally displaced persons.

## Situations where UNHCR has conducted refugee status determination

- in States that are not party to the 1951 Convention or the Protocol;
- in States that are party to the 1951 Convention but have not established asylum procedures;
- in States that are party to the 1951 Convention but retain the geographic limitation thereby denying some access to their asylum procedures; and
- when UNHCR has assessed serious shortcomings in the State's asylum procedure such that refugees are unlikely to obtain the protection they need, either because they are not recognized, or because recognition does not entail the protection it should.

UNHCR therefore may need to conduct refugee status determination under its mandate to address protection gaps.

### 3.1.2 Statelessness determination

Although the 1954 *Convention Relating to the Status of Stateless Persons*<sup>2</sup> sets out a definition of a stateless person and prescribes the treatment they should be afforded, there has been little attention paid to the development of dedicated procedures for determining whether a person is stateless.

For stateless persons, whether they are migrants or present in their “own country”, an effective determination procedure presents an opportunity for recognition of their rights and a reprieve from a legal limbo that can take the form of prolonged irregular status or detention. Moreover, it gives them a chance for a durable solution, whether this takes place locally or through admission (or readmission) to another state.<sup>3</sup>

Stateless individuals in a migratory situation may, however, simultaneously be found to be refugees when assessed under the same status determination procedures. If a stateless person is simultaneously a refugee, he or she should be protected according to the higher standard which in most circumstances will be international refugee law, not least due to the protection from *refoulement* in Article 33 of the 1951 Convention.

Stateless persons not found to be refugees under the refugee status determination procedures nevertheless can be considered for resettlement, but there must be careful negotiation with the prospective resettlement country. *Further guidance is provided in Chapter 7.2.2.*

<sup>2</sup> UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations Treaty Series, vol. 360, p. 117, <http://www.unhcr.org/refworld/docid/3ae6b384o.html>

<sup>3</sup> UNHCR, *Expert Meeting - Statelessness Determination Procedures and the Status of Stateless Persons (Summary Conclusions)*, December 2010, <http://www.unhcr.org/refworld/docid/4d902762.html>

### 3.1.3 Mandate refugee status and resettlement

Although UNHCR applies both the 1951 Convention definition and the broader refugee definition when examining eligibility for refugee status, UNHCR staff seek to identify the basis for eligibility under the 1951 Convention wherever possible. This is critical as many States, including resettlement States, do not accept obligations towards refugees who do not meet the 1951 Convention criteria, and in practice, it may be more challenging for UNHCR to protect and assist refugees recognized under the broader refugee definition.



Refugees recognized by UNHCR pursuant to its mandate can be considered for resettlement, but it is also important to be aware that many resettlement States restrict their resettlement programmes to refugees recognized under the 1951 Convention. Therefore, the prospects for resettlement are, in reality, often more limited for refugees recognized by UNHCR under one of the broader refugee definitions.

#### Mandate refugees *prima facie*

Refugee status must normally be determined on an individual basis, but situations often arise in which large populations have been displaced under circumstances indicating that most members of the population could be considered individually as refugees. In such situations, the need to provide protection and assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of that population. Recourse is therefore made to **group determination of refugee status**, whereby each member of the population in question is regarded *prima facie* (in the absence of evidence to the contrary) as a refugee. In other words, the presumption is that individual members of the population concerned would be considered as refugees in need of international protection.

For example, the widespread violence associated with the conflict in Iraq triggered massive flight, and in 2007 UNHCR's operations in several countries in the region adopted procedures under which asylum-seekers from south and central Iraq were recognized on a *prima facie* basis following a more detailed registration to identify immediate protection needs as well as possible exclusion triggers.

#### Substantiating the *prima facie* recognition

In situations where resettlement is considered for persons who have been recognized as refugees on a *prima facie* basis UNHCR in the past has held the position that it usually would be necessary to conduct an assessment of individual eligibility for refugee status. However, many resettlement countries have in practice accepted resettlement submissions from UNHCR on behalf of refugees recognized on a *prima facie* basis.

Therefore **it may be sufficient for UNHCR offices in their resettlement submissions to simply substantiate the *prima facie* recognition** rather than elaborate individual basis for eligibility for refugee status, provided the refugee

cases do not show evident exclusion elements. Toward this end the Convention ground(s) relevant for the group recognition, and the objective situation in the country of origin which supports considering a group as mandate refugees *prima facie*, could be referred to in standard paragraphs included with the submission.

The Programme of Action under the *Agenda for Protection* supports this policy approach in calling upon “States to examine how more flexible resettlement criteria could be applied with regard to refugees recognized on a *prima facie* basis in mass displacement situations to which Article 1 F does not apply...” and in promoting the expansion of resettlement opportunities particularly through “*Asking States that offer resettlement opportunities to consider increasing their resettlement quotas diversifying their intake of refugee groups and introducing more flexible resettlement criteria.*”<sup>4</sup> Elsewhere “*resettlement countries are encouraged to harmonize their resettlement criteria with UNHCR’s mandate to allow for due consideration of the unique circumstances and resettlement needs of prima facie refugees.*”<sup>5</sup>

In other contexts resettlement submissions regarding refugees recognized *prima facie* do require an individual examination to reaffirm refugee status and to document in greater detail the basis of refugee status recognition. This examination, however, does not represent individualized refugee status determination. The procedures to reaffirm individual elements of the claim of refugees recognized *prima facie* will differ from the formal refugee status determination process to determine eligibility for refugee status. Nevertheless the substantive and due process principles that apply to the examination of eligibility for refugee status are also relevant in resettlement interviews to draw out and elaborate the individual elements of the claim for refugees recognized on a *prima facie* basis.

## Continued need for protection

Resettlement is limited to those who do not have a durable solution, and who therefore have a continued need for international protection.

UNHCR’s annual protection assessments include a review of the continued need for protection of refugee populations recognized as such on a *prima facie* basis, and the appropriateness of resettlement consideration is a component of the overall protection strategy for each operation. This includes ascertaining whether the objective situation in the country of origin continues to expose individual members of the group to danger or other serious consequences, for reasons relevant to the refugee criteria, in the event they return to their home country.

### 3.1.4 Separation of RSD from resettlement as a safeguard

Refugee status determination should not normally be undertaken by resettlement staff, but rather by protection or eligibility staff, partially as an additional

<sup>4</sup> See *Agenda for Protection*, Goal 3, Objective 6, and Goal 5, Objective 5, Action 4.

<sup>5</sup> UNHCR, *Global Consultations on International Protection/Third Track: Strengthening and Expanding Resettlement Today: Dilemmas, Challenges and Opportunities*, 25 April 2002, EC/GC/02/7, <http://www.unhcr.org/refworld/docid/3d62679e4.html>



safeguard against fraud and abuse. However, resettlement staff are responsible for ensuring that Resettlement Registration Forms (RRFs) are accurate and of a high standard in respect to the refugee(s) concerned. Understanding what constitutes a quality assessment of refugee status is thus imperative, as it allows staff to follow up properly with protection or eligibility staff whenever any doubts or questions arise.



Maintaining high quality refugee status determination procedures is essential for UNHCR's credibility with States and NGOs, and ultimately for the availability of durable solutions for refugees who are recognized by UNHCR. Through the Resettlement Registration Forms (RRFs) submitted to resettlement countries, governments have the opportunity to closely scrutinize and assess the quality and thoroughness of UNHCR refugee status determination.

## Tools for understanding the refugee definition

Making these assessments requires a detailed understanding of each specific criterion of the refugee definition, the exclusion provisions, as well as standards of proof and the basis on which a credibility evaluation should be made. The *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol Relating to the Status of Refugees*<sup>6</sup> remains one of the most authoritative texts on the interpretation and application of the 1951 Convention inclusion criteria, and has been complemented by more detailed guidance in the series of *Guidelines on International Protection* ("GIP") and other guidance notes on specific eligibility issues. See the essential reading section of this chapter for a list of the GIP and other guidance notes.

A standard *UNHCR RSD Assessment Form*<sup>7</sup> has been developed to provide a standard structure for the analysis of the main elements of the decision. The form is designed to assist eligibility officers to address each of the relevant substantive issues and to present the relevant facts and reasons for their decision in a structured and consistent manner.

### 3.1.5 Derivative status related to family reunification

Family members and dependants seeking reunification with a resettled refugee may be considered for derivative status in accordance with their right to family unity.<sup>8</sup> Claims for derivative refugee status should be assessed by protection or eligibility staff, as they involve a detailed examination of all available documents and other information regarding the applicant's identity and dependency.

<sup>6</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*, 1979, re-edited version January 1992, <http://www.unhcr.org/refworld/docid/3ae6b3314.html>

<sup>7</sup> UNHCR, *UNHCR RSD Assessment Form (Annotated)*, 2011, (Internal) <http://swigea56.hcrnet.ch/refworld/docid/4acf37b72.html>

<sup>8</sup> For further guidance on derivative status, see UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, Unit 5, <http://www.unhcr.org/refworld/docid/42d66dd84.html>



Although individuals who obtain derivative refugee status enjoy the same rights and entitlements as other recognized refugees, family members who are determined to fall within the criteria for refugee status in their own right should be granted refugee status rather than derivative refugee status. Identifying an independent claim is important for the identification of protection needs, and in the context of resettlement may be crucial to ensuring that adult dependants are accepted by a resettlement State.<sup>9</sup>

However, the determination of derivative status is often key to facilitating family reunification for dependants of refugees who have been resettled. After the determination of derivative refugee status has been made by protection staff, resettlement staff may provide assistance with the processing under a resettlement State's family reunification programme, or consider the case for a resettlement submission as appropriate. See [Chapter 5.1.2](#) and [Chapter 6.6](#) for more guidance.

## 3.2 WHO IS A REFUGEE? REFUGEE STATUS DETERMINATION UNDER UNHCR'S MANDATE

In the words of a renowned expert on international refugee law, the purpose of defining who is a refugee is in fact *"to facilitate, and justify, aid and protection."*<sup>10</sup> The term "protection" also, of course, encompasses finding a durable solution.

Two categories of persons may be refugees within UNHCR's international protection mandate:

### 3.2.1 Refugees within Article 1A (2) of the 1951 Convention

The refugee definition contained in the 1951 Convention forms the core of the eligibility criteria for mandate refugee status. Pursuant to Article 1A (2) of the 1951 Convention, the term "refugee" shall apply to:

*"a person who... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or unwilling to return to it."*

### 3.2.2 Refugees under the broader refugee definition

UNHCR's mandate to protect refugees also extends to persons who are affected by the indiscriminate effects of armed conflict or other "man-made disasters", including, for example, foreign domination, intervention, occupation

<sup>9</sup> Whereas UNHCR includes all dependants on a single RRF, reflecting UNHCR's inclusive definition of a family, some resettlement States split off adult dependants onto their own cases, and require all applicants to have an individual refugee claim.

<sup>10</sup> See G.S. Goodwin-Gill, *The Refugee in International Law*, 2nd edition, 1996, Oxford University Press, 4.

or colonialism. In addition to individuals who meet the criteria in the 1951 Convention definition, UNHCR recognizes as refugees, those who are:

*“outside their country of origin or habitual residence and unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.”*

The group of persons who may be refugees under UNHCR’s international protection mandate is similar to those categories covered by the refugee definitions incorporated in regional refugee instruments, which provide for broadened refugee definitions to address the specific protection problems of the African and Latin American regions. It is important that eligibility staff in countries which apply these definitions are familiar with them.

### 3.2.3 Refugee definitions in regional instruments

#### **1969 OAU Convention Governing Specific Aspects of the Refugee Problems in Africa (the “OAU Convention”) – Article 111**

*(i) For the purpose of this Convention the term “refugee” shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it.*

*(ii) The term “refugee” shall also apply to 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.*

#### **1984 Cartagena Declaration – Conclusion No. 312**

*“... the definition or concept of refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”.*

In most cases where eligibility under the broader refugee definition is relevant, UNHCR offices will have received direction from Headquarters regarding the

<sup>11</sup> Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Convention”)*, 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>

<sup>12</sup> *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.unhcr.org/refworld/docid/3ae6b36ec.html>

characterization of events in the region concerned and the impact that these events are deemed to be having upon the populations affected. This is usually provided through **eligibility guidelines**, which are prepared to promote a common understanding of the objective country conditions and a harmonized approach to the status determination of individuals from the countries concerned.<sup>13</sup>

### 3.2.4 How does UNHCR determine refugee status?

When assessing whether an applicant meets the inclusion criteria for mandate refugee status, UNHCR's eligibility officers should consider:

- whether the individual concerned falls within the criteria for inclusion set out in the refugee definition of the 1951 Convention; and, if this is not the case,
- whether he/she meets the criteria of the broader refugee definition under UNHCR's mandate.

Establishing as a first step whether these criteria are met is important, since recognition as a refugee within the meaning of the 1951 Convention definition may in practice provide a more secure status than recognition as a refugee under UNHCR's broader decision. States (particularly those who are not bound by relevant regional refugee instruments) may not necessarily accept any obligation towards those who do not fall within the Convention criteria, and it is therefore often more difficult for UNHCR to ensure international protection or to find durable solutions in such cases.

Only if it has been established that an applicant does not meet the eligibility criteria of the 1951 Convention definition should UNHCR proceed to consider whether he/she comes within the wider category of persons who are also refugees under UNHCR's mandate.

UNHCR's protection responsibilities for refugees recognized under the Office's mandate are the same as for Convention refugees, and refugee status accorded on that basis should not be viewed as "secondary" or "subordinate". Similarly, UNHCR's international protection responsibilities towards *prima facie* refugees are the same as for those whose refugee status has been determined individually.



## 3.3 THE REFUGEE DEFINITION OF THE 1951 CONVENTION

Article 1A(2) of the 1951 Convention sets forth the so-called inclusion criteria of the refugee definition, that is, those elements which must be met for an asylum-seeker to qualify as a refugee under this Convention, provided that none of the exclusion clauses contained in Article 1D, 1E or 1F are applicable to him/her. The following sections briefly consider these criteria one by one. Further details can be found in the *Handbook on Procedures and Criteria for Determining Refugee Status* and in relevant guidelines.

<sup>13</sup> See for example UNHCR, *UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia*, 5 May 2010, HCR/EG/SOM/10/1, <http://www.unhcr.org/refworld/docid/4be3b9142.html>

### 3.3.1 Outside the country of nationality or habitual residence

A person can only be a refugee if he/she is outside his/her country of nationality, or for those who are stateless, outside their country of habitual residence. This is a factual issue, which is to be established on the basis of documents, statements or any other information submitted by the applicant or obtained from other sources.

Persons who have more than one nationality must establish a well-founded fear of persecution with respect to each of the countries concerned in order to qualify for refugee status. However, this requirement applies only if the applicant's second nationality actually carries with it the full range of rights normally enjoyed by citizens of the country concerned.

The 1951 Convention does not require that a person's departure from his/her country of origin or habitual residence was caused by a well-founded fear of persecution. Grounds for recognition as a refugee may arise when the individual concerned is already out of the country – in such situations, the person may become a refugee while being in the host country (“*sur place*”).

### 3.3.2 Well-founded fear

The indicators for assessing whether the fear is well-founded include the applicant's personal circumstances (background, experiences, personality, family history, etc.) and the objective situation in the country of origin (social/political conditions, human rights records, legislation, etc). Reliable country-of-origin information is essential for eligibility staff, both to understand the applicant's personal circumstances and to assess the well-foundedness of his/her fears. Experiences of family members and/or other persons with a comparable profile may also be relevant.

If the perpetrator of the harm feared is a non-State agent, the willingness and ability of the State to protect the applicant should also be considered. A State may be unable to extend meaningful protection to its citizens in time of war, or other grave disturbance or in contexts where the State does not exercise control over a certain part of the territory.

The applicant's fear can be considered well-founded if there is a **reasonable possibility** that he/she would face some form of harm or predicament if returned to the country of origin or habitual residence. In general, eligibility for refugee protection under the 1951 Convention requires a current or future fear of persecution. The applicant must not necessarily have suffered persecution in the past, but if it is established that this has happened, it may normally be assumed that there continues to be a risk of persecution in the future.

### 3.3.3 Persecution

The concept of “persecution” is not defined in the 1951 Convention or in any other international instrument. From Article 33 of the 1951 Convention it can be inferred that a **threat to life or physical freedom** constitutes persecution, as would other **serious violations of human rights**. The preamble to the 1951 Convention refers to international human rights standards, which all persons, regardless of their nationality, enjoy. The 1948 *Universal Declaration of Human Rights* (UDHR)<sup>14</sup> set out a list of fundamental rights which should be universally respected, and the 1966 *International Covenants on Civil and Political Rights* (ICCPR),<sup>15</sup> and on *Economic, Social and Cultural Rights* (ICESCR)<sup>16</sup> codified these in legally binding form. A series of other human rights instruments have built on and developed these standards to address specific categories of rights.

#### Threshold of persecution

Not every violation of an applicant’s human rights or instance of discrimination or harassment is serious enough to be considered persecution. Discrimination, in particular, can constitute persecution if it is **linked to a protected right** (such as, for example, freedom of religion), or if there has been a persistent pattern of discrimination – provided this reaches a certain level of seriousness for the particular individual. The threshold of persecution is clearly met if the applicant’s enjoyment of fundamental human rights – for example, access to the basic means of survival – is seriously restricted. Moreover, discriminatory measures which, taken separately, would not amount to persecution, may on aggregate render the situation for the applicant intolerable. This would be considered persecution on “**cumulative grounds**”.

However, “persecution” is not limited to human rights abuses. It also encompasses other kinds of **serious harm or intolerable predicament**.

When assessing whether a particular treatment or measures amount to persecution, decision makers consider it/them in light of the opinions, feelings and **psychological make-up of the applicant**. The same act may affect people differently depending on their previous history, profile and vulnerability. In each case, decision makers must determine in light of all the specific individual circumstances whether or not the threshold of persecution is reached.

#### Circumstances not amounting to persecution

Certain circumstances do not amount to persecution. Thus, for example, persons who fear natural disasters are not refugees, unless they also have a well-founded fear of persecution for one of the reasons set out in the 1951 Convention

<sup>14</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), <http://www.unhcr.org/refworld/docid/3ae6b372c.html>

<sup>15</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <http://www.unhcr.org/refworld/docid/3ae6b3aao.html>

<sup>16</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, <http://www.unhcr.org/refworld/docid/3ae6b36co.html>

definition (discussed below). Likewise, persons who leave their countries solely to improve their economic situation are not refugees, although as noted above, severe economic restrictions which deprive a person of all means of earning a livelihood can amount to persecution.

### Who is the persecutor?

In many cases, persecution originates directly from the government, through official agents, such as police, army or civilian administrators. In other cases, it may be carried out by groups that, although formally separated from the government structure, act at the instigation or with the consent of the government, such as death squads, militias and paramilitary forces. Persecution may also originate from *de facto* authorities and may even occur at the hands of private citizens or people not connected with the authorities. In such cases, the decisive question is whether or not the authorities are able and/or willing to provide protection to the individuals concerned.

### 3.3.4 1951 Convention grounds – the “nexus” requirement

The refugee definition in the 1951 Convention specifies that a person may qualify for refugee status under its terms only if he/she fears persecution “**for reason**” of one or more of the **five grounds** listed in Article 1A (2). This link is often referred to as the “nexus” requirement. It is satisfied if the Convention ground is a relevant factor contributing to the persecution – it does not have to be its sole or even dominant cause.

In practice, more than one Convention ground may apply, for example if a member of a particular religious or ethnic group is also a political opponent. The link between the fear of persecution and the relevant Convention ground is also present where the authorities mistakenly impute a particular belief (e.g. religion or political opinion) or attribute a characteristic (e.g. homosexual) to the individual concerned. Neutrality may also form the basis of a refugee claim, for example in the context of a civil war, as a person who remains neutral in such circumstances may be perceived by either side as a political opponent, which in turn may result in his/her persecution.

The UNHCR *Guidelines on Gender-Related Persecution* provide detailed guidance on examining gender-related claims in light of the five grounds contained in the 1951 Convention.<sup>17</sup> The Guidelines emphasize that gender-related claims may fall within any of the five grounds. Examination of these claims should not therefore be limited to the ground of “membership of a particular social group”. The challenge for decision makers in this respect is to understand the way in which gender fits into each of the five grounds. When analyzing gender-related claims, for example, there is a need to consider that certain acts and situations affecting women, that often appear purely private and personal, may in reality be *profoundly political* and should therefore be considered under the ground “political opinion”.

<sup>17</sup> UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, <http://www.unhcr.org/refworld/docid/3d36f6c6.html>

## Race

“Race” should be broadly interpreted as any kind of distinctive ethnic characteristic, whether real or perceived. Minority groups are more likely to be persecuted than majorities, but this is not always the case: for example, in apartheid South Africa, the racial majority was oppressed by the minority. Men and women in “mixed” marriages, in which each spouse comes from a different ethnic or racial background, may face problems which in some cases may amount to persecution. In such cases, it is particularly important to understand the underlying social context. Another form of persecution which is frequently based on race is denial of citizenship, and the loss of rights which this entails.

## Religion<sup>18</sup>

As noted above, freedom of religion is a fundamental human right. It includes the right to have or not to have a religion, to practice one’s religion, and to change religions. “Religion” as a 1951 Convention ground refers not only to the established institutionalized religions; it covers any system of belief – that is, convictions or values about a divine or ultimate reality, or the spiritual destiny of mankind. Claims for refugee status on this basis may involve elements related to religious belief (or the fact of not having a belief), religious identity or religion as a way of life. Examples of persecution for reason of religion include the following:

- restrictions on the exercise of religious freedom, for example, prohibition of membership in a religious community or of religious instruction;
- serious discrimination because of religious practice or membership in a given religious community;
- forced conversion, or forced compliance or conformity with religious practices, provided that such measures have a sufficiently serious impact on the individual concerned.

## Nationality

“Nationality” as a ground for refugee status does not only refer to “citizenship”, but also extends to groups of people defined collectively through their real or perceived ethnic, religious, cultural or linguistic identity, regardless of whether this difference has been formalized legally.

Persons who are stateless – that is, without a nationality in its more limited sense of “citizenship” – may be refugees if they have been denied citizenship on the basis of one of the five 1951 Convention grounds, or if they have a well-founded fear of persecution on one of the Convention grounds in the country of habitual residence.

<sup>18</sup> Detailed guidance on the examination of claims for refugee status based on religion can be found in UNHCR, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, 28 April 2004, HCR/GIP/04/06, <http://www.unhcr.org/refworld/docid/4090f9794.html>



## Membership of a particular social group<sup>19</sup>

This Convention ground applies where an applicant belongs to a group of persons who share a common characteristic other than the risk of being persecuted. This characteristic is one which is:

- **innate** – such as sex, race, caste, kinship, ties, linguistic background, or sexual orientation;
- **unchangeable** – for example, because it relates to the individual’s past history, such as former military officer, former trade union member, or former landowner; or
- **otherwise fundamental** to identity, conscience or the exercise of one’s human rights, such that the person should not be expected to change or reject it.

The group must be set apart in some way from others, either because it sees itself as being different, or because it is perceived as such by the persecutor. It is not dependent on whether the members of the group know each other and associate together, nor is it necessary that it be a small group – thus, for example, there may be situations in which it is appropriate to recognize “women” generally as a particular social group.

Claims related to sexual orientation, gender identity and expression are also appropriately recognized under the 1951 Convention ground “membership of a particular social group,” although individual cases may also be recognized under other grounds.

One of the most visible examples of a particular social group is the family. Claims for refugee status may arise, for example, where family members of political activists or opposition fighters are targeted for persecution as a means of punishing the latter or forcing them to surrender or cease their activities.

### Gender as a factor in the determination of the claim

“Gender-related persecution” denotes quite a varied set of possible claims. These claims may typically include acts of sexual violence, family violence, coerced family planning, female genital mutilation, sexual orientation, etc. These types of claims may mix forms of persecution (e.g. persecution effected through sexual violence) with reasons for persecution (e.g. persecution because of deviation from attributed gender’s role). What is common amongst them is the fact that gender is a relevant factor in the determination of the claims.

For further guidance see UNHCR *Guidelines on Gender-Related Persecution*.<sup>20</sup>

<sup>19</sup> A detailed analysis of the applicability of this Convention ground is contained in UNHCR, *Guidelines on International Protection No. 2: “Membership of a Particular Social Group” Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/02, <http://www.unhcr.org/refworld/docid/3d36f23f4.html>. See also UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, <http://www.unhcr.org/refworld/docid/48abd566o.html>

<sup>20</sup> UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, <http://www.unhcr.org/refworld/docid/3d36f6c64.html>

## Political opinion

The concept of “political opinion” as a ground for recognition as a refugee should be interpreted in a broad sense, as encompassing any opinion concerning matters on which the machinery of the state, government or society is engaged. It goes beyond identification with a specific political party or recognized ideology, and may include, for example, an opinion on gender roles. The mere fact of holding a political opinion which is different from that of the government is not in itself a ground for claiming refugee status. The key question is whether the applicant holds – or is perceived to hold – opinions which are not tolerated by the authorities or by the community, and whether he/she has a well-founded fear of persecution for this reason.

### 3.3.5 Internal flight or relocation alternative

If the applicant’s fear of persecution emanates from non-State actors and is confined to a specific part of the country, outside of which the feared harm cannot materialize, it may be appropriate to assess whether he/she would have a possibility of finding protection elsewhere in the country of origin. This is known as the “internal flight or relocation alternative”. Where it exists, the applicant may not be eligible for international refugee protection. Guidance on this subject can be found in UNHCR’s *Guidelines on International Protection: “Internal Flight or Relocation Alternative.”*<sup>21</sup>

**Claims of children** should also be considered in light of the 1951 Convention grounds. In particular, it is important to note that children may also have political opinions, though these may be manifested differently from the opinions of adult men and women in the society. In this particular respect, it is important to note that children may not have a subjective fear (because of their age and lack of maturity). This, however, would not impact upon their need for protection provided that the objective element of fear is present.<sup>22</sup>

## 3.4 ELIGIBILITY UNDER THE BROADER REFUGEE DEFINITION

Individuals who have fled their country of origin and are unable to return owing to indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order may be eligible for mandate refugee status even if they do not have a well-founded fear of persecution linked to a 1951 Convention ground.

<sup>21</sup> UNHCR, *Guidelines on International Protection No. 4: “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*, 23 July 2003, HCR/GIP/03/04, <http://www.unhcr.org/refworld/docid/3f2791a44.html>

<sup>22</sup> For detailed guidance on examining the claims of child applicants, read UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>

The criteria for eligibility under UNHCR's broader refugee definition differ in various ways from those of the refugee definition of the 1951 Convention.

Instead of a "well-founded fear of persecution", the basis for the claim is a serious threat to the applicant's life, and physical integrity or freedom. The standard of proof for establishing the existence of such a threat, however, is the same as under the 1951 Convention definition – there must be a reasonable likelihood that the harm will materialize if the person concerned were to be returned.

The threat of harm must result from generalized violence or events seriously disturbing public order; in other words, it should arise from a generalized breakdown in the State's capacity to provide protection, as may be a result, for example, of armed conflict or other man-made disasters, including foreign domination, intervention or occupation and colonialism.

Moreover, under the broader refugee definition, the threat may be indiscriminate – in most cases where an individual is subject to a selective or discriminate risk of harm, this would be linked to a 1951 Convention ground.

### 3.5 EXCLUSION FROM REFUGEE STATUS UNDER INTERNATIONAL REFUGEE LAW



A decision on refugee status should normally have been made before an individual is considered for resettlement. However, it is essential that issues relating to exclusion from refugee status be carefully reviewed before resettlement is considered. Should any exclusion issues arise during consideration for resettlement, the case should be sent to the Protection Unit for an exclusion assessment.

International refugee law excludes from refugee status certain persons who would otherwise qualify as refugees, but who are nevertheless denied international protection under the 1951 Convention. This may be because they are receiving protection or assistance from a UN agency other than UNHCR or because they are not in need or not deserving of such protection. The conditions in which this is the case are defined in Articles 1D, 1E and 1F of the 1951 Convention. These provisions are usually referred to as the **exclusion clauses**.

- **Exclusion under Article 1E** means that an individual who fulfils the criteria for inclusion under Article 1A (2) of the 1951 Convention cannot benefit from refugee status because he or she is not in need of international protection. This provision applies to persons who do not require protection because they already enjoy a status which, possibly with limited exceptions, corresponds to that of nationals.<sup>23</sup>
- **Article 1D**, on the other hand, applies to a special category of refugees, who like other refugees are in need of international protection, but for

<sup>23</sup> Guidance on the application of this exclusion provision can be found in UNHCR, *UNHCR Note on the Interpretation of Article 1E of the 1951 Convention relating to the Status of Refugees*, March 2009, <http://www.unhcr.org/refworld/docid/49c3a3d12.html>

whom separate arrangements have been made to receive protection or assistance.<sup>24</sup>

- **Article 1F** of the 1951 Convention provides for exclusion from international refugee protection of persons who are deemed undeserving of such protection on account of having committed certain serious crimes or heinous acts.<sup>25</sup>

Like all exceptions to human rights provisions, the exclusion clauses of the 1951 Convention must be interpreted restrictively and applied with caution. Procedural safeguards must be observed, and a thorough assessment of whether or not the relevant criteria are met must be made, based on the specific circumstances of the individual case.

UNHCR's competence does not extend to persons who come within the scope of the exclusion clauses of the 1951 Convention.<sup>26</sup> The integrity of the Office's international protection mandate requires that whenever the facts of a particular case raise the possibility of exclusion, it must be carefully considered whether or not the individual concerned is eligible for refugee status under UNHCR's mandate.

The need for an individualized examination of all aspects of a person's claim applies whenever the application of Article 1F is considered, be it:

- In the course of **individual RSD procedures** at the initial eligibility stage, where exclusion considerations are examined as part of the determination of eligibility for international refugee protection.
- Where exclusion issues arise for individuals who are part of a group considered eligible for **refugee status recognition on a prima facie basis**, for example in the context of a mass influx. Such persons undergo full individual RSD.
- Where exclusion issues that were not previously considered arise during other processes, including a resettlement interview. Such persons must undergo a full exclusion assessment before their cases can be submitted for resettlement.
- In proceedings with a view to the possible **cancellation** of refugee status. Cancellation means a decision to invalidate refugee status which should not have been granted in the first place, either because the person concerned

<sup>24</sup> Guidance on the application of this provision, which operates as both an inclusion and an exclusion clause, can be found in UNHCR, *Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, October 2009, <http://www.unhcr.org/refworld/docid/4add77d42.html>

<sup>25</sup> Guidance on the interpretation and application of this provision can be found in UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003 (hereafter "UNHCR Guidelines on Exclusion"), <http://www.unhcr.org/refworld/docid/3f5857684.html>, and *UNHCR Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003 <http://www.unhcr.org/refworld/docid/3f5857d24.html>, as well as a number of other documents referred to in this chapter.

<sup>26</sup> UNHCR's 1950 Statute contains, in paragraphs 7(b), (c) and (d), exclusion provisions which are similar to Articles 1D, 1E and 1F of the 1951 Convention. The refugee definition set out in the 1951 Convention constitutes the later and more specific expression of the refugee concept evolving at the time of the drafting of both definitions. For this reason, the exclusion clauses in the 1951 Convention take precedence over those contained in the 1950 Statute, and UNHCR staff should apply the criteria set out in Articles 1D, 1E and 1F of the 1951 Convention when determining whether an individual is excluded from mandate refugee status.

did not meet the inclusion criteria, or because an exclusion clause should have been applied to him or her at the time of the initial determination.

- Through the **revocation** of refugee status, which means the withdrawal of refugee status from a person who was properly recognized as a refugee but engages in conduct within the scope of the exclusion clauses contained in Article 1F (a) or (c) of the 1951 Convention after recognition.<sup>27</sup>



**Assessing exclusion factors** is an integral part of the status determination process, and it is essential that issues relating to exclusion from refugee status be carefully examined in all cases where there are indications that the individual concerned may come within the scope of Article 1E, 1D or 1F of the 1951 Convention.

In practice, the exclusion grounds which UNHCR eligibility and resettlement staff are most often required to examine are those provided for in Article 1F of the 1951 Convention.

### 3.5.1 The exclusion clauses of Article 1F

Article 1F provides that the 1951 Convention “shall not apply to any person with respect to whom there are serious reasons for considering that:

- a) he [or she] has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- b) he [or she] has committed a serious non-political crime outside the country of refuge prior to his [or her] admission to that country as a refugee; or
- c) he [or she] has been guilty of acts contrary to the purposes and principles of the United Nations.”

The rationale behind this provision is that certain acts are so grave as to render their perpetrators undeserving of international protection as refugees. Such persons should not be able to abuse the institution of asylum in order to avoid being held legally accountable for their acts. Thus, to protect the integrity of the institution of asylum, Article 1F should be applied scrupulously to those who come within its scope.

At the same time, decision makers should be aware of the serious implications of the application of Article 1F. Exclusion means that a person who meets the inclusion elements of the refugee definition – and is therefore determined to be in need of international protection – is denied refugee status. This may have very severe consequences for the individual concerned. Therefore, decision makers need to interpret the exclusion clauses restrictively and exercise great caution when considering their application.

<sup>27</sup> Guidance on the cancellation and revocation of mandate refugee status can be found in UNHCR, *Guidelines on the Cancellation of Mandate Refugee Status (Internal)*, 22 November 2004, <http://swigea56.hcrnet.ch/refworld/docid/41dd6eb84.html>, and (external) UNHCR, *Note on the Cancellation of Refugee Status*, 22 November 2004, <http://www.unhcr.org/refworld/docid/41a5df94.html>

### **Detailed guidance on the interpretation and application of Article 1F of the 1951 Convention is set out in:**

*UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, 1979, reedited Geneva, January 1992, <http://www.unhcr.org/refworld/docid/3ae6b3314.html>

*UNHCR Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003 (hereafter “UNHCR Guidelines on Exclusion”), <http://www.unhcr.org/refworld/docid/3f5857684.html>

*UNHCR Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.unhcr.org/refworld/docid/3f5857d24.html>

*UNHCR Guidelines on the Application in Mass Influx Situations of the Exclusion Clauses of Article 1F of the 1951 Convention relating to the Status of Refugees*, February 2006, <http://www.unhcr.org/refworld/docid/43f48cob4.html>

*UNHCR Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>

The procedural safeguards which should be observed in exclusion proceedings are set out in UNHCR’s *Procedural Standards for Refugee Status Determination under UNHCR’s Mandate* (hereinafter RSD Procedural Standards), 20 November 2003, at § 4.8, <http://www.unhcr.org/refworld/docid/42d66dd84.html>, as revised through *UNHCR IOM/019/2010 - FOM/019/2010 Revision of Procedural Standards for Refugee Status Determination under UNHCR’s Mandate: Headquarters review of exclusion, revocation, cancellation and cessation decisions*, 12 April 2010, (Internal) <http://swiga56.hcrnet.ch/refworld/docid/4bc44e912.html>

All UNHCR staff involved in interviewing, decision making and/or reviewing of RSD decisions need to be familiar with these documents. A comprehensive list of resource materials on exclusion is included at the end of this chapter.

## **3.5.2 Applying Article 1F of the 1951 Convention**

### **Inclusion before exclusion**

In principle, inclusion should be considered before exclusion, so as to allow the decision maker to examine both the reasons justifying refugee status and the factors related to exclusion in a holistic manner.<sup>28</sup>

<sup>28</sup> However, as noted in UNHCR’s *Guidelines on Exclusion*, exclusion may be exceptionally considered without particular reference to inclusion issues (i) where there is an indictment by an international criminal tribunal; (ii) in cases where there is apparent and readily available evidence pointing strongly towards the applicant’s involvement in particularly serious crimes, notably in prominent Article 1F (c) cases; and (iii) at the appeal stage in cases where exclusion is the question at issue.

If a person does not meet the inclusion criteria of the refugee definition, he/she does not have a well-founded fear of persecution, and it is for this reason that his/her claim for recognition as a refugee should be rejected.

### Standard and burden of proof

Article 1F applies if there are **“serious reasons for considering”** that the individual concerned has committed, or participated in the commission of acts within the scope of this exclusion clause. While it is not necessary to meet the standard of proof in criminal cases (e.g. “beyond reasonable doubt” in common law systems), the “balance of probabilities” threshold is too low. Likewise, a simple suspicion would not be a sufficient basis for a decision to exclude. Clear and credible evidence is required to meet the “serious reasons for considering” standard.

The information which links an individual with acts within the scope of Article 1F must be evaluated carefully in light of all relevant circumstances, including its nature, content and source. Where exclusion considerations are raised by an indictment or conviction by a national court, it is necessary to determine whether the person concerned is fleeing persecution or seeking to escape legitimate prosecution. This is especially relevant in cases where criminal proceedings are under way before a court in the person’s country of origin.<sup>29</sup>

The burden of proof lies, in principle, on the decision maker. In other words, the State or UNHCR must show that there are indeed “serious reasons for considering” that the person concerned comes within the scope of Article 1F. This always requires an individualized assessment of the applicant’s conduct, including where he/she was a member of a repressive regime or a group that commits or advocates violent crimes, or if he or she took part in an armed conflict in the past.<sup>30</sup>

### Procedural safeguards

Given the exceptional nature and potentially severe consequences of exclusion for the individual, procedural safeguards are particularly important in exclusion cases. These include, in particular, the need for a full RSD interview and the right of the individual concerned to respond to information which may form the basis for an exclusion decision.<sup>31</sup> Procedural fairness also requires that the excluded person be given a possibility to submit an appeal, which should be examined by a person or organ different from the one involved in adjudicating and/or reviewing the first-instance decision.

<sup>29</sup> By contrast, indictments by an international criminal tribunal would generally meet the “serious reasons for considering” standard required under Article 1F. For further guidance on this point, see UNHCR, *Background Note on Exclusion*, at para. 106.

<sup>30</sup> Further guidance on the standard and burden of proof in case involving exclusion under Article 1F of the 1951 Convention can be found in UNHCR’s *Background Note on Exclusion Clauses*, <http://www.unhcr.org/refworld/docid/3f5857d24.html>, at paras. 105-111.

<sup>31</sup> The applicant’s right to full disclosure of relevant information may be limited only in certain exceptional situations, where this is necessary (generally to protect the security of UNHCR staff or a witness or other source of information). Guidance on the circumstances in which this may be relevant, and on appropriate UNHCR procedures, can be found in the *RSD Procedural Standards*, at § 4.8.2 and § 6.2.



## Non-cooperation

RSD interviewers are sometimes faced with applicants who do not cooperate, and in particular, refuse to answer questions concerning their involvement in excludable crimes. As such, this would normally not be sufficient to exclude an asylum-seeker from refugee status, unless there is enough information to meet the “serious reasons” standard and thus to justify the application of Article 1F. This being said, an applicant’s refusal to cooperate may have a negative effect on his/her overall credibility and result in the rejection of his/her claim. However, before rejecting the claim on this basis, the decision maker should investigate the cause of an applicant’s non-cooperation, as it may be related to mistrust and/or confusion as a result of trauma or even lack of understanding of the procedures.

### 3.5.3 Framework for analysis of Article 1F

Whenever there are indications that an applicant may have been involved in acts which may fall within the scope of Article 1F, a thorough examination of all relevant aspects is required. Exclusion considerations may be triggered by statements of the individual applicant him/herself, or any other information which suggests that he or she may have been linked with excludable acts.

If exclusion considerations are triggered, it is necessary to examine:

- whether the acts in question come within the scope of Article 1F(a), (b) or (c), and if so,
- whether the person’s conduct and state of mind with regard to these acts give rise to individual criminal responsibility, and if this is the case,
- whether the consequences of exclusion from refugee status are proportional to the seriousness of the act committed.

### Identifying excludable acts

The first step – identifying the acts – requires decision makers to assess the relevant facts in light of the legal criteria set out in Article 1F (a), (b) and/or (c). Article 1F contains an exhaustive list of the acts which may give rise to exclusion from international refugee protection on the grounds that the person concerned is undeserving of such protection. Only those acts which fall within one or more of its clauses, because they constitute (a) crimes against peace, war crimes, crimes against humanity, (b) serious non-political crimes, and/or (c) acts contrary to the purposes and principles of the United Nations, may lead to exclusion under this provision.<sup>32</sup>

<sup>32</sup> Detailed guidance on the types of acts which may give rise to exclusion under Article 1F of the 1951 Convention can be found in UNHCR’s *Background Note on Exclusion Clauses*, <http://www.unhcr.org/refworld/docid/3f5857d24.html>, at paras. 26-49.

## Individual responsibility

Once it has been determined that an applicant is associated with acts within the scope of Article 1F, decision makers must examine whether he or she incurred individual responsibility for the acts in question. This will be the case if there is credible and reliable information on the basis of which it can be established that the applicant perpetrated the crime(s) him/herself, or that he/she participated in the commission of crimes by others, for example through planning, ordering or instigating, or by making a substantial contribution to the commission of a crime through aiding or abetting or participation in a joint criminal enterprise. Under certain circumstances, persons in a position of authority in a military or a civilian hierarchy may be held responsible for crimes committed by their subordinates.

Decision makers must also establish whether there are serious reasons for considering that the applicant acted with the intent (as to his/her conduct and/or its consequences) and knowledge (as to relevant circumstances and/or the consequences of his or her conduct) necessary to commit the crime(s) in question. This is referred to as the mental element of the crime, or *mens rea*. Where the mental element (*mens rea*) is lacking, individual responsibility does not arise. This may be the case, for example, because of insanity, mental handicap, involuntary intoxication or lack of mental capacity due to immaturity. The latter is particularly relevant for determining individual responsibility of a child (see also below).

It is also necessary to examine whether the applicant has a valid defence, that is, if there are circumstances exempting him or her from liability for the crime(s) he or she committed or participated in. A defence may apply, for example, if the applicant acted under duress resulting from an imminent, serious threat against him or herself or another person, or in self-defence. As part of a comprehensive exclusion analysis, decision makers should examine the possible existence of circumstances which would negate individual responsibility, even if this has not been raised by the applicant.<sup>33</sup>

## Proportionality

If there are serious reasons for considering that the applicant is individually responsible for acts within the scope of Article 1F, the final step in the exclusion analysis consists in assessing whether exclusion would be in keeping with the general legal principle of proportionality. Decision makers must weigh the seriousness of the crime(s) in question against the potential consequences of exclusion for the individual concerned, that is, the treatment which the applicant is likely to face, if he/she were to be excluded. The existence or otherwise of effective protection mechanisms under international or regional human rights instruments is an important factor in this regard.<sup>34</sup>

<sup>33</sup> Detailed guidance on how to determine individual responsibility in the context of exclusion under Article 1F of the 1951 Convention can be found in UNHCR's *Background Note on Exclusion Clauses*, <http://www.unhcr.org/refworld/docid/3f5857d24.html>, at paras. 50-75 and 91-93.

<sup>34</sup> Detailed guidance on the proportionality assessment in the context of exclusion under Article 1F of the 1951 Convention can be found in UNHCR's *Background Note on Exclusion Clauses*, <http://www.unhcr.org/refworld/docid/3f5857d24.html>, at paras. 76-78.

### 3.5.4 Consequences of exclusion

If it is established that an exclusion clause of Article 1F applies, the person concerned cannot be recognized as a refugee and benefit from international protection under the 1951 Convention, nor can he/she fall within the mandate of UNHCR. The situation of such a person is governed by legislation of the host State applicable to the presence on its territory of foreigners who are not refugees.

However, the fact that a person has been excluded from refugee status does not affect his/her entitlement to the enjoyment of other rights and benefits that are to be afforded under relevant human rights instruments or national legislation.<sup>35</sup>

The revised *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*<sup>36</sup> set out the UNHCR Headquarters review approval process for exclusion, revocation, cancellation and cessation decisions taken by the field.

### Exclusion and family unity

If the principal applicant is excluded, his/her family members or dependants are not automatically excluded as well. Their situation must be determined on an individual basis. They will qualify for refugee status if it is established that they have a well-founded fear of persecution linked to a Convention ground in their own right, even if the fear of persecution derives from the relationship with the excluded person. Family members and/or dependants of excludable persons can only be excluded if they themselves are found individually responsible for excludable acts falling within the scope of Article 1F.

The excluded person him/herself cannot, however, obtain derivative refugee status – that is, recognition as a refugee on family unity grounds and based on the refugee status granted to one of his/her family members.<sup>37</sup>

## 3.6 SPECIAL CONSIDERATIONS

Whenever the background and/or profile of an individual who is submitted for resettlement raises possible exclusion issues, it is of critical importance that the RRF contain a thorough exclusion analysis explaining why the person concerned has *not* been excluded from international refugee protection. The paragraphs below examine a number of specific situations wherein the application of Article 1F may intersect with States' efforts, for instance, on national security, counter-terrorism, extradition and law enforcement.

<sup>35</sup> Further guidance on the consequences of exclusion under Article 1F can be found in UNHCR's *Background Note on Exclusion Clauses*, paras. 21-22, <http://www.unhcr.org/refworld/docid/3f5857d24.html>

<sup>36</sup> UNHCR, *IOM/019/2010 - FOM/019/2010 Revision of Procedural Standards for Refugee Status Determination under UNHCR's Mandate: Headquarters review of exclusion, revocation, cancellation and cessation decisions*, 12 April 2010, (Internal) <http://swigea56.hcrnet.ch/refworld/docid/4bc44e912.html>

<sup>37</sup> Further guidance on family unity and exclusion can be found in UNHCR's *Background Note on Exclusion Clauses*, paras. 94-95, <http://www.unhcr.org/refworld/docid/3f5857d24.html>

### 3.6.1 Exclusion for acts committed when the applicant was a child

In principle, Article 1F can be applied for crimes committed when the applicant was a child, that is, under the age of 18. However, when analyzing cases of this nature, a number of specific issues must be taken into account.

First, Article 1F may be applicable only if, at the time the acts in question took place, the applicant had reached the **age of criminal responsibility** – the age below which a child cannot commit a crime (as opposed to the age of majority – the age at which a person acquires the full legal rights of an adult). There is no internationally binding standard as to which age should be used, although Article 40 of the *Convention on the Rights of the Child* recommends that States establish a minimum age. If the age of criminal responsibility is different in the country of origin and the country of asylum, the higher should normally be applied.

If the child has reached the age of criminal responsibility, the next step is to establish whether he or she had the necessary **mental capacity** to commit the crime(s) in question. It is necessary to determine whether the child was mature enough to comprehend the nature and consequences of his/her acts. In cases involving child soldiers, relevant factors in the analysis include the child's age when becoming involved in the armed group; reasons for joining (voluntary or coerced); consequences of refusal to join; length of time as member; forced use of drugs, alcohol, medication; level of education and understanding; trauma, abuse or ill-treatment suffered; absence of positive role models etc. If the child did not have the requisite mental capacity, individual responsibility does not arise. The younger the child, the greater is the presumption that he/she did not have the necessary mental capacity at the time. The child's maturity and any other relevant factors also need to be taken into account when examining the existence of a defence, and during the proportionality assessment.<sup>38</sup>

### 3.6.2 Former combatants

Another question which has received increased attention in recent years is that of the treatment of asylum applications of **combatants**. UNHCR's Executive Committee has defined combatants in ExCom Conclusion No. 94 (LIII) of 2002 as "persons taking active part in hostilities in both international and non-international armed conflict who have entered a country of asylum".

Military activities are by their nature incompatible with the civilian character of asylum. Therefore, active combatants are not eligible for international refugee protection and assistance. By contrast, **former combatants** who request asylum should be admitted into asylum procedures once it has been established that they have genuinely and permanently renounced military activities. Their asylum claims should be examined in individual RSD procedures, which should encompass an assessment of the possible application of Article 1F.

<sup>38</sup> Detailed guidance on the application of Article 1F in cases involving children can be found in UNHCR, *UNHCR Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>

The fact of having taken part in armed conflict does not in and of itself constitute a ground for exclusion, nor does it as such establish a presumption of responsibility for acts within the scope of an exclusion clause, although a careful assessment of the applicant's conduct during the armed conflict will be required.

### 3.6.3 Exclusion in situations of mass displacement

In situations of mass influx, refugee status is often determined on a *prima facie* basis. This is appropriate where there is sufficient objective information about the circumstances causing the flight of a particular population to consider the majority of the members of that population to meet the inclusion criteria applicable in the particular context. In situations where active or former combatants may be mixed in with the refugees, any declaration or statement of *prima facie* refugee status setting out the eligibility criteria to be met by members of the group should state that the *prima facie* recognition does not apply to either active or former combatants.

As noted above, active combatants are not eligible for international refugee protection, while former combatants who request asylum should be admitted to individual RSD procedures once it has been established that they have genuinely and permanently renounced their military activities. An exclusion assessment will need to form part of these procedures.

Exclusion considerations may also arise in other cases if information comes to light which indicates that an individual among a group of *prima facie* refugees may have committed a crime within the scope of Article 1F. In such cases, the UNHCR Field Office should carry out cancellation or revocation proceedings as appropriate. The resettlement submission should only be made after the UNHCR Field Office has established that the exclusion clauses are not applicable.

The determination that a person is undeserving of international refugee protection requires an individualized assessment in all cases. This also applies in situations of mass influx, including where the members of a group have been recognized as refugees on a *prima facie* basis. Those among the *prima facie* refugees for whom exclusion considerations arise because of their background and/or activities should undergo a review of their status as soon as it becomes feasible.<sup>39</sup>

### 3.6.4 Membership in a group or organization involved in violent crimes

Membership *per se* of a group or an organization that commits or incites others to carry out violent crimes is not necessarily sufficient to exclude a person from refugee status. Exclusion considerations will, however, be triggered for individuals who belong to such groups or organizations. While the fact of

<sup>39</sup> UNHCR, *UNHCR Guidelines on the Application in Mass Influx Situations of the Exclusion Clauses of Article 1F of the 1951 Convention relating to the Status of Refugees*, 7 February 2006, sets out detailed guidance. <http://www.unhcr.org/refworld/docid/43f48cob4.html>

membership does not, in and of itself, justify the application of an exclusion clause, the individual's role and activities within the group may bring him/her within the scope of Article 1F.<sup>40</sup>

### 3.6.5 Exclusion and acts of terrorism

The question of exclusion frequently arises in the context of crimes referred to as acts of terrorism. In many instances, it will not be necessary to consider whether such acts give rise to exclusion: where the person alleged to have been involved in terrorist crimes fears legitimate prosecution rather than persecution, he/she does not meet the inclusion criteria of the refugee definition and his or her claim will be rejected on that basis. If it is established, however, that a person alleged to have been involved in terrorist acts has a well-founded fear of persecution for reason of a 1951 Convention ground, an exclusion examination is required.

Cases of this nature must be handled with great care. On the one hand, it is important that persons who are undeserving of international protection do not obtain refugee status. On the other hand, the asylum claim of a person who belongs to a particular organization or who is suspected of having committed terrorist acts should be examined in a fair and efficient procedure in which the circumstances of the individual case are assessed against the criteria of Article 1F, including the requirement to establish whether the standard of proof under that provision (“serious reasons for considering”) is met.

Given the continued absence of a universally agreed definition of terrorism, decision makers considering the applicability of Article 1F to a particular individual should determine whether the acts with which he/she is said to be associated meet the criteria set out in that provision, rather than focusing on the “terrorism” label. Most acts of violence commonly referred to as “terrorist”<sup>41</sup> will constitute serious non-political offences within the meaning of Article 1F (b) of the 1951 Convention, particularly if they indiscriminately endanger or harm civilians. While they may be politically motivated, they are nevertheless likely to give rise to exclusion, as in many such cases the link between the crime and the alleged political purpose will not be sufficiently close, and/or the means employed cannot be considered proportionate to their goal.

Article 1F (c) – “acts contrary to the purposes and principles of the United Nations” – could also be relevant in cases involving terrorist acts, if these acts impinge on the international plane in terms of their gravity, international impact, and implications for international peace and security. The qualification of “an act of terrorism as an act contrary to the purposes and principles of the UN” as stipulated, for instance, in a number of UN Security Council Resolutions relating to terrorism or in domestic legislation does not in and of itself provide sufficient basis for exclusion without an individualized assessment of all relevant aspects.

<sup>40</sup> Further guidance on this question can be found in UNHCR's *Background Note on Exclusion Clauses*, <http://www.unhcr.org/refworld/docid/3f5857d24.html>, at paras. 59-62.

<sup>41</sup> This would include many of the acts prohibited under the existing conventions and protocols pertaining to aspects of terrorism which have been developed under the auspices of the United Nations and its specialized agencies.

As with all cases involving Article 1F, an exclusion assessment with regard to conduct referred to acts of “terrorism” would need to include a determination on the applicant’s individual responsibility. This also applies where a person’s name forms part of a list of suspected terrorists or if the group he or she is a member of has been designated as “terrorist” organization by the international community, a regional body or a State.<sup>42</sup> Such designation will regularly trigger exclusion considerations.<sup>43</sup>

### 3.6.6 Individual associated with criminal acts or subject to criminal proceedings

International refugee protection and criminal law are not mutually exclusive. The 1951 Convention does not shield refugees or asylum-seekers who have engaged in criminal conduct from prosecution for their acts. Similarly, refugee status, or the fact of having applied for asylum, does not mean that an individual involved in criminal conduct could not be prosecuted in the host State.<sup>44</sup>

Exclusion considerations may be triggered if an asylum-seeker is the subject of an extradition request based on criminal charges or a conviction in his or her country of origin or a third country. This would need to be taken into consideration during RSD procedures, as it may mean that the individual is a fugitive from justice rather than persecution. If it is found that the person is fleeing legitimate prosecution or punishment for criminal acts, he/she would not meet the refugee definition set out in Article 1A (2) of the 1951 Convention, and the claim should be rejected.

Decision makers should, however, consider the possibility that the authorities of the country of origin may be using criminal prosecution as a means of persecution and that extradition may be sought as a means to obtain the surrender of the “wanted person” with persecutory intent. In situations where the extradition proceedings place the person concerned at risk of *refoulement*, this may give rise to a need for resettlement.

Where the individual concerned has a well-founded fear of persecution in the country of origin – be it in the context of the criminal prosecution or for unrelated reasons – he/she would satisfy the refugee criteria stipulated in the 1951

<sup>42</sup> UNHCR, *Background Note on Exclusion*, para. 106. See also UNHCR *Statement on Article 1F of the 1951 Convention*, July 2009, <http://www.unhcr.org/refworld/docid/4a5de2992.html>, pp. 30-32 and UNHCR, *Addressing Security Concerns without Undermining Refugee Protection – UNHCR’s Perspective*, 29 November 2001, Rev. 1, paras. 12-19, <http://www.unhcr.org/refworld/docid/3cob880eo.html>

<sup>43</sup> Further guidance on the application of Article 1F to acts considered to be of a terrorist nature can be found in UNHCR’s *Background Note on Exclusion Clauses*, <http://www.unhcr.org/refworld/docid/3f5857d24.html>, at paras. 79-84.

<sup>44</sup> For instance, under Article 2 of the 1951 Convention, persons who have been recognized as refugees as well as asylum-seekers whose claims are being determined are bound to conform to the laws and regulations of the host country. If they do not do so, they may be prosecuted to the full extent of the law. Where necessary, refugees or asylum-seekers may also be subject to police measures aimed at the prevention of crimes, provided such measures are applied in a non-discriminatory manner and with full respect for the principle of proportionality. Detailed guidance on UNHCR’s position on substantive and procedural issues which arise when an extradition request concerns an asylum-seeker or a refugee can be found in UNHCR, *Guidance Note on Extradition*.



Convention, provided there is a link between the feared persecution and one of the grounds for persecution enumerated in Article 1A (2) of the 1951 Convention. However, in these circumstances, a thorough examination of possible exclusion issues would be required when determining the applicant's eligibility for international refugee protection.

In relation to crimes that fall within the scope of Article 1F (a) and Article 1F (c) of the 1951 Convention, these provisions apply at any time, whether the excludable act is committed in the country of origin, in the host country, or in a third country, before or after recognition of the asylum-seeker as a refugee. By contrast, for Article 1F (b) to apply, only serious non-political crimes committed by the asylum-seeker in the country of origin, or in another country apart from the host country prior to his/her admission to the host country, are relevant.

In all such cases – and particularly if extradition is sought by the person's country of origin – the reliability of available information must be assessed in light of all circumstances pertaining to the individual case.

As stated above, the fact that a person holding refugee status, which has been granted by UNHCR, is associated with criminal conduct, or is under a criminal investigation either in the country of origin, or in a host country does not *ipso facto* lead to the cancellation or revocation of his/her refugee status. This also applies where exclusion considerations arise when an asylum-seeker or a refugee is apprehended in the country of asylum or a third country on the basis of an INTERPOL “red notice”. Information which has come to light through INTERPOL channels should be examined in the same way as if it had been submitted directly by the authorities of the country on whose behalf the information has been disseminated through the INTERPOL system.<sup>45</sup>

### 3.7 EXCLUSION AND RESETTLEMENT

To protect the integrity of UNHCR's resettlement procedures, it is essential that possible exclusion issues are carefully examined, and eligibility for international protection under the Office's mandate is confirmed before an individual case is submitted for resettlement.

In principle, exclusion issues should be examined before a case is referred to resettlement procedures. However, staff responsible for resettlement must be attentive to any possible exclusion issues that may not have been considered at the RSD stage. This applies particularly where resettlement submissions are made for persons who were recognized as refugees on a *prima facie* basis, and therefore did not undergo full individualized RSD.



Should any facts or indications arise during the resettlement interview that suggest an individual may have been associated with excludable acts, the case should immediately be sent to the protection unit for an exclusion assessment.

<sup>45</sup> Guidance on the ways in which international refugee protection and extradition intersect and overlap, including the implications of extradition-related information for RSD (inclusion and exclusion aspects) can be found in UNHCR, *Guidance Note on Extradition*, April 2008, <http://www.unhcr.org/refworld/docid/481ec7d92.html>

Because of the particular serious implications for the individual concerned and the complex criteria that are relevant to the determination, examination of the application of the exclusion clauses in Article 1F should only be undertaken by UNHCR protection staff that have the requisite knowledge and training. For the same reasons, the *Procedural Standards for Refugee Status Determination under UNHCR's Mandate* require Headquarters review of all exclusion, revocation, cancellation and cessation decisions taken in the field.<sup>46</sup>

### 3.7.1 Standard Operating Procedures relating to resettlement submissions in cases where exclusion is triggered

The following SOPs are to be followed to minimize the risk of exclusion issues being overlooked in the context of resettlement.

1. The RSD decision should be reviewed by the Senior Protection Officer responsible for RSD or the Head of Office whenever:
  - there is uncertainty during resettlement processing whether exclusion triggers were adequately examined during individual RSD;
  - exclusion was triggered but not examined in full individualized RSD proceedings for a refugee recognized on a *prima facie* basis;
  - new exclusion considerations concerning a refugee arise during resettlement processing.
2. Resettlement processing should only resume when an exclusion assessment has been conducted and the refugee status has been confirmed.
3. In sensitive or borderline cases, the Field Office should submit its finalized decision, together with the Office's detailed analysis and recommendation, to the Senior Legal Advisor of the relevant Bureau for guidance. DIP is available to provide advice to the Bureaux on complex doctrinal issues related to the interpretation of Article 1F.

These steps must be taken before the case reaches the Resettlement Service at Headquarters or Resettlement Hubs/Regional Offices as applicable. If these SOPs have not been followed the Resettlement Service, Hub or Regional Office will return the case to the Field Office concerned.



4. Alternative procedures for review of exclusion cases may be adopted in certain RSD operations where the relevant Bureau and DIP determine that only cases of a specific type or exceptional nature need be reviewed by Headquarters before resettlement is pursued as a solution.

<sup>46</sup> UNHCR, *IOM/019/2010 - FOM/019/2010 Revision of Procedural Standards for Refugee Status Determination under UNHCR's Mandate: Headquarters review of exclusion, revocation, cancellation and cessation decisions*, 12 April 2010, (Internal) <http://swigea56.hcrnet.ch/refworld/docid/4bc44e912.html>



In any case where exclusion considerations were examined, the Resettlement Registration Form (RRF) must detail the relevant facts as well as the legal assessment which resulted in UNHCR's finding that exclusion is *not* applicable.

## 3.8 RECOGNIZING A QUALITY RSD ASSESSMENT

### 3.8.1 Assessment of the claim and report-writing

Following the refugee status determination interview the interviewer evaluates the claim, and prepares a written report known as the RSD Assessment. A well-organized and comprehensive RSD Assessment will contribute greatly to the quality of the determination decision, as well as the efficiency and accuracy of the review and appeal procedures, and in the cases where the individual is found to be in need of resettlement, the quality of the resettlement submission.

The RSD Assessment should include a:

1. **summary of the claim;**
2. **credibility assessment**, which should identify evidence that was not accepted or was regarded to be insufficient and provide an explanation for this finding; credibility is only assessed with respect to the evidence presented; evidence assessed as credible then forms the basis of the legal analysis;
3. **statement of the facts** which are considered established;
4. **legal analysis** of whether the accepted facts bring the applicant within the refugee criteria; this should examine first eligibility under the 1951 Convention, and if this criterion is not met, it should proceed to examine whether the applicant falls within the broader refugee protection criteria;
5. **assessment of whether exclusion issues** may apply, and an examination of the relevant issues where potential exclusion grounds are identified; and
6. **recommendation** on whether or not the applicant should be recognized.

The requirements for an assessment to be included in a Resettlement Registration Form may actually be higher than those required for UNHCR's own purposes. The standards or positions to be applied are not necessarily different, but the analysis must be explicit and cogent enough to convince an external party, in this case a potential resettlement State, to recognize an individual as a refugee. This is particularly true for refugees who have complex issues that raise possible exclusion considerations, such as former combatants or persons with criminal records.

### 3.8.2 The legal analysis

After establishing the relevant facts of the claim and assessing the credibility of the applicant, the decision maker needs to make the determination of whether the applicant meets the criteria set out in the refugee definition of the 1951 Refugee Convention or comes within the category of refugees covered by the broader refugee definition under UNHCR's mandate.

This requires a systematic approach that breaks down the reasoning process into manageable parts. Each element of the refugee definition should be checked against the facts gathered through the interview. Controversial issues should be addressed and discussed systematically, and the reasoning should be clearly explained. The evidence provided by the applicant, evidence from witnesses, and information about the country of origin must all be examined together to determine whether the applicant falls within the refugee criteria.

The RSD decision should clearly state the arguments to support the determination, whether positive or negative. Equally important is the impartiality, objectiveness, and consistency of decisions.

It is important that all decision makers use a consistent framework of analysis to assess refugee claims. This is crucial to ensure that RSD is carried out in a harmonized manner by all UNHCR's offices throughout the world and that refugees have equal chances to have their status recognized, independently of the UNHCR office in which they submit their claim.



### 3.8.3 Country-of-origin information

UNHCR issues country-related papers including *Eligibility Guidelines* to assist decision makers, including UNHCR staff, governments and private practitioners, in assessing the international protection needs of asylum-seekers. The *Eligibility Guidelines* are legal interpretations of the refugee criteria in respect of specific profiles on the basis of assessed social, political, economic, security, human rights and humanitarian conditions in the country/territory of origin concerned.

Good country-of-origin information (COI) is crucial to helping establish both the subjective and objective elements of the asylum-seeker's claim. An appropriate use of COI assists the eligibility officer:

- to ask pertinent questions and to help elicit the asylum-seeker's story;
- to identify and clarify any apparent contradictions or inconsistencies as the interview progresses;
- to assess the reliability of statements and other information provided by the applicant and any witnesses and establish the relevant facts.

Information on the conditions prevailing in the country of origin, however, very often gives the interviewer only a "general impression" of the situation affecting an individual. Country-of-origin information cannot, therefore, be systematically applied in the process of refugee status determination without being adequately *assessed* and put in the *appropriate context*.

The mere absence of information, moreover, or one's inability to find information that supports an applicant's claim, should not in itself justify a negative eligibility decision.

## Sources

The quality of information systems has improved dramatically in recent years. UNHCR's *Refworld* contains a large collection of documents related to security and human rights situations in countries of origin and legal and policy documents. The information has been selected and filtered from a wide variety of sources including the UN, UNHCR, governments, non-governmental organizations, academic institutions and judicial bodies.

The internal version of *Refworld* includes all of the public documents available on the external version of *Refworld*, as well as those which are classified as internal. All internal documents are marked in red, within search results, navigation, and in the document view itself.

The ease with which information can be published on the internet makes it crucial that both the source and the information be carefully evaluated.

### 3.8.4 The importance of a well-supported RSD Assessment

The information provided in the RSD Assessment, the organization of this information, the language used, as well as the tone of the writing play an important role in the way the recommendation will be received.

The quality and comprehensiveness of the RSD Assessment will also have an important bearing on the quality of resettlement referrals. A refugee claimant interviewed for RSD and recognized may be subsequently found to be in need of resettlement, either during the same interview or upon a subsequent interview undertaken by resettlement colleagues.

The information included in the RSD assessment report is used to prepare Resettlement Registration Forms (RRFs) that are submitted to resettlement countries. Should substantial inconsistencies arise at the moment of the resettlement interview, the case may be referred back to the RSD decision maker for clarifications, which might delay the case. In this context resettlement and RSD staff need to work in close consultation as an integrated team.

Moreover, resettlement country authorities usually undertake their own refugee status determination during interviews with the refugees whose cases UNHCR has submitted to them. A clear and comprehensive explanation of their claim provides invaluable support to the refugees facing what will hopefully be one of their final interviews in the quest for a durable solution.



## Essential reading

- UNHCR, *Self-Study Module 1: An Introduction to International Protection. Protecting Persons of Concern to UNHCR*, 1 August 2005, <http://www.unhcr.org/refworld/docid/4214cb4f2.html>
- 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, <http://www.unhcr.org/refworld/docid/3ae6b3314.html>
- UNHCR, *Manual on Mandate Refugee Status Determination (RSD) - A Reference Tool for UNHCR Adjudicators*, 1 October 2005, (Internal) <http://swigea56.hcrnet.ch/refworld/docid/438c17194.html>
- UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 20 November 2003, <http://www.unhcr.org/refworld/docid/42d66dd84.html>
- UNHCR, *IOM/o19/2010 - FOM/o19/2010 Revision of Procedural Standards for Refugee Status Determination under UNHCR's Mandate: Headquarters review of exclusion, revocation, cancellation and cessation decisions*, 12 April 2010, (Internal) <http://swigea56.hcrnet.ch/refworld/docid/4bc44e912.html>
- UNHCR, *Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees*, April 2001, <http://www.unhcr.org/refworld/docid/3b20a3914.html>

## UNHCR Guidelines on International Protection

- *GIP No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, <http://www.unhcr.org/refworld/docid/3d36f1c64.html>
- *GIP No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/02, <http://www.unhcr.org/refworld/docid/3d36f23f4.html>
- *GIP No. 3: 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 2003, HCR/GIP/03/03, <http://www.unhcr.org/refworld/docid/3e50de6b4.html>
- *GIP No. 4: "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*, 23 July 2003, HCR/GIP/03/04, <http://www.unhcr.org/refworld/docid/3f2791a44.html>
- *GIP No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, <http://www.unhcr.org/refworld/docid/3f5857684.html>



- *GIP No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, 28 April 2004, HCR/GIP/04/06, <http://www.unhcr.org/refworld/docid/4090f9794.html>
- *GIP No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006, HCR/GIP/06/07, <http://www.unhcr.org/refworld/docid/443679fa4.html>
- *GIP No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>
- UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.unhcr.org/refworld/docid/3f5857d24.html>
- UNHCR, *UNHCR Guidelines on the Application in Mass Influx Situations of the Exclusion Clauses of Article 1F of the 1951 Convention relating to the Status of Refugees*, 7 February 2006, <http://www.unhcr.org/refworld/docid/43f48cob4.html>
- UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, <http://www.unhcr.org/refworld/docid/48abd566o.html>
- UNHCR, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 31 March 2010, <http://www.unhcr.org/refworld/docid/4bb21fa02.html>