Operational Guidelines

On Maintaining the Civilian and Humanitarian Character of Asylum

UNHCR
The UN Refugee Agency

United Nations High Commissioner for Refugees

September 2006

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Preface

These Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum have been drafted at the request of UNHCR's Executive Committee, which had highlighted in its Conclusion 94 (LIII) of 2002, the need for the elaboration of measures for the disarmament of armed elements and the identification, separation, and internment of combatants. These Guidelines have taken into account the recommendations of an Expert Meeting held between 9th-11th June 2004 (see Annex 3) and build on two research papers that were commissioned in preparation of the Expert meeting, as well as subsequent internal consultations. These Guidelines especially benefited from the research paper on Maintaining the Civilian and Humanitarian Character of Asylum written by Rosa Da Costa and published in 2004 under the Legal and Protection Policy Research Series of UNHCR's Department of International Protection (now the Division of International Protection Services).

Despite well established legal principles and directives applicable to the issue of maintaining the civilian character of asylum and the separation and internment of combatants, the response on the ground often remains inadequate, with reluctance, or inability, on the part of Governments, but also international agencies, to assume responsibility. While ultimately the responsibility for maintaining the civilian character of asylum and security in general lies with States, the Guidelines suggest addressing issues of identification, separation and internment in a collaborative approach, to ensure that the process for identification, separation and internment benefits from expert guidance and is executed in a clear and transparent manner. Relevant actors involved in this process would include most importantly the Government, DPKO, UNHCR, the ICRC, and national and international NGOs. Other UN agencies, such as UNICEF may also have an important role to play.

The civilian and humanitarian character of asylum is a critical aspect of safety and security of refugees, and constitutes an important international protection standard. Refugee camps are particularly susceptible to violations of this principle. Failure to address breaches may also develop into threats to international peace and security. It follows that the involvement of the UN's political organs on the issue is fully justified.

Various UN bodies have paid attention to this issue, results of which may be used as a basis for advocacy with States. The adverse impact of armed elements and combatants on refugee populations has become, since 1999, a recurrent theme in the UN Secretary General's reports to the Security Council on the "Protection of Civilians in Armed Conflict." The Security Council, in its Resolution 1296 (2000), has tasked the Secretary-General to bring to the attention of the Security Council those situations where the presence of armed elements in refugee settings may pose threats to regional peace and security. An "Aide-Memoire" reflecting evolving protection priorities, first adopted by the Security Council in March 2002 and revised in December 2003, provides a further basis for the Security Council to review situations where support is required to obtain disarmament of armed elements as well as identification, separation and internment of combatants.

There are possibilities for UNHCR to explore influencing the UN system in playing a bigger role in supporting separation activities. The Secretary General's periodical reports to the Security Council on the Protection of Civilians offer elements for the definition of Peacekeeping missions, and enhanced inter-agency co-ordination also facilitates

Integrated Mission Planning. The Executive Committee on Humanitarian Affairs supervises a Protection of Civilian Implementation Group which is spearheading efforts to develop more systematic reporting on developments in key protection concerns in armed conflict situations. This includes refugees and internally displaced persons, as well as the threat that presence of armed elements poses to them.

These mechanisms could be exploited to give greater attention to operational challenges posed by separation of combatants, in respect of which UNHCR's relationship with DPKO is very relevant. DPKO's unique experience should facilitate discussions on more accurately defining Peacekeeping mandates to address issues of identification, separation and internment of combatants appropriately. DPKO could also assist in operational support, the provision of military experts and observers, conducting training or recommend civilian police deployments.

Newly established peacekeeping operations have been given a clear mandate to protect UN facilities and civilians under imminent threat, albeit mostly with the caveat "within its capabilities and areas of deployment". Peacekeeping operations will have a mandate to operate in post-conflict areas, but not beyond the borders of the State hosting the mission. A very recent Security Council Resolution 1625 (2005) stresses the importance of a regional approach to conflict prevention, particularly programmes of disarmament, demobilization and reintegration, including the effective and sustainable reintegration of former-combatants. It is within such a regional context that DPKO may see a role also in dealing with security matters cross-border.

UNHCR's primary interest is the security of refugees and the assurance that the civilian and humanitarian character of asylum is maintained. While eliminating the root causes of armed conflict and reducing the flow of arms are the ultimate solutions to be pursued by the international community, the physical protection of refugees in refugee camps and settlements remain primarily the responsibility of the host country. These Guidelines serve as UNHCR's contribution to furthering protection, both as regards the right to seek and enjoy asylum as well as the right of refugees to life and security.

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Geneva, September 2006

Part 1:

Introduction

A. BACKGROUND

The Preamble of the 1951 Convention relating to the Status of Refugees (the 1951 Convention) stipulates that the nature of the refugee problem is social and humanitarian.[1] Similarly, UNHCR's Statute provides that the work of the Office is social and humanitarian.[2] It is a universally recognised principle that the grant of asylum and the recognition of refugee status is a peaceful, non-political and humanitarian act.

So as to ensure the civilian and humanitarian character of asylum, it is of the utmost importance that only civilian populations benefit from the grant of asylum. International humanitarian law, through its "principle of distinction", provides for the protection of civilian populations and civilian objects from military attacks, by distinguishing them from members of the armed forces. The latter are being conferred combatant status and are thus entitled to participate in hostilities while becoming legitimate targets of military attacks. Refugee law in turn has been influenced by this key principle of distinction in its basic tenet that refugee camps and settlements should be used for accommodating civilian populations only, and not combatants, in order that the humanitarian character of asylum is ensured.

The presence of combatants[3] in an influx of refugees, or in existing camps or refugee-populated areas, threatens the fundamental principle of the civilian and humanitarian character of asylum, as it does the very institution of asylum. It can generate serious security concerns for refugees, receiving States and host communities, as well as humanitarian workers. By virtue of their displacement, refugees are vulnerable to a range of security problems generated by the breakdown of social structures and cultural norms, the separation from and loss of family members and community support, and impunity for perpetrators of crimes and violence. In such a context, the presence of combatants exacerbates the situation as it may provoke cross border attacks, and has a high risk of leading to forced military recruitment, a general breakdown in law and order, an increase in physical violence and sexual abuse, political manipulation, and the diversion of humanitarian aid. A deteriorating security situation in areas surrounding refugee camps may well impact the hosting area, creating a source of tension between refugees and host communities. When the authorities can no longer tolerate the security situation, refugees may be subject to refoulement. The presence of combatants in camps may also inhibit the realization of durable solutions, such as voluntary repatriation and local integration.

[1] The 1951 Convention relating to the Status of Refugees stipulates in its preamble: "Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States." The UN Declaration on Territorial Asylum 2312 (XXII) of 14 December 1967: "Recognizing that the grant of asylum…is a peaceful and humanitarian act and…cannot be regarded as unfriendly by any other State".
[2] The Statute of UNHCR preambular paragraph 5.
[3] See Part II, under definitions, which explains that the use of the term "combatant" in the present Guidelines does not correspond with the specific meaning of combatant in International Humanitarian Law.

In some contexts, the militarization of camps can jeopardize national security and even regional stability, as well as threaten inter-State relations. The resulting risk to security and an often limited response capacity may lead prospective host States to deny refugees and asylum seekers access to international protection altogether or to limit freedom of movement and other rights of refugees that normally accompany asylum. Whilst it poses a major challenge, drawing a distinction between refugees on the one hand, and combatants on the other, is clearly in the interest of States, refugees and the institution of asylum as a whole.

In a mass influx situation, when refugees flee armed conflict and cross the border, physical security ranks high among the priorities of those seeking asylum. The right to life, and security of persons, is among the key human rights refugees seek to protect. Threats may originate from a variety of actors, such as military and police, organized armed groups, criminal organizations, the local population or other refugees. It may take various forms, such as physical and sexual violence, criminal acts, and attacks on refugee camps, landmines, forced recruitment or the infiltration of combatants in refugee populated areas.

Solutions to security problems must be sought in a holistic manner, taking into account the local circumstances, while addressing all major issues. As security issues are invariably linked, a combination of approaches must be considered. This will require the development of a comprehensive strategy, involving a multitude of relevant actors.

In order to create a better understanding of what can be a very complex and sensitive issue, the present Guidelines offer an explanation of the legal context, where close linkages exist between international humanitarian law, refugee law, as well as international human rights law. Following on to that, these Guidelines aim to provide practical guidance on actions to be taken when there are indications that refugee camps or settlements have been infiltrated by combatants or are being so threatened. The Guidelines also look into ways in which relevant actors can collaborate in the prevention of militarization of camps by addressing the issue of mixed flows (i.e., mass refugee influxes which are characterized by the mixed presence of both refugees and combatants) from the beginnings of a crisis. A chapter on security management issues in refugee camps aims to demonstrate how the issue of separation must be addressed within the context of a comprehensive strategy enhancing refugee security.

A wide variety of factors will have an influence on whether the disarmament of armed elements and the identification, separation and internment of combatants will be successful. Many countries that need to take such measures lack sufficient financial resources, or show political or military sympathy with the combatants. Geographical factors, such as long stretches of uncontrolled borders with poor infrastructure, create further challenges to prevent military elements to cross borders and infiltrate into refugee communities. International burden sharing, through the provision of both financial and technical resources, including training of security forces is very important. Ultimately, however, success will often depend heavily on the available political will of the host Government. In that respect it is hoped that these Guidelines will also serve as a tool of advocacy to impress upon States the importance of taking action and the risks of inertia.

B. HISTORICAL OVERVIEW

The problem of insecurity of refugee camps and their civilian and humanitarian character was first brought to the attention of the Executive Committee of the High Commissioner's programme in 1979 in the context of armed attacks on refugee camps in southern Africa.[4] The High Commissioner commissioned a study on the subject[5] and in 1983, in his report to the Sub-Committee of the Whole on International Protection, he stated that "[in] the case of military attacks on refugee camps and settlements the political and non-political – i.e. humanitarian – elements are always closely interrelated. It may not therefore be possible for the High Commissioner to undertake effective action – even to achieve his purely humanitarian objectives – otherwise than in close cooperation with the political organs of the United Nations, and in close consultation with the United Nations Secretary-General which should be established in every case".

The Executive Committee continued to seek consensus on a set of principles with respect to attacks on refugee camps. Most of its Conclusions adopted on the matter remained quite general, merely stressing that States should do "all within their capacity to ensure that the civilian and humanitarian character of such camps and settlements is maintained".[6]

The UN General Assembly in the meantime considered UNHCR's concerns and adopted a Resolution in 1984[7] in which it condemned all violations of the rights and safety of refugees and asylum-seekers, in particular those perpetrated through military or armed attacks against the refugee camps and settlements.

In the Secretary General's 1998 Report on Africa,[8] he urged "the establishment of an international mechanism to assist host Governments in maintaining the security and neutrality of refugee camps and settlements". Consequently, the Security Council adopted Resolution 1208 on 19 November 1998, in which it called upon African States to implement refugee protection mechanisms, especially where they relate to the location of refugee as at a safe distance from the border and the separation of refugees from other persons who do not qualify for international protection. The Resolution also encourages African States to seek international assistance if needed.[9]

The 1998 General-Secretary's report on Africa is also one of the first documents where the concept of protection of civilians in armed conflict was raised, with a strong

[4] Executive Committee Conclusion No. 14 (XXX), 1979.
[5] Executive Committee Conclusion No. 27 (XXXIII), 1982.
[6] See particularly Executive Committee Conclusions 32, 33, 45 and 48.
[7] A/Res/39/140, 14 December 1984.
[8] The causes of conflict and the promotion of durable peace and sustainable development in Africa, A/52/871 – S/1998/318, 13 April 1998.
[9] In July 1998, the High Commissioner, upon consultations with the Under-Secretary-General for Peacekeeping Operations, submitted a proposal of a "ladder of options", aimed at addressing the different types and degrees of insecurity which typically arise in refugee-populated areas. The "soft" option includes preventive measures that can be taken by States, possibly with assistance from the international community, such as limiting the size of camps, ensuring a reasonable distance from the border with the country of origin, and including refugee leaders in camp management decisions. Under this option Governments should consider the separation of combatants, while the international community could provide assistance to national law enforcement authorities. The "medium" option could include the deployment of multi-national civilian observers or an international police force to support national law enforcement efforts. And finally, as a measure of last resort, the "hard" option refers to the deployment of a UN Peacekeeping Operation or that of a multi-national or regional force under Chapter VI of the UN Charter, or even under Chapter VII and VIII, in case there is no consent for external intervention.

recommendation that more attention must be paid to the monitoring and reporting on respect for humanitarian and human rights norms during armed conflicts.

Since then efforts have intensified towards achieving more systematic reporting on protection of civilians in armed conflict. In 1999 the Security Council explicitly requested the Secretary General to prepare a report with recommendation on ways the Council could improve the physical and legal protection of civilians in situations of armed conflict. This has generated both periodical reports from the Secretary-General and bi-annual oral briefings by the Humanitarian Relief Coordinator to the Security Council, which benefit from more regular and consistent reporting by the relevant UN agencies.[10]

On April 19th, 2000, the Security Council adopted Resolution 1296,[11] which considered the importance of the protection of civilians in armed conflict and notably invited the Secretary-General to bring to the attention of the Council situations where refugees and internally displaced persons are vulnerable to the threat of harassment or where their camps are vulnerable to infiltration by armed elements and where such situations may constitute a threat to international peace and security. In such cases the Council would be willing to act to help create a secure environment for civilians endangered by conflicts, including by providing support to States concerned in this regard. An important milestone in this process was the adoption in April 2006 of Security Council Resolution 1674 on the Protection of Civilians in Armed Conflict.[12]

In that same year, UNHCR launched the Global Consultations on International Protection, which engaged States and other partners in a broad-ranging dialogue to explore how best to revitalize the existing international regime for the protection of refugees, while ensuring flexibility for addressing new challenges and problems. The issue of the civilian character of asylum featured on the agenda of the Global Consultations and a number of guiding principles and concrete recommendations were presented.[13]

The ensuing Agenda for Protection calls for addressing security-related concerns more effectively, through the resourcing of States for securing the safety of refugees and for the separation of armed elements from refugee populations, as well as addressing issues of military recruitment of refugees and the prevention of age-based and sexual and gender-based violence.

As a follow-up, the Executive Committee sought to address the issue through the adoption of Conclusion 94 (LIII) 2002, on the Civilian Character of Asylum. The Conclusion calls upon UNHCR to facilitate a process for the elaboration of measures for the disarmament of armed elements and the identification, separation and internment of combatants, including the clarification of relevant procedures and standards. The present Guidelines are in response to this identified need.

[10] See the request for reporting in Presidential Statement on 12 February 1999 (S/PRST/1999/6) and subsequent reports S/1999/957, S/2001/331, S/2002/1300, S/2004/431 and S/2005/740.
[11] S/RES/1296 (2000).
[12] S/RES/1674 (2006).
[13] EC/GC/01/5, February 19th, 2001 and EC/GC/01/8/Rev.1, June 28th, 2001.

C. SCOPE OF THE GUIDELINES

The present Guidelines cover situations where mixed refugee flows (i.e., mass refugee influxes which are characterized by the mixed presence of both refugees and combatants) enter a neighbouring State, as a result of either an international or internal armed conflict. The Guidelines are thus aimed at addressing the situation of militarization of refugee camps and settlements in countries of asylum, underpinned by the objective of ensuring the safety of refugee populations.

D. LEGAL FRAMEWORK

The UN Charter

Considered the cornerstone of the UN Charter, Article 2(4) provides the basis for States' obligation to disarm armed elements, and separate and intern combatants, in both international and non-international armed conflicts. Article 2(4) obliges States to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations".

Article 2(4) is regarded as part of customary international law[14] and should be read and interpreted within the wider spirit of the UN Charter, and particularly Article 1, which lists the purposes of the United Nations to develop friendly relations among nations, achieve international cooperation in solving problems of a humanitarian character, and maintain international peace and security – the principal purpose of the UN Charter. Resolution 2625, which adopts the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations*, is particularly relevant.[15] It states, *inter alia,* the following principles:

> *Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.*
>
> *Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force. […]*
>
> *[N]o State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.*

Prohibitions under the Charter thus extend beyond direct inter-State military attacks to include attacks by recourse to irregular forces such as armed bands, mercenaries or rebels. Assisting, encouraging or even tolerating armed activities by private individuals, national or foreign, is also prohibited under the Charter. Moreover, as mentioned above, the State has the obligation to suppress and prevent the use of its territory by individuals

[14] The nature of article 2(4) as well as the type of actions which are prohibited by that provision was interpreted by the International Court of Justice in *Nicaragua v. U.S. (1986) ICJ 14 (27 June 1986).* In that case, the court held, *inter alia*, that indeed article 2(4) is a declaration of customary law, and that the type of prohibitions resulting from that provision extend to acts which are less grave then a direct armed attack.
[15] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, G. A. Res. 2625 (XXV) of 24 October 1970.

whose purpose is to attack another State, or instigate the violent overthrow of its regime. The host State has a duty of due diligence in this regard, such that it must use the means at its disposal to prevent or suppress these wrongful acts in situations where the risk is foreseeable, otherwise it will be in breach of article 2(4) of the Charter.

The Law on Neutrality and International Humanitarian Law

The Fifth Hague Convention[16] provides for the duty of a neutral State to intern troops it receives on its territory belonging to belligerent armies and not to permit hostilities to be conducted from its territory.[17]

Although the Fifth Hague Convention only formally applies in relation to international armed conflict, it is generally accepted that it can also be applied by analogy in situations of non-international conflicts, in which combatants either from the Government side or from armed opposition groups have fled into a neutral State.[18]

The duty stemming from the law of neutrality resembles the obligations under Article 2(4) of the UN Charter as described above. It is reasonable to conclude that these provisions in the Fifth Hague Convention belong to the core norms applicable to all armed conflicts and have attained customary law status.

Refugee Law

The very existence of international refugee law and the protection it confers is premised on the acceptance of its fundamentally neutral character by the international community, and more specifically, on the peaceful and humanitarian (non-political) character of asylum. The granting of asylum by a host State cannot therefore be considered as an unfriendly act by the country of origin.[19]

This is expressed in the Preamble of the Convention relating to the Status of Refugees (hereinafter, the 1951 Convention) where: "*The High Contracting Parties [express] the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States".*[20] The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (hereinafter, OAU Convention) reiterates this principle by stating explicitly that *"[t]he grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State*".[21]

In order to effectively preserve the civilian and humanitarian character of asylum, host States must therefore ensure that refugee camps and settlements are not misused for political purposes or exploited to support or achieve military objectives and must prevent that refugee camps end up serving as bases for conducting military training, providing rest and recuperation to combatants, or fall victim to recruitment activities. It is therefore essential that States effectively separate combatants from the refugee populations, both to ensure the protection and physical security of refugees, and to respect the peaceful

[16] The Fifth Hague Convention of 1907 respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land.
[17] See in particular Articles 5 and 11 of the Fifth Hague Convention.
[18] ICRC, 'The Civilian Character of Asylum: Separating Armed Elements from Refugees', Official Statement to the UNHCR Global Consultations on International Protection, first meeting, 8-9 March 2001, http://www.icrc.org.
[19] See GA Resolution 2312 (XXII), Declaration on Territorial Asylum.
[20] Convention relating to the Status of Refugees, of 28 July 1951, paragraph 5 of the Preamble.
[21] OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted 10 September 1969 (entry into force 20 June 1974), Article II, para. 2.

character of asylum vis-à-vis other States. The duty to separate combatants from refugees is articulated very explicitly in the Preamble of the OAU Convention which establishes the need to distinguish between refugees and persons wishing to foment subversion from outside their country and further elaborated in Article III (2), requiring States to prevent refugees residing in their territories from conducting attacks on any State Member of the OAU.[22]

Refugee law also imposes obligations upon refugees. Apart from the rather obvious duty in Article 2 of the 1951 Convention to conform to the laws of the host country, Article 9 could also be applied to enforce the principle of the neutrality of asylum with regard to asylum seekers.[23] The OAU Convention has a similar obligation as the one in Article 2 of the 1951 Convention, but adds an explicit prohibition against refugees engaging in subversive activities against any Member State of the OAU.[24]

National Law

International law obliges States to separate and intern combatants that have entered their territory. This obligation is primarily rooted in the interest States have in maintaining friendly relations and refraining from aggression against another State. As the presence of combatants in the territory of a State has implications for its international relations, the ability of a State to deal with these matters should be guided by international law rather than be treated as a purely internal matter falling solely within the purview of its criminal jurisdiction.

There may however be good reasons for a State to initiate criminal proceedings against combatants, to protect national security, to prevent subversive activities, and address illegal arms possession and forced recruitment. As long as a host State upholds its international obligations, it should be able to rely on its national criminal proceedings, not as substitute for, but complementary to international law.

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[22] In paragraph 2 Signatory States undertake to prohibit refugees in their territory from "attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio."

[23] Atle Grahl-Madsen, *Commentary on the Refugee Convention 1951*, UNHCR Geneva, 1963, at 43. "Other grave exceptional circumstances" could include conditions bordering on war, e.g., a State of neutrality in a conflict between important or neighboring countries; a period when the State is threatened with armed aggression by another State; or the existence or threat of civil war." Provisional measures may only be applied in cases where there is some reason of suspecting a particular person as being a threat to national security. "Person" refers to someone claiming to be a refugee, a prima facie refugee, or whom there is reason to believe is a refugee. As combatants are not regarded asylum-seekers, they fall out of the ambit of this Article.

[24] Article III paragraph 1.

Part 2:
Operational Guidelines

A. TERMINOLOGY

Combatants

Under international humanitarian law the term "combatant" refers to members of a State's armed forces. Combatants are entitled to take direct part in hostilities and, if captured, are entitled to protection as prisoners of war. Like everyone in a situation of armed conflict they must respect international humanitarian law. Persons other than members of a State's armed forces, including "rebels" and "insurgents" in internal armed conflicts are not considered combatants. This means that they do not have a right to take direct part in hostilities and may be tried under national law for their mere participation. If captured, although not entitled to prisoner of war status, they are entitled to minimum conditions of detention and treatment. Moreover, they too must respect international humanitarian law.

However, for the purpose of ensuring the civilian and humanitarian nature of asylum, the emphasis must be on identifying all individuals who, because of their involvement with armed activities, pose a threat to refugees, and for that reason need to be separated. Hence, for the purpose of these Guidelines, the term "combatant" is applied to any member, man or woman, of regular armed forces or an irregular armed group, or someone who has been participating actively in military activities and hostilities, or has undertaken activities to recruit or train military personnel, or has been in a command or decision-making position in an armed organization, regular or irregular, and who find themselves in a host State.

A former combatant is a person who, having been a combatant, has genuinely and permanently renounced all activities that can be attributed to combatants.

Armed elements

This term refers to all individuals carrying weapons, who may be either combatants or civilians. It is intended to include civilians who may happen to be carrying weapons for reasons of self-defence or reasons unrelated to any military activities (for example hunting rifles, defensive weapons). All armed elements must be disarmed upon crossing the border into a host State, while only combatants need to be separated and interned.

Recruitment

Recruitment encompasses compulsory, forced and voluntary enrolment into any regular or irregular armed force or group.

Internment

This is a legal term which refers to the restriction on freedom of movement as imposed on an individual (the internee). For the purpose of the current Guidelines, reference is made to the regime of internment as provided for under the rules of neutrality in articles 11 and 12 of the Fifth Hague Convention.

Children Associated with Armed Forces

This term refers to any person less than 18 years of age who is part of regular armed forces or irregular armed groups in any capacity, and not limited to actual participation in armed combat at any time. It includes girls recruited for sexual purposes and forced marriage. The term goes beyond children carrying or having weapons, which is assumed by the narrower term of *child soldiers.*[25]

Deserter

A deserter is a member of the armed forces (not irregular groups) of a party to a conflict who unilaterally terminates his or her military service with the intention to abandon his or her military obligations. The assumption exists that a deserter has renounced military activities, but its genuineness still needs to be confirmed. For the purpose of separation and internment, deserters are to be treated as combatants pending assessment of genuineness of their intention.

Militarization of a refugee camp

This is the continuing occurrence of military or armed attacks and other threats to the security of refugees, including the infiltration and presence of armed elements in refugee camps and settlements, and the forced recruitment of refugees from the camps. The use by the host State of its regular military personnel for the protection of refugee camps and settlements does not constitute militarization.

B. GENERAL CONSIDERATIONS

Most armed conflicts today are internal rather than international in nature. This creates tremendous challenges when it comes to the identification of armed elements fleeing from internal armed conflict as in practice one would rarely be able to distinguish those who have been engaged in combat from those who have not. Members of militia rarely wear military uniforms, or may hide their uniform or arms and mingle with civilians. Modern internal armed conflicts are characterised by volatility, risks of spill over to neighbouring countries or influence and assistance from other nations. This frequently leads to patterns of mobilization, demobilization and remobilization, as well as the forced recruitment of children and other civilians in the war effort, making it difficult to distinguish between combatants, former combatants and others. In such circumstances the risk of militarization of refugee camps is high. In situations where combatants are easily identifiable, for instance by carrying weapons, they may be superior in strength to the host government authorities and thus pose a threat to those who seek to disarm

[25] See Action for the Rights of Children, “Critical Issues”, Child Soldiers, which uses the term Child Soldiers.

them.[26] Matters can be further complicated when the authorities of the host country due to an internal armed conflict in that country have no access to those parts of the country where refugees reside or where no functioning central government is present. This would necessitate dealing with non-State actors to secure access to the refugee population. The existence of such instability within the host State also poses serious security risks for refugees and affected populations, and considerably increases the risk of militarization of the refugee camps by local or exiled factions, including forced recruitment.

These and similar constraints cause serious challenges for the effective undertaking of identification and separation activities. Ideally, identification and separation activities are conducted as early as possible, preferably even at the entry point, by trained personnel, and where separation facilities should be available. Conditions for this to take place are likely to be the exception rather than the rule, hence it is important to develop a strategy that takes into account all eventualities. These Guidelines seek to define measures which will maintain the humanitarian and civilian character of refugee camps and settlements. Certain measures seek to prevent camps and settlements to be infiltrated by armed elements and combatants, while others aim to address situations where security has already been jeopardised. There may also be situations where forcible separation is either not advisable or impossible, and alternative measures must be considered aimed at neutralizing military influence on refugees.

C. BASIC PRINCIPLES

Dealing with armed elements and combatants in refugee camp and settlements is a highly sensitive and possibly risky task and a typical area of humanitarian and military interface. Humanitarian actors naturally will have an interest that civilians are protected, but do not have the mandate nor the expertise to confront military elements. Military support is necessary in order to ensure safety of refugees as well as of humanitarian workers. The following represents certain basic principles which should guide approaches to the disarmament of armed elements and identification, separation and internment of combatants.

1 Non-refoulement and admission to territory

All individuals who flee a situation of armed conflict and who seek protection in the territory of a host State should be allowed unhindered access to safety, and no one should be rejected at the frontier.[27] The need to identify and separate combatants should not lead to refoulement of asylum-seekers or refugees. Thus in a situation of mass influx where group recognition of refugee status is applied, and it is not clear who is or who is not a combatant, no one should be refused entry on the mere suspicion that the person is a combatant. A permissible exception to this is where the individual concerned is openly carrying weapons, in which case entry to territory may be made subject to laying down their weapons.

2 Security Impact Assessment

Before embarking on disarmament of armed elements and the identification, separation and internment of combatants, a thorough security assessment must be conducted

[26] UNHCR, Global Consultations on International Protection, The Civilian Character of Asylum: Separating Armed Elements from Refugees, EC/GC/01/5, 19 February 2001.
[27] See UNHCR Executive Committee Conclusion 99(LV) 2004 para. (l)

based on which a decision must be made to proceed or not. The aim of such an assessment is to evaluate whether the identification and separation exercise might lead to a situation of grave insecurity so as to threaten the refugee population in general. Such a situation may arise if for example armed elements resist any disarmament. The assessment should be undertaken by national security personnel, and where appropriate in consultation with international security forces, DPKO and security staff of UN agencies on the ground. Disarmament of armed elements and identification, separation and internment of combatants must be conducted in full appreciation of the security situation and in a way that does not jeopardize the security of the refugees or those involved in the exercise itself, although a certain element of risk cannot be discounted. The process should not continue if it is reasonable to assume it will generate a situation of serious disorder, insecurity or violence.

3 Responsibility of the government and the role of the international community

While the host Government has primary responsibility for the identification and separation of combatants, the international community has a responsibility to assist in developing the capacity of the host State to undertake such exercises. Where the capacity of the host State is lacking, it should consider mobilising international resources to support and assist in its undertakings. The mobilisation of international resources may be undertaken with the cooperation of the UNHCR.

D. THE PROCESS FOR DISARMAMENT

Disarmament of armed elements in mass influx situations is an extremely complicated and risky endeavour. Especially in a mass influx situation it would not be difficult for armed elements to infiltrate into refugee facilities hiding their weapons[28]. It is important for host government authorities to collect at the earliest opportunity relevant political and military intelligence related to a possible or actual influx. Depending on such background information of a mass influx adequate interventions can be anticipated. It would be important to ensure sufficient resources to screen arrivals as early as possible, including at border points, to ensure that all weapons are confiscated prior to entry into the territory. Early screening of arrivals for weapons is essential for the security of refugees.

Where the background to a mass influx warrants, the host government should be ready to systematically verify the presence of weapons on all individuals seeking refuge and ensure they surrender their weapons before being admitted to the territory. Armed elements openly carrying weapons should be disarmed at border points prior to entry to the territory. Individuals who refuse to surrender their weapons should not be considered as asylum seekers and need not be admitted to the territory. To avoid that such non-admission would amount to refoulement, where possible, persons must be made aware

[28] Weapons include small arms, such as revolvers and self-loading pistols, rifles and carbines, assault rifles, sub-machine guns, and light machine-guns, as well as light weapons, such as heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-tank and anti-aircraft guns, recoilless rifles, portable launchers of anti-tank and anti-aircraft missile systems, and mortars of less than 100mm calibre. For the purpose of these guidelines, weapons include also “any object capable of being readily used by one person to inflict severe bodily injury upon another person”, with the exception of objects which, following cultural traditions of the particular refugee population, are being used for non-offensive purposes (agricultural tools, ceremonial knives).

of the consequences of their refusal to disarm. Armed elements who are disarmed and admitted to the territory may be combatants or may be civilians. If in such situations it is not possible to immediately identify combatants among disarmed civilians, the only viable option may be to accommodate all disarmed arrivals in facilities separate from the refugees. A process for the identification and internment of combatants should then be implemented in relation to the individuals concerned as soon as possible (see Section E).

There may be situations where the individuals concerned are not openly carrying weapons, but are hiding them. It may also not be immediately clear that the individuals are combatants. Where there is reliable information that the individuals are in possession of weapons but hiding them, such individuals may be admitted to the territory, but should be subject to a screening for weapons. Such screening for weapons should take place in facilities separate from refugee facilities. The separate facilities should not be the internment facilities which should be used exclusively for purpose of interning those considered as combatants. Admission to refugee facilities should be permitted only upon confirmation that the individuals do not possess weapons, or upon the surrender of their weapons, and that they are not combatants. Only disarmed civilians can be admitted to refugee camps, while combatants cannot be admitted until after it has been established that they have genuinely and permanently renounced military activities (see Section G).

In case it is discovered that individuals who have already been recognised as refugees and admitted to refugee facilities possess weapons or have hidden weapons, the individuals concerned should be made to disarm and surrender their weapons. Once disarmed, they should be subject to a process of identification if they are combatants (see Section E). Individuals identified as combatants should have their refugee status cancelled[29] on the basis that they were not eligible to seek asylum in the first place, and they should be separated and interned in internment facilities. Where the individual concerned is affirmed not to be a combatant, he or she should maintain his or her refugee status, but may be dealt with according to national security laws, if necessary and as appropriate.[30]

While all efforts must be put into disarmament at an early stage, continuous monitoring of the situation is imperative in order to detect the presence of weapons in refugee facilities, to arrange for their removal and to prevent further penetration of weapons in the camps. It is particularly difficult to weed out small weapons and light arms which are easy to conceal. Investigations and spot checks may be needed in order to ensure that hidden weapons are found and confiscated. Refugees and their leadership, including security committees, should be consulted on a regular basis in order to gather intelligence about the possible presence of weapons.

The UN Inter-Agency Working Group on Disarmament, Demobilization and Reintegration (DDR) has developed a framework of standards relevant to DDR activities, which should be used as reference.[31] These integrated DDR standards (IDDRS) represent the agreed

[29] See UNHCR's guidance on cancellation of refugee status: internal document for staff "UNHCR Guidelines on the Cancellation of Mandate Refugee Status" and public domain document "Note on the Cancellation of Refugee Status"; issued on 22 November 2004.

[30] It is possible that in some situations persons other than combatants pose a threat to security. Such persons could include refugees accused of having committed common crimes, refugees perceived as being a threat to national security for reasons other than "military", intimidators, political activists, or refugees who have already been found to be excludable. Although there may be good reasons why such persons also need to be separated, this will be guided by relevant provisions of refugee law, such as Articles 2, 9, 26, 31.

[31] An inter-agency Working Group on DDR has prepared the Integrated DDR Standards (IDDRS), a set of

policies and procedures of the United Nations for preparing and executing DDR programmes in peacekeeping operations. It is a comprehensive set of policies, guidelines and procedures covering many areas of DDR ranging from the strategic to the operational and tactical level.

Disarmament is a security exercise and humanitarian agencies should not directly participate. Any forcible disarmament should be undertaken and overseen only by security personnel such as the armed forces of the host country, and/or, where applicable, by members of international peacekeeping forces following clear procedures relating to security. Combatants, if identified, should be separated and interned.

Voluntary disarmament should be encouraged. Information on the requirement and process to surrender weapons prior to being admitted to territory and to refugee facilities, as well as any incentives available where this is appropriate, should be made available at all public places at entry points and in refugee facilities. A safe environment greatly enhances the effectiveness of voluntary disarmament programmes, by decreasing the need for (former-) combatants to retain their weapons. Weapons surrendered or confiscated should be documented and securely stored for destruction or eventual handing-over to the authorities of the country of origin at the end of the internment period (which may or may not coincide with the end of the conflict). All caution should be taken to ensure that such weapons are not re-cycled back into the conflict.

The treatment of disarmed children, as well as women and girls should be guided by Sections J and K respectively.

E. THE PROCESS FOR IDENTIFICATION OF COMBATANTS

Identification of combatants is the process whereby all available evidence indicating that an individual may be a combatant is examined by an appropriate authority in order to establish if the individual must be separated from the civilian population and interned.

Although there are occasions when an individual combatant or group of combatants arrive conspicuously and separate from civilians, more often than not combatants will be mixed with the civilian refugee populations, do not carry arms and are therefore difficult to identify. Combatants who are part of irregular armed forces, combatants who are supported by entities in the host country, or who for any reason choose to hide their identity, will render their identification more challenging. In many instances therefore, identification would have to be achieved through informal means, through a multitude of sources of information, with a realistic risk for error of identification. There is thus a need to put in place proper procedures to allow individual recourse in the event of alleged wrongful identification. At the same time, self-identification should be encouraged and means of doing so put in place.

policies, guidelines and procedures for UN-supported DDR programmes in a peacekeeping context. Their web based Resource Centre is at www.unddr.org

General Considerations

1 Response needs to be instructed by relevant background information

Whether a process for the identification of combatants among refugees should be initiated will depend on the background of the refugee flow. Where armed conflict is the cause of the refugee exodus, implementing a process for identifying, separating and interning combatants would often be necessary. In some situations, arrivals may openly carry weapons, so that once disarmed, they should be subject to the identification process. In other situations, where arrivals do not openly carry weapons, and there are no apparent armed elements in the refugee outflow, there may be a real risk of infiltration by armed elements, especially if one party to the armed conflict is on the run. Thus the identification process should benefit from information on the country of origin, enabling an analysis of the political context in which the armed conflict and subsequent population movement has taken place. Information should be collected about the nature and background of the conflict, and on the characteristics of the displaced population. Military intelligence, if available, should be interpreted by experienced military personnel. The information will facilitate the drawing up of criteria to guide the identification process, allowing for a more transparent and reliable process to be established.

2 Identification of combatants should take place as early as possible and continue as long as necessary

Once a mass influx has started to take place and credible information or other evidence exists to demonstrate that combatants are present among the influx, the identification process should be initiated as soon as possible. Clearly where armed elements are present among the influx, disarmament must be given priority as part of the identification process. While the process of identification should preferably take place at entry points, it may not always be possible to do so due to the exigencies related to mass influxes and the complexities, not least relating to security, associated with disarmament and separation. However, the involvement of border officials or other relevant security personnel at border points may be warranted in order to monitor individuals entering the country. At the same time, identification should not take place in the country of origin or in any disputed territory, nor in a highly unstable situation where meeting basic needs is the priority. Once put in place, the identification process should continue as long as there is credible evidence that the arriving individuals may include combatants.

Process for Identification

The following steps should be taken in the identification process:

1 Screening during registration

If a suspicion exists that combatants may be present among the refugees, discreet screening could be incorporated into both the initial and any ongoing registration exercise. This will facilitate the identification process by providing an initial indication on the possible presence of combatants among the civilian population. This would be particularly useful where combatants do not openly carry their weapons into the territory of the host country. For this purpose, registration personnel needs to be sensitized and guided on the questions that should be posed to asylum seekers which will help distinguish those who may have been associated with military forces. Questions should

be targeted at eliciting information on the individual's background; place from where he or she had fled; occupation and other related activities; his or her places of residence during key periods of time; his or her thinking toward the armed conflict; political affiliations; and other relevant questions. The information should be channelled to the appropriate body which oversees the identification process.

2 To identify a body to oversee the identification process

Within the relevant Government structures, an authority needs to be identified which will be responsible for overseeing the identification process. Such a body will assume three essential functions:

(1) gathering evidence or information from various sources, and, if appropriate, proceed with an investigation; (2) taking the decision whether a person is a combatant and referring those considered as combatants to the relevant security agency for further action; and (3) conducting the review of the decisions. This body must clearly set out the criteria used for considering an individual as a combatant, as well as establish the procedures for its functioning.

An existing entity can be tasked with these functions, or it could take the form of an ad hoc committee, panel or task force and could comprise representatives from relevant government agencies. As the identification of combatants requires specific expertise on military structures and conduct, military liaison officers or other pertinent personnel of international peace keeping forces could provide specialist advice or be requested to be part of the body overseeing the identification process. Subject to capacity and specific mandates, representatives of international agencies could be called upon to provide general advice. Such organisations would typically include the UNHCR, other UN entities concerned, the ICRC and representatives of international NGOs.

A mechanism should be established to consider a request for review from any individual claiming to have been wrongfully identified as a combatant. Such a request must be processed by a different entity within the body overseeing the identification process or a separate body altogether. Standard operating procedures should be prepared comprising the methodology for referral of such requests as well as the modalities of its operation. Once interned, the individual should have the possibility of further challenging the internment.

3 Establishment of clear operating procedures

It is important that clear operating procedures are in place, preferably in the form of administrative rules, so as to ensure that basic principles of fairness are respected. The following areas could be covered by such procedures:

- the criteria for considering an individual as a combatant; elements could be drawn from the definition provided in Section A, Terminology.
- the composition of and terms of reference for the body which is responsible for taking decisions whether a person is considered a combatant, including on how information is collected and investigations conducted.
- the relevant indicators to take into consideration; if evidence is in the form of information provided by third parties, rather than an identifying characteristic, it must be from a credible and verifiable source, and must be verified before being accepted, unless the reliability of the source is self evident.

- the methodology for the decision making body to reach its decisions, the need for the decision to be recorded in writing along with an assessment of the evidence; and the reasons for the decision.
- the proceedings before the body, including the possibility for the individual to appear before the body and to rebut the evidence; in this context, the individual should be able to know the evidence against him or her and should be able to present evidence to support his or her own case.
- the methodology of a different entity or separate body effectuating a review process.
- other relevant issues such as confidentiality of information, including the safe storage of information and the sharing of files.

Special expertise must be available for dealing with the specific needs of women and children who were combatants or were associated with military forces (see Sections J and K).

4 Implementation of information campaigns

Information campaigns should serve to explain the reasons for the process of separation, the procedures involved, the implications for the individuals concerned, while at the same time encouraging self-identification. Information campaigns should serve to enhance the transparency of the process, disseminating information as widely as possible among the population. Messages should be clear, unambiguous and consistent.

5 Gathering information in support of identification

A variety of sources must be pursued to gather information that can be used for the identification of combatants. Such sources will include the refugee community, former-combatants, local leaders and the local community, and public information. Information and possible denouncement by such sources should be carefully verified, and the individual concerned should be given an opportunity to rebut the evidence. The confidentiality of the source and chain of information should be guarded. There may be a need to ensure that no reprisal action is taken against sources which have provided information.

Relevant indicators for consideration and standard of proof

The carrying of weapons, whether openly or in hiding, constitutes important evidence which should be taken into account, but is not decisive. Weapons are particularly significant evidence if they are of the type known to be used by fighting forces of the parties to the conflict. Other evidence which could be accepted for consideration include physical attributes such as age range, haircuts or tattoos, stature and physical well-being, scars and wounds, or evidence of classical military signs such as the wearing of military uniforms or insignia, military knowledge linked to the specific conflict, and signs of military behaviour. Profiles and behaviour that are clearly different from the other arrivals can also be important indications, for instance the wearing of different clothing, the absence of belongings, and the absence of family members. Denunciation by refugees particularly those who have been victims or witnesses of combatants is another means of identifying combatants.

Where the evidence consists of information on identity provided by a source, such as denunciation by a refugee, then the information must be independently verified, unless

corroborated by a well known reliable source. Sources of information should be kept confidential.

As the ability to recognize signs of military hierarchy and behaviour patterns which may reveal the presence of combatants requires a familiarity with military structure, the task of evaluating the evidence should usually benefit from military advice.

Available evidence should be channelled by the investigating agents to the deciding body which will consider all relevant elements. The individual concerned should be given an oral hearing to rebut evidence against him or her, and a decision should be taken whether the individual is considered a combatant. While there is no specific legal principle on the applicable standard of proof in these instances, a balance must be found between the following considerations. On the one hand difficulties of securing concrete and irrefutable evidence of the military activities and/or intentions of the individual concerned call for a standard of proof that is not too high, while on the other hand the serious consequences such a status entails for the individual requires a fairly high standard of proof. The threshold should thus not be as high as in criminal cases (beyond reasonable doubt), nor be as low as in civil cases (balance of probabilities).

A useful standard of proof can be drawn from international refugee law in the context of determination on exclusion, with the requirement of “serious reasons for considering”. These Guidelines suggest that for the current determination the standard of proof will be if serious reasons exist for considering that a person is a combatant. Guidance in applying this standard should be drawn from relevant jurisprudence and norms.

F. THE PROCESS FOR SEPARATION AND INTERNMENT OF COMBATANTS

In order to fulfil a State’s obligations under international law to intern combatants it receives on its territory, it is required to separate combatants and confine them in a specific area to prevent their resuming armed activities. This means that once it has been determined through the appropriate process that an individual is a combatant, he or she must be separated and interned. A person who contests being considered a combatant and consequent internment must nevertheless be interned pending the review of the case. Internment should not prejudice the review of the case, in particular if the individual concerned presents any additional evidence to support his or her case. It is important that separation and internment takes place immediately upon a decision that the individual concerned is a combatant, as this will avoid the person absconding or going into hiding. Where refugee status is based on group determination, civilian family members of combatants or former combatants should be treated as refugees and should not be separated with the combatants.

Separation should be undertaken by security agencies, whether this is by the military, police or international peace-keeping forces. The active role of these agencies is important, in particular where combatants are armed and refuse to be transferred to internment facilities. Humanitarian agencies should not directly participate in the disarmament or separation of combatants.

Children associated with military activities should not be interned, but should be treated in a way which ensures that their special needs are addressed. Care must be taken to ensure that children who are traumatised are provided with specialised assistance which addresses their psycho-social needs, as well as physical needs. With respect to separated or unaccompanied children, tracing for immediate family members should be undertaken and action initiated to effect family reunification, where this is the best interest of the child. In all matters regarding children, their best interest should be the guiding principle.[32]

Women combatants may be interned, but should be held in facilities separate from men. The specific needs of women and girls must be given special attention in particular those who have suffered trauma, including from SGBV.

International humanitarian law provides guidance on the treatment of combatants. Combatants who cross an international border and are interned by a neutral State are not prisoners of war. However, if they have been involved in an international armed conflict they are entitled to the protection of the Third Geneva Convention. [33] As has been stated, it is generally accepted that this protection should also be extended to combatants involved in a non-international conflict. These standards are minimum standards and should not prejudice any higher standards which may be adopted by the State. In addition, internees should also benefit from protection of international human rights provisions, in particular those specific to international standards in relation to treatment of detainees. Relevant standards provided by international law for the deprivation of liberty in general include the Convention on Torture, the International Covenant of Civil and Political Rights, The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment;[34] UN Standard Minimum Rules for the Treatment of Prisoners;[35] and The Basic Principles for the Treatment of Prisoners.[36] From a human rights point of view, internment constitutes a form of restriction of movement. Human rights standards on freedom of movement prohibit restrictions other than those that are necessary on grounds of public order, public security or safety and public health. Given the importance of the individual being given an opportunity to challenge the internment, the entire process of separation and internment, including the standards of treatment, must be subject to legislative clarity. Thus any restrictions on freedom of movement can be imposed only under law.[37]

The following represent important principles in relation to internment, which legislative provisions should take into account:

[32] See Inter-agency Guiding Principles on Unaccompanied and Separated Children (www.icrc.org).
[33] Article 4(B)2 of the Third Geneva Convention on the treatment of prisoners of war stipulates that combatants interned by a neutral State are entitled to the same treatment as prisoners of war.
[34] Adopted by General Assembly Resolution 43/173, on 9 December 1988.
[35] Adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, Geneva 1955, and approved by the Economic and Social Council in resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.
[36] Adopted by General Assembly Resolution 45/111 on 14 December 1990.
[37] International Legal Criteria for the Separation of Members of Armed Forces, Armed Bands and Militia from Refugees in the Territories of Host States, Chaloka Beyani, International Journal of Refugee Law, Vol 12, Special Supplementary Issue, p 263.

1 The right not to be arbitrarily deprived of liberty (Article 9 of the Universal Declaration of Human Rights) means that any deprivation of liberty must be undertaken only upon a process regulated by law. It also includes the right to know the grounds for detention and to challenge the deprivation of liberty.

2 Internees are not criminals and therefore should not be incarcerated in prisons meant for criminals. The standards of treatment are guided by those relating to prisoners of war. While the Third Geneva Convention does not provide for judicial guarantees in respect of internment of prisoners of war, human rights standards are applicable.

3 On the one hand persons may wish to challenge the evidence that led to the decision of their internment, on the other it is possible that persons may have been mistaken for combatants and thus wrongfully put in internment facilities. Such categories may include children associated with armed forces; women, who had not engaged in direct military activities, but were abducted and abused by military elements; civilians who bore arms or wore military uniforms, but not for military purposes; mercenaries and other persons holding the nationality of countries not party to the conflict, in case they wish to return to their country of origin; and political activists.

4 Where large numbers of persons have been separated from the refugee population and interned without an opportunity to challenge the decision, it is important that the detaining authorities conduct a verification exercise to ensure that no one is wrongfully interned. The verification process should take place within the first three months of internment and should include the right to a hearing to rebut any evidence which has been considered in the decision. Any behaviour of the individual which is relevant to the verification process should be recorded. The verification exercise may be overseen by the body making the decision on combatant status, and where combatant status is affirmed and the individual wishes to have a review, such a review should be conducted by the appropriate review body.

5 Young persons deemed to be under the age of 18 and women suspected to having been subjected to sexual and other forms of abuse should receive priority in the identification and verification process so that, if appropriate, they can be released and be allowed to benefit from rehabilitation programmes as soon as possible.

6 Internees should be registered by the authorities who should have available the names and other identifying information in relation to all persons interned. Each individual interned should have a file with all relevant information concerning his or her separation and internment. The information should be kept confidential, and any sharing of personal data should be subject to international data protection standards.

7 The ICRC should be permitted free and unhindered access to the internees to monitor their conditions of internment and possibly re-establish family links. Other international agencies should be permitted access to provide international assistance where this is necessary.

8 Internees should be detained in areas which are not exposed to risk of combat operations. Internment facilities should also be at some distance from refugee populated areas so that the internees are not able to gain access to refugee camps and settlements easily.

9 Internees should be treated humanely at all times and with respect for their person and their honour. Their accommodation should be hygienic with adequate sanitation and potable water. The host State should provide internees with basic amenities such as food, clothing, and health care. Women should be accommodated separately from men and should be under the supervision of women.

10 Internees must be given the opportunity to engage in intellectual, educational and recreational pursuit and have the opportunity for physical exercise and to go into the open air. To the extent possible, measures must be put in place to reduce the hardship caused by the separation from families. This could be done by facilitating communication, regular family visits, or providing separate but nearby facilities for family members.

G. RENUNCIATION OF ARMED ACTIVITIES

Internment of combatants may be considered as the most effective way for a State to fulfil its obligation in preventing foreign combatants from resuming their military activities. At the same time, internment should be scrutinized in the interest of the human rights of the internees, who may choose to give up their military intentions and resume the status of a civilian. Any further detention would be subject to relevant national legislation including human rights protection with respect to freedom of movement.[38] In case it has been established that a combatant has genuinely and permanently[39] renounced his or her military activities, it would follow that the grounds for internment would cease to exist. Although the end of the conflict would normally justify a release, humanitarian law does not prevent an earlier release. If upon verification clear evidence exists that the (former-)combatant has genuinely and permanently renounced his or her military activities, his or her combatant status would be considered as ended. The individual may be released but would be subject to normal immigration laws as well as laws relating to residency status. Where the individual expresses a fear of return to his or her country of origin or otherwise seeks asylum, he or she may be considered an asylum seeker for the purpose of admission to the asylum procedure. The former-combatant should at this stage be able to benefit from all basic services available to all other asylum-seekers. Where relevant, and in the absence of any other security concerns, he or she should gain access to the refugee camp.

Within relevant Government structures, an authority needs to be identified which will be responsible for taking decisions on whether a combatant has genuinely renounced military activities. This body could be the same as the one overseeing the identification process, and the decision maker on whether a person is a combatant. Where the body

[38] Article 12(3) of the Covenant on Civil and Political Rights.
[39] A true test of permanence can only be done over time. In the present context renunciation is deemed to be permanent if there is little likelihood that the individual will resume military activities in the armed conflict which he/she has left.

makes a negative decision and the individual concerned wishes to have the application reviewed, it should be reviewed by a different entity of this body or a separate body.

Subject to capacity and specific mandates, representatives of international agencies could be called upon to provide general advice. Such organisations would typically include the UNHCR, other UN entities concerned, the ICRC and representatives of international NGOs. A positive decision on the genuineness of the renunciation, hence a regaining of civilian status, will render the person eligible to seek asylum. Where former combatants do seek asylum, UNHCR has a genuine interest in being informed of, or where appropriate provide assistance to, this determination process.

Verification of the Genuineness and Permanence of Renunciation

A combatant who expresses his or her wish to renounce military activities should be able to do so verbally or in writing to the competent authority of the hosting State, which should normally be the body deciding on combatant status and internment. Once this has been done, the person should be subject to a period of verification in order to establish the genuineness and permanence of the renunciation. The verification of the genuineness and permanence of renunciation should be conducted on an individual basis. Such assessment needs to be conducted both in relation to the person's background as well as the individual's situation, profile, and behaviour during the internment. Where the individual complains of undue influence by existing military hierarchical structures inside the internment facilities, he or she should be removed from the facilities and be provided assistance separately so that he or she would not be subject to intimidation, and could freely make his or her decision to renounce. While a deserter may be assumed to have renounced military activities, the genuineness of such renunciation must still to be verified.

Verification would normally occur over a period of time, to enable a thorough assessment to be undertaken. It involves an active process of monitoring of the behaviour of the individual, and a continuing evaluation of the person's situation.

In light of the serious consequences to the refugee population should an erroneous decision be made, the same threshold of proof as in deciding combatant status should be applied. Thus as long as there is serious reason to believe that the individual has not genuinely and permanently renounced his or her intentions as a combatant, the verification period should be extended. The individual's situation should be reviewed regularly taking into account the evolving behaviour of the individual concerned, as well as any changes in his or her circumstances and changes in the country of origin. A regular review, rather than a formal appeal based on negative findings of renunciation, would offer a more flexible approach.

To arrive at an individual assessment on the genuineness of renunciation, the individual should be provided the opportunity to clarify his or her intentions verbally through interviews. In addition, a variety of sources should be used, including data obtained during the registration of the individual, as well as records of the initial screening, with information about past activities and how he or she was first identified. Observations on the person's behaviour in the internment facility can also be important.

Considerations should be given to outside factors or circumstances that may influence the person's desire or capacity to continue his or her military activities. These could

include fundamental changes in the political situation of the country of origin, (not involving an end of hostilities), the individual's family circumstances, and his/her physical condition.

The following provide some guidance on the factors to be taken into account when assessing the genuineness and permanence of the renunciation, as well as the length of period over which the verification should be undertaken. This is not an exhaustive list.

Indicators of genuineness and permanence of renunciation

The real difficulty lies in distinguishing between those who have genuinely renounced their military activities and those who express the wish to do so, but lack sincerity. Assessing genuineness of renunciation involves a process of monitoring the behaviour of the individual concerned, as well as evaluating information provided by relevant sources. A number of elements may be taken as indicators of genuineness and while each element taken on its own may not suffice for a decisive assessment, all elements may be taken into account along with information from relevant sources. Below are a few elements which may serve as an indication of genuineness:

1 The individual expresses some form of empathy for the victims of the conflict and some form of regret for past involvement in the conflict.

2 The individual demonstrates exhaustion, weariness and/or a general feeling of homesickness.

3 The individual shows dissatisfaction with his or her organization, its leaders and the political aspect of the conflict.

Incentives contributing to the genuineness and durability of renunciation

It is believed that renunciation has a better chance to be genuine if there is a proper incentive which outweighs the individual's inclination to return to battle. The following may represent such incentives:

1 The prospect exists for family reunion.

2 Participation in reintegration schemes which will include community based rehabilitation programmes, and counselling activities. If DDR (disarmament, demobilization and rehabilitation) programmes already exist in the country of origin, links could be established with these programmes for those who opt to return.

3 Participation in educational programs, including peace education, and skills and vocational training.

Where these elements are present, and the individual concerned expresses a desire to benefit from them, there is greater likelihood that the renunciation is genuine and also permanent. It is ultimately on the individual concerned to provide sufficient evidence for the deciding body to be satisfied that he or she has genuinely and permanently renounced his or her combatant intentions and activities.

Characteristics that can influence the length of the verification period

Generally it is assumed that military personnel that have adopted their military activities as a career or an ingrained way of life will have more difficulty detaching themselves from it. Such cases would necessitate a longer verification period. Conversely those who have been forcibly recruited or ill-treated during the time when they were associated with military activities may find it easier to give up their military intentions.

Below is a list of factors that need to be taken into account when considering the period for verification:

1 Rank and position; the higher the rank or position, the longer the period it would take to provide an accurate assessment of renunciation;

2 Period of service and active involvement in violent acts; the more active the involvement, the longer time it would take to verify;

3 Length of time since demobilization; if there is evidence that demobilization took place long before the verification process, a shorter time would be required;

4 Forced or voluntary recruitment; those forcibly recruited would be better able to give up military intentions;

5 Forced or voluntary demobilization; deserters can be assumed to have renounced their military activities, subject to a confirmation that their desertion was not spurred by ulterior motives. Likewise combatants who have come forward through self-identification would require a shorter verification period as opposed to those identified by other sources or forcibly demobilized;

6 Particular hardship caused by the separation from the family; internees with family members in the host State or elsewhere from whom they are separated presumably feel the hardship and would have greater motivation to renounce;

7 The nature of the conflict and its parties should also be factored into considering the time period for verification of renunciation; however, depending on the individual's personal circumstances, it could necessitate a longer or shorter verification period. Conflicts characterized by a high level of generalized violence, the occurrence of atrocities, protracted conflicts, and conflicts arising from deep ideological or ethnic opposition may have hardened the resolve of the person, so that a longer verification period is needed. On the other hand, these circumstances may have resulted in disillusionment and the desire to distance him or herself from the conflict, so that a shorter verification period is needed.

H. REFUGEE STATUS DETERMINATION OF FORMER COMBATANTS

Combatants cannot be considered as asylum seekers and should not be allowed to gain access to asylum procedures as long as they have not genuinely and permanently renounced their military activities or intentions. However, once a combatant has been

assessed as having genuinely and permanently renounced military activities or intentions, and if he or she seeks asylum, the individual concerned should be admitted to the asylum procedure.

The refugee status of former combatants who have genuinely and permanently renounced their military activities and who seek asylum should always be determined individually. While participation or association with military activities should by no means create an assumption of exclusion, the real possibility of former-combatants having committed excludable acts means that they will be kept outside the scope of *prima facie* recognition. Their asylum claims should be examined thoroughly under the inclusion criteria as well as elements related to the possible application of the exclusion clauses.[40]

If there is evidence that an individual has been involved in conflicts characterised by violations of international humanitarian law, or serious violations of human rights law, the question of individual responsibility should be examined. Where the military outfit is known to have been particularly violent, membership of such a group, if voluntary, would raise the presumption that the individual concerned has contributed to the commission of violent crimes. Caution must however be exercised when such a presumption is raised, and care should be taken to consider the actual activities of the group, as well as the group's role in the society in which it operates, its organisational structure, the individual's position in it, and his or her ability to influence its activities. Regard must also be had to the possible fragmentation of the group, so that one faction may not be able to control another. The nature of the group's violent conduct may have evolved, so the individual's membership must be examined in the context of the organisation's behaviour at the relevant time. Defences raised by the applicant should be examined accordingly.[41]

If an extradition request is submitted against a former-combatant who has been admitted to the asylum procedure, he or she is protected from refoulement by virtue of Article 33(1) of the 1951 Convention. This Article precludes the surrender of the wanted person if this would expose him or her to a risk of persecution.

I. ACTS BY REFUGEES INCOMPATIBLE WITH THE CIVILIAN AND HUMANITARIAN CHARACTER OF ASYLUM

Once a person has been granted refugee status and enjoys international protection, he or she is expected to abide by the laws of the host State and generally refrain from any activities that are incompatible with the civilian character of asylum. It is not unlikely that in some situations refugees in a country of asylum will attempt to join an armed struggle from exile. While revocation of refugee status may be applicable if the refugee has committed acts that fall within the scope of Article 1F(a) or 1F(c), the 1951 Convention does not explicitly provide for a loss or suspension of status if the refugee otherwise acts in contravention to the civilian and humanitarian character of asylum.

[40] See 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; paragraph 15.
[41] In examining the applicability of the exclusion clauses, guidance should be sought from UNHCR's Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees (Ref HCR/GIP/03/05) of 4 September 2003.

In such a situation it is the responsibility of the host State to deal with the individual in accordance with its criminal and related laws, and subject to their obligations under refugee law. The 1951 Convention provides for the possibility of expulsion in Article 32. Moreover, Article 33(2) provides for an exception to the core principle of *non-refoulement,* if the person is a danger to the security or, having been convicted of a particularly serious crime, to the community of the host country. It is necessary to take into account all the circumstances of the case in order to determine whether the seriousness of the threat would justify an exception to the principle of *non-refoulement*.[42] Both Articles 32 and 33 should be interpreted in a restrictive manner and the principle of proportionality should be applied. This would require that there be a rational connection between the removal of the refugee and the elimination of the danger; the removal must be the last possible resort to eliminate the danger; and the danger to the country of refuge must outweigh the risk to the refugee upon expulsion.

In case the acts of the refugee threaten the security of a neighbouring State (the country of origin of the refugee), it is generally accepted that a host State has a duty not to sponsor subversive conduct directed at the State of origin, and to exercise due diligence in preventing acts of violence. In such cases, the individual concerned may be considered a combatant in view of the fact that he or she is undermining the neutrality of the host State, and therefore may be interned as an alternative to expulsion. Internment allows the host State to observe its obligations vis-à-vis maintaining its neutrality and at the same time ensures that those who have refugee status will not be returned to a situation where they risk persecution.[43]

The OAU Refugee Convention sets out "cessation clauses", which are based on exclusion considerations. If a refugee, recognized individually or *prima facie* as part of a group, engages in subversive activities in the sense of Article III (2) of the OAU Convention, refugee status could cease on the basis of Article I (4)(g). Since the OAU Convention complements the 1951 Convention, it must be interpreted in a manner compatible with it. However both exclusion and cessation clauses need to be interpreted restrictively and no other reasons may be adduced by way of analogy to justify the withdrawal of refugee status.[44] Hence, Article I (4)(g) must be read within the framework of Article 1F of the 1951 Convention and the same standards with respect to these provisions apply.

The premise of the current Guidelines is the principle that were combatants to seek asylum, they are denied international protection due to the fact that their status is incompatible with the civilian and humanitarian character of asylum. By analogy, we can argue that in case a refugee picks up weapons or assumes any of the acts that characterise a combatant, a different sphere of law, that is, humanitarian law, replaces refugee law in relation to the person concerned. This "suspension" of refugee law would only be lifted once the refugee can establish that he or she has genuinely and permanently renounced military activities.

[42] See UNHCR Note on the Principle of Non-Refoulement, EU Seminar on the Implementation of the 1995 EU Resolution on Minimum Guarantees for Asylum Procedures, 1 November 1997.
[43] See also Asylum State Responsibility for the Hostile Acts of Foreign Exiles, Steven Corliss, International Journal of Refugee Law, Vol.2 No.2, 1990.
[44] Handbook on Procedures and Criteria for Determining Refugee Status. UNHCR, January 1992, para 116 and 149.

J. CHILDREN ASSOCIATED WITH ARMED FORCES

General Considerations

Children[45] are uniquely vulnerable to military recruitment and should be regarded primarily as victims, regardless of how they were recruited.[46] Their participation in conflict, either as subjects of abuse, as witnesses to severe violence or even as perpetrators of violent acts, inflicts serious harm on their physical and emotional well-being, and deprives them of a normal childhood. This is not to say that children who actively participated in combat or other children associated with armed conflict cannot pose a threat to the refugee population, but their specific needs must be understood and addressed at all times.

It is important to understand that the category of children associated with armed forces or armed groups is by no means restricted to children carrying or having carried arms. More often than not they are children accompanying regular or irregular armed forces or groups for a variety of tasks. It includes girls recruited for sexual purposes and forced marriage.

Operational Guidance

1 Priority attention should be given to identifying children who are or have been associated with armed forces. Self-identification should be facilitated by sensitization of the community generally, including through the organisation of information campaigns, psycho-social assistance projects and other out-reach programmes. Children who have deserted from their military units and who seek assistance may have pressing protection needs and should be given due attention. Once identified, the child's welfare should be monitored separately and he or she enabled to benefit from special programmes which address his or her specific needs as well as support the reintegration into the community.

2 Special attention should be paid to the identification of girls associated with armed forces. They could be victims of abduction, sexual abuse or exploitation, rape, sexual slavery, or other forms of sexual and gender based violence. They could be coping with unwanted pregnancies; additionally, there is also a risk of having been infected with HIV/AIDS. Special programmes that provide appropriate counselling, as well as health care services and rehabilitation into the community should be put in place immediately. It should be noted that boys are not immune to these forms

[45] International humanitarian law and human rights law set at 15 the minimum age for recruitment and participation in hostilities. See Article 77(2) of Protocol I Additional to the Geneva Conventions; article 4 (3)(c) of Protocol II Additional to the Geneva Conventions; and article 38 (1)-(3) of the Convention on the Rights of the Child. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted by the UN General Assembly on 25 May 2000 (A/RES/54/263), raises the age at which participation in armed conflicts is permitted from 15 to 18 years of age, and establishes a ban on compulsory recruitment below 18 years of age (Articles 1 and 2). See also the Cape Town Principles and Best Practices, adopted at the symposium on the prevention of recruitment of children into the armed forces and on demobilization and social reintegration of child soldiers in Africa, 27-30 April 1997, Cape Town, South Africa (www.unicef.org).

[46] See Rome Statute of the ICC, Article 8, describing conscription or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities as a war crime; The African Charter on the Rights and Welfare of the Child prohibits the recruitment or direct participation in hostilities or internal strife of anyone under the age of 18 years.

of abuse, and should equally benefit from appropriate counselling and rehabilitative programmes.

3 The process of disarming armed elements and identifying, separating and interning combatants is primarily guided by security considerations. For any decisions and actions in this process affecting children, their best interests should be a primary consideration.[47] Once children have been identified as being or having been associated with armed forces, they should be referred to a special panel dealing with decisions relating to the best interests of the child, in order to consider the most appropriate type of care and support depending on the specific needs of the child, as well as advise on the implications of possible internment. It is advisable that such a panel be established, consisting of the relevant government agencies, particularly those dealing with children, as well as other child care organisations, including NGOs, child experts and, as necessary, psychotherapists. Relevant UN bodies such as UNICEF, UNDP and UNHCR could each also play an important role in an advisory capacity.

4 Within the scope of these Guidelines, it is recommended that, in general, children (under the age of 18 years) associated with military forces should not be interned, although exceptions may be applied to children of 15 years and above (see below). Children should benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation. It may not always be appropriate for children who have suffered serious traumatic experiences due to their association with armed activities, to reside among refugee population. A case by case decision should be undertaken as to the most appropriate care facilities based on the best interests of the child concerned.[48] Save for exceptional circumstances, the best interests of the child are best secured by the parents, hence family unity must be a priority.

5 Under no circumstances should children associated with armed forces below the age of 15 years be interned. However, on an exceptional basis, those of 15 years and above may be interned if they pose a serious security threat, but such decision should be made on an individual basis and in view of grave circumstances or concerns particular to that specific child. A decision on internment should not be made without consultation with the best interests of the child panel (see above under 3). Children should never be interned longer than absolutely necessary.[49] Their internment should be regularly reviewed in consultation with the best interests of the child panel, taking into account all relevant elements, such as the child's conduct and the situation of relatives or care givers.

6 If interned for reasons related to the armed conflict, children should be held in quarters separate from the quarters of adults, except where families are accommodated as family units.[50] It is also important that they benefit from special guarantees as provided for in humanitarian law and human rights law.[51]

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[47] Art. 3(1) of the Convention on the Rights of the Child. See also the UNHCR Guidelines on Formal Determination of the Best Interests of the Child, provisional release May 2006 at http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=447d5bf24

[48] Supra note 44, par.56.

[49] Supra note 44, par.57; see also Article 37 (b) of the Convention on the Rights of the Child.

[50] Additional Protocol I to the 1949 Convention, art. 77(4).

[51] See Fourth Geneva Convention, articles 24, 50, 68, 76; Protocol I to the Geneva Conventions, articles 70,

These provisions relate to the special treatment due to minors because of their age and their specific psychological and physiological needs, the facilitation of the exercise of their religion and education, the need for their identification, access to legal assistance and principles relating to the criminal responsibility of children under general criminal law.

7 Unaccompanied children or separated children are particularly vulnerable to the risk of recruitment. Family tracing activities must be initiated as soon as possible, in close collaboration with the ICRC. However, whether family reunification should be undertaken will depend on the best interest decision in relation to the child concerned, in particular if there is a risk of the child being exposed to renewed forced recruitment.[52]

8 Once children have been identified as being associated with armed forced all efforts must be taken to ensure the child is protected from any further association. Especially action must be undertaken to eliminate any further risk of under-age recruitment or of the child's further participation directly or indirectly, in hostilities.[53] Demobilized children should benefit from child-specific programmes including psycho-social assistance, education, skills training and other rehabilitative and re-integration programmes. These programmes require specialist staff with relevant expertise on working with children involved in conflict. Association of children with adult DDR programmes has proven to render the re-integration process more problematic.

9 In case large numbers of children who have been associated with armed forces or armed groups are placed in refugee camps, they should not all be located in the same refugee camp or, if there is only one refugee camp, in the same location within the camp. The situation of each child should be monitored carefully to ensure that any serious protection needs are immediately addressed and that the child is properly assisted to reintegrate into his or her family and community.

77; Protocol II to the Geneva Conventions, articles 4(3), 6(4). See also The Implementation Handbook for the Convention of the Rights of the Child, UNICEF, fully revised edition, June 2002, page 539-562. Another useful reference, although relating to juvenile justice, are the Beijing Rules, adopted by General Assembly Resolution 40/33 of 29 November 1985.

[52] See the Inter-agency Guiding Principles on Unaccompanied and Separated Children (www.icrc.org).

[53] See General Comment No.6 (2005), on the Treatment of unaccompanied and separated children outside their country of origin, Committee on the Rights of the Child, 39th Session, 2005, par.58.

K. CONSIDERATIONS FOR WOMEN AND GIRLS

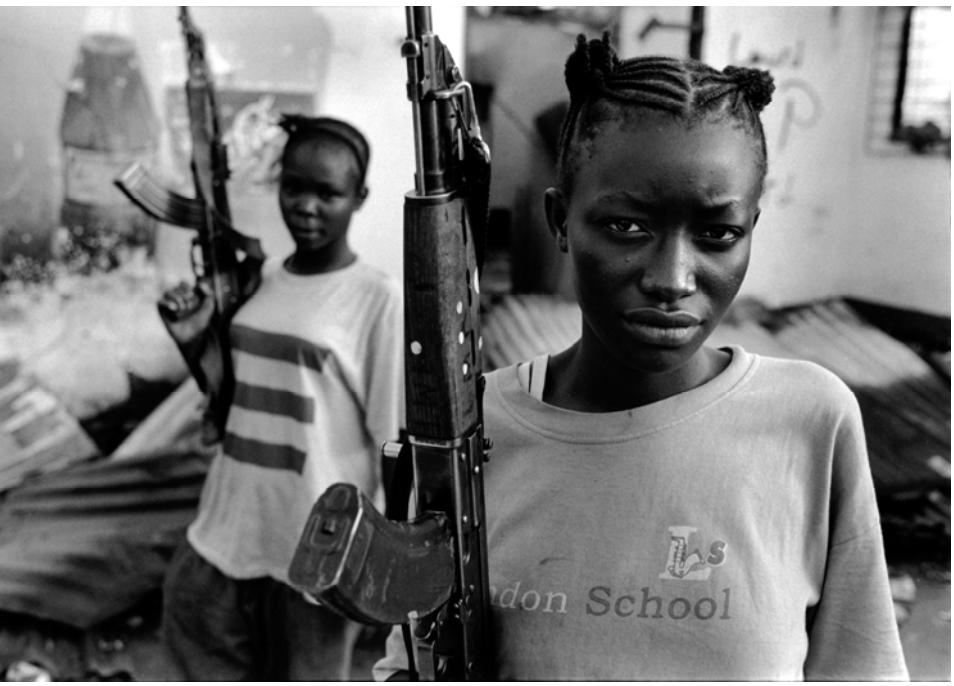
General Considerations

During armed conflict and in consequent situations of displacement, women and girls are particularly vulnerable to sexual violence and exploitation, including torture, rape, forced pregnancy (and motherhood), sexual slavery, enforced prostitution and trafficking. Women and girls may also have been actively participating in the conflict as fighters, although in general women and girls, whether recruited voluntarily or involuntarily, are given supportive roles and are made to provide domestic services. Very often women and girls are exploited for sexual purposes.

International humanitarian law protects women and girls who are taking an active part in hostilities on the same basis as men and boys. The principle of non-discrimination requires parties to the conflict to afford the same treatment and protection to everyone without distinction on the basis of sex,[54] albeit in ways which are sensitive to the specific protection needs of women.

Operational Guidance

1 The differential impact of conflict on women and girls calls for specific responses.[55] There may be instances of women and girls who are traumatised, and there may be those who attempt to re-attach themselves to their former recruiters. Psychosocial support should be targeted to address the specific needs of women and girl combatants or former combatants, particularly those who have been victims of SGBV. Unwanted pregnancies need to be handled carefully. The extent of violations of human rights of women and girls during armed conflict must be recognized and awareness of these violations must be a factor in the planning and implementation of all programmes for assisting women and girl refugees as well as those who have been interned as combatants.



2 Women and girl combatants should not be interned together with men. However, where married couples are interned, they should be permitted time of privacy together. While being interned, they should have access to basic resources and

[54] Protocol I additional to the Geneva Conventions of 12 August 1949, in Article 76 provides some specific measures in favor of women and children.
[55] One can find these recommendations in the SG's report on Women, Peace and Security, S/2002/1154, 16 October 2002.

services, such as food, water, health care and recreational services.[56] Women, as ex-combatants, "camp followers", or families of ex-combatants, need to be able to participate meaningfully in decision-making processes, and their needs must be incorporated in the design and implementation of disarmament, demobilization and reintegration programmes. All too often rehabilitation assistance is given only to men and not women ex-combatants. Specific needs for psycho-social and health (HIV/AIDS) counselling should be identified.

5 There must be recognition of the impact of armed conflict and displacement on family relations, with a risk of increased domestic violence, especially in the families of former-combatants. Special attention should be given to prevention of and response to domestic violence through counselling and mechanisms which will enable women to report incidents, seek and receive assistance and secure redress for the violations of their rights. A participatory approach towards assessing individual risks and needs should be adopted. This should lead to the design and implementation of strategies to ensure that the specific needs of women and girls in their family context are addressed through preventive and remedial measures.

6 Where women combatants who are interned have young children, the situation of the children must be given special attention. Special arrangements should be made for the care of the children, permitting frequent visitations to their mother. New born babies and infants may be kept with their mother. Where in such circumstances the mother wishes to renounce her military activities, priority should be given to the evaluation of the genuineness and permanence of the renunciation.

L. INTERNATIONAL CO-OPERATION

As we have seen above, it is a well established principle in international law that host States have the primary responsibility for the physical protection of refugees and for maintaining the civilian and humanitarian character of their camps and settlements. At the same time, the need to support host States which are unable to discharge these responsibilities effectively has been increasingly recognized by the international community.[57] This is underpinned not in the least by the fact that the militarization of camps has potentially far reaching consequences with respect to peace and security, not just within a country, but also cross-border, and hence regionally. The Secretary-General underlined this by noting that the Security Council is expected to ensure that the host State receives the necessary support and that appropriate measures are taken, in a timely manner, to separate armed elements from refugees and other civilians.[58] A number of actors may have a role to play, including other States, the UN -both UN humanitarian agencies, the Security Council and DPKO- as well as the ICRC, NGO's, donors and of course refugees and other affected civilians. The definition of their respective roles should be ensured on a situation-by-situation basis.

International support and co-operation could focus on four different areas:

[56] See S/RES/1325 (2000), 31 October 2000.
[57] S/RES/1208 (1998), par. 3 and 4; S/RES/1625 (2005), par. 10 and 11.
[58] Report of the Secretary-General on the Protection for Humanitarian Assistance to Refugees and others in Conflict Situations, S/1998/883, 22 September 1998.

(1) advocacy, political support and standard setting; (2) resources; (3) technical capacity building; and (4) durable solutions.

1 Advocacy, political support and standard setting

Where humanitarian operations are affected by serious security problems which the host States are not able or willing to address in a satisfactory manner, but where there is consent from the State for the presence of external security forces, the Security Council may determine the need to deploy peacekeeping forces and/or take other measures, with the consent of the host State, to provide security support to the humanitarian operation.

The international community must be ready to advocate for appropriate measures and create understanding among relevant Government authorities on the risks of inaction, in case host States do not address serious security problems. This needs to be in concert with all humanitarian actors. The creation of inter-Departmental and inter-Agency co-ordination mechanisms on security may provide a useful mechanism for discussing security issues with Government counterparts.

If still no satisfactory reaction is forthcoming, and the host State does not consent to the presence of external security forces, a decision by the Security Council may be required to launch enforcement action, which could involve deploying regional or international military forces that are prepared to take effective measures to protect civilians. Such measures could include compelling disarmament of armed elements.[59]

2 Resources

Where the capacity of a State to respond is lacking, the international community must be able to mobilize adequate resources to support and assist States in maintaining the civilian and humanitarian character of asylum.[60] Such assistance could be provided in the form of personnel, equipment, training, logistics or similar measures.

3 Technical capacity building

Military authorities conducting separation and internment activities would normally operate according to their own guidelines and practices. When executed in a refugee context, it is particularly important for UNHCR to know about, and preferably be consulted, on the establishment of, the applicable criteria for identification and separation. As there may be different interpretation of the criteria, there should be a review mechanism, which would allow an authoritative decision on the relevant issues.

4 Durable solutions

In relation to durable solutions for refugees who are ex-combatants, political and diplomatic efforts and resources should support all three durable solutions of voluntary repatriation, local integration and resettlement, as applicable. Resettlement of refugees who are ex-combatants has proven to be difficult as many resettlement countries are constrained by security concerns. Even children have been rejected for resettlement

[59] See Report of the Secretary-General on Protection for Humanitarian Assistance to Refugees and others in conflict situations, S/1998/883, 22 September 1998, part V, par. 34-35; Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, S/1999/957, 8 September 1999, par. 64; and Security Council Resolutions 1296 (2000), 19 April 2000, S/RES/1296 (2000), par. 14 and 1674 (2006), 28 April 2006, S/RES/1674 (2006), par. 18.
[60] ExCom Conclusion No.94 (LIII), Conclusion on the Civilian and Humanitarian Character of Asylum, par. (f).

despite their having been forcibly recruited. Resettlement of ex-combatants could be best addressed as a component of a comprehensive approach to durable solutions for a particular group of refugees. Ex-combatant refugees who decide to voluntarily repatriate to their countries of origin should be able to benefit from any DDR programmes conducted there.

M. COMBATANTS WHO DO NOT RENOUNCE

Genuine renunciation of military activities can restore civilian status, upon which the former combatant can be released from internment. Those who seek asylum should be able to have their claims examined, with particular attention paid to possible application of the exclusion clauses.

There are a number of categories of persons who fall outside the scope of UNHCR's mandate or protection activities. These include internees who have not renounced military activities; internees whose renunciation was assessed not to be genuine; internees who did renounce, but did not seek asylum; those who are excluded from refugee status upon refugee status determination.

This raises the question as to how long such cases should be kept in internment facilities. In principle, the host State could, according to the rules of neutrality, keep them interned until the end of hostilities.[61] However, those who have genuinely and permanently renounced their military activities or intentions are no longer a threat and should not be interned, even if they do not seek asylum. The host State may choose to release them and provide them with a residence status while ensuring that they do not resume military activities. These individuals should also benefit from any available rehabilitation and skills training programs, as well as peace education pending their eventual repatriation. Upon repatriation, they should be able to benefit from DDR programmes.

DDR (Disarmament, Demobilization, Reintegration)[62]

Disarmament entails the collection of arms and ammunition; demobilization is a process that separates combatants from military services or armed troops, while reintegration programmes support the immediate and medium term social and economic inclusion of former combatants into their communities or origin or new communities (reintegration therefore also includes integration).

For post-conflict peace building strategies to be effective it is imperative that DDR activities receive priority attention.[63] While disarmament and demobilization could be seen as activities with definitive outcomes in the short term, reintegration is a longer term process. This process will never succeed if there is no commitment to peace from the Government, the former combatants and the community at large. Although DDR will generally be part of a national recovery strategy, it is important for such plans to take into account the regional dimensions. Former combatants, and especially those who are disappointed in the reintegration process, can easily be enticed to move to another

[61] Third Geneva Convention, Art. 118 on release and repatriation of POWs at the close of hostilities.
[62] See footnote 30
[63] See also S/RES/1625 (2005), 14 September 2005.

conflict and be re-recruited. Hence former-combatants who were part of mixed outflow and were subsequently separated from the refugee population should be able to benefit from DDR programmes in their country of origin.

DDR programmes tend to be treated as having the primary objective of enhancing security by disarming combatants, while social objectives of rehabilitation are usually perceived to be of secondary importance. If the rehabilitation programmes are not successfully implemented however, there is always a risk of former-combatants returning to the armed conflict or wasting their lives at the margins of society. It is also important to include women into DDR process, while paying special attention to their specific needs being addressed.

Mercenaries

International humanitarian law excludes mercenaries from the possibility of being considered a combatant or a prisoner of war.[64] The OAU Convention for the Elimination of Mercenarism in Africa [65] and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries[66] establish the crime of mercenarism and underscore the seriousness of the threat it poses against the sovereignty and territorial integrity of States. One major challenge that the issue of mercenaries poses is the considerable difficulties faced by States, especially those with limited resources, to actually prevent the use or transit of its territory by mercenaries. Another is the fact that in recent years the use of mercenary services is increasingly accepted in the form of private security companies, which risks the development of a legitimized version of mercenarism.

Without prejudice to the obligations of States to pursue criminal proceedings against identified mercenaries, for the purpose of eliminating the severe security threat they pose, mercenaries must be disarmed and separated. Whether they can be interned together with other combatants must be determined taking the specific circumstances of the case into account.

Per definition, the mercenaries' motive for involvement in military activities is personal gain, whether material or other, which limits the likelihood of a genuine renouncement of armed activities, or a successful reintegration process within a possible DDR programme. Nevertheless, mercenaries should not automatically be excluded from benefiting from DDR programmes, especially in regions that see a high prevalence of recruitment and re-recruitment of combatants moving regularly across borders from conflict to conflict.

Mercenaries who express a fear of return to their country may also be considered for access to asylum procedures if they lay down their arms. Once they cease to be considered as an armed element, they could be allowed access to asylum procedures as asylum seekers given their civilian status. Their claims should be assessed on an individual basis; such assessment should take into account the background and involvement of the individual concerned in armed activities for mercenary reasons; the applicability of the exclusion clauses should also be examined.

[64] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 47.
[65] Adopted by the Assembly of Heads of State and Government at its Twenty-Ninth Ordinary Session 3 July 1977, Libreville, Gabon, and entered into force in April 1985.
[66] Adopted by the General Assembly on 4 December 1989, A/RES/44/34.

Part 3:
Refugee Camp Security

A. INTRODUCTION

The separation of combatants is but one aspect of a broad range of issues affecting the physical protection of refugees. Any response to the suspected presence of combatants among refugees should therefore be part of a comprehensive strategy that includes preventive measures to address the wide variety of physical protection issues. It is outside the scope of these guidelines to discuss in detail the range of available measures aimed at addressing security issues. The activities outlined in Part II of these Guidelines should be planned and conducted simultaneously and in conjunction with other security measures.

There are situations where separation of combatants may be deemed unfeasible. This may be due to security concerns, in particular, where implementation could give rise to further security problems rather than resolving them, or else, may be due to political obstacles. Separation may not provide the full or satisfactory result so it is just as essential that preventive measures be put in place which would help mitigate the impact of suspected or possible infiltration by armed elements and combatants. This section looks at a number of preventive security measures and camp management strategies that should be viewed as complementary to the separation activities and, as seen above, in the wider context of a comprehensive refugee security strategy.

B. PREVENTIVE MEASURES

There are a number of measures that should be implemented at the very onset of a refugee influx which will contribute to maintaining the civilian character of asylum.

1 Early information in regard to the background and nature of the armed conflict, the various factions or parties to the conflict, as well as the characteristics of those fleeing and entering the host State goes a long way in the planning of the any needed security response to the mass influx, not only in relation to the possible presence of armed elements and combatants, but also in relation to the humanitarian and security needs generated by the influx in general. Identification, separation and internment measures could be put in place as soon as possible where information is received early and acted upon speedily.

2 Serious consideration must be given to the location of refugee camps. They should be located at a safe distance from the border of the country of origin. A minimum of 50 kilometres is recommended as a guiding principle, while in some hostile environments the situation may call for a larger distance. A number of other factors need to be taken into account to determine the appropriate location. Camps must not be located in areas that are affected by armed conflict, or are

inherently unstable or suffering from endemic violence. Ethnic, religious and cultural affiliations could also influence the location. Considerations that are equally important are short and longer term sustainability (access to water, agricultural land etc.), the road infrastructure to ensure accessibility (in a positive sense for humanitarian access, and in a negative sense giving easier access for combatants).

3 The size and physical layout of refugee camps should be conducive to the maintenance of security. Refugee camps should not accommodate more than 20,000 refugees. Protection based physical planning of refugee sites is crucial, looking at the location of private and common areas, as well as safe access to basic services such as water, latrines, schools and distribution centres. This includes issues such as lighting of sensitive areas and special regard for vulnerable refugees. Refugee participation in physical planning is a key element to improving security among the refugee community.

4 If and when refugees are relocated away from the border, national law enforcement officers should be present to assist and monitor the move and to act as deterrence for combatants. In case of a suspicion of the presence of weapons, searches should be conducted, with due respect for the dignity of all refugees.

5 At the start of an emergency, it would be appropriate to explore the necessity of organising a technical assessment mission, in order to evaluate the security situation, and to determine the extent of infiltration, if any, by combatants and to advice on appropriate security measures to be put in place. Such a mission should comprise experts from the host State, UNHCR, and other concerned humanitarian agencies. A request to the DPKO for specialized security personnel may also be considered.

C. SECURITY MANAGEMENT PRACTICES

A number of security measures must be put in place in any refugee setting regardless of the security situation. These are mentioned here to emphasize the importance such measures can have in strategies to combat or control militarization.

1 Refugees should be involved in discussions regarding the sources of and responses to their insecurity. An open dialogue must be held at all times, giving refugees a sense of shared responsibility for their own

security. Although refugee leaders can play an important role in this, efforts should be made to include all sectors of the community, in particular women refugees, who should be provided the opportunities to raise their concerns with respect to SGBV.

2 Camps rules and by-laws should be drawn up in consultation with the refugees. These rules should promote mutual respect and govern the behaviour of refugees within the camps and in their relations with the host community. They should promote the peaceful and civilian character of asylum. Refugees should be made aware of their obligations under such rules, as well as refugee and national law. Serious criminal offences should be handled by the criminal law of the host State.

3 In order to maintain law and order within the refugee camps, "refugee watch systems" can be established. The role and responsibilities of volunteers should be clearly defined, as well as their relation with national law enforcement structures. Refugee watch systems should include women refugees. Participants should receive appropriate training and equipment such as walkie-talkies but not weapons. Such refugee security systems can only complement the security system provided by the authorities.

4 If there are credible indications that weapons are present in a refugee camp, it will usually be in the best interest of the refugees that weapon searches are conducted in the refugee camp. Although the authorities will have the legitimate wish to control such exercises and maintain the element of surprise, there are a number of issues that UNHCR or camp management can recommend. Firstly that such searches are conducted by law enforcement agents rather than the military, secondly that UNHCR offers to provide background information about the refugees and the camps to those responsible for the search, and thirdly that refugee leaders will be given the opportunity to explain the exercise just before it takes place (this can be done without jeopardizing the element of surprise).

5 It is not unlikely that in some situations persons other than combatants pose a threat to the security of refugee camps or settlements. Such persons could include refugees who have committed serious common crimes, refugees perceived as being a threat to national security, intimidators, political activists, or refugees who have already been found to be excludable from refugee protection. There may be justified grounds for the separation and confinement of these persons, but this would have to be implemented based on a distinctly different set of guidelines different from those for combatants. It is also possible that individuals who infringe national criminal laws be prosecuted in the local court.[67]

6 Parallel with the assistance to reinforce law enforcement structures, assistance to the judiciary may also be envisaged. Assistance could be targeted at improving access to the national justice system through the establishment of mobile courts, providing training on refugee law, human rights law and international humanitarian law to judges and judicial officials as well as training of refugees on their rights and obligations under national law.

[67] The 1951 Convention deals with the restriction on freedom of movement of refugees and asylum-seekers in several instances where the restriction of freedom of movement is only permitted subject to strict criteria and safeguards. See articles 9, 26 and 31 of the 1951 Convention.

7 If the host State lacks the capacity to deal with the increased security requirements that mass influx situations often entail, the international community must consider entering in co-operation programmes with the Government for the assistance of law enforcement structures in the refugee hosting areas. Such agreements can include material assistance, as well as training and capacity building activities.

D. CAMP MANAGEMENT ISSUES

Apart from above-mentioned specific security related measures, a host of other good camp management practices can also positively contribute to ensuring the civilian and humanitarian character of refugee camps. These include:

1 Visible and effective presence in refugee camps of government personnel and international humanitarian agencies.

2 A transparent camp administration that enters in a regular dialogue with refugees and their leaders.

3 Refugee leaders who are democratically chosen, and who are committed to promoting and maintaining the civilian character of the refugee camps.

4 An effective information flow between refugees and the camp administration, including the existence of a complaint mechanism.

5 An appropriate and adequate gender distribution in camp management, representation and security mechanisms.

6 Protection of legal rights of refugees through individual documentation, access to legal remedies, protection from arbitrary arrest, respect of their freedom of movement, provision to refugees of information about their rights.

7 Administration of justice systems in the camp, with special emphasis on reporting, complaint and follow-up mechanisms, as well as procedures for the documentation and statistical recording of crimes. Where appropriate, camp justice systems should be built upon traditional dispute-resolution mechanisms to resolve family or communal disputes. Attention must be paid however to ensure that such mechanisms do not breach general human rights principles.

8 Regular dialogue and communication with the host community. Confidence building measures and conflict resolution mechanisms should be encouraged.

9 Safeguarding at all times the integrity of the family, which provides a fundamental protection function with regards to its individual members.

10 The establishment of an effective and transparent relief distribution system, with special regard to vulnerable refugees. Women should be involved in the distribution system.

E. RECRUITMENT OF REFUGEES

International humanitarian law establishes a duty on neutral States to prevent recruitment on their territory by belligerent parties.[68] It also prohibits forced recruitment of refugees into the armed forces of the host State in times of war against his or her own country,[69] as it may give rise to a violation of the principle of non-refoulement. Apart from such specific provisions, there is no clear and general prohibition in international law on the military recruitment of foreigners, including refugees. It should be noted that military conscription into their armed forces is a prerogative of States only, and it is not legitimate for non-Sate entities to recruit individuals into irregular armed groups.

Apart from questions of lawfulness, military conscription by a host State of refugees poses problems with respect to the civilian and humanitarian character of asylum. States that undertake or condone military recruitment of refugees on their territories would appear to act inconsistently with their primary responsibility to ensure the civilian character of asylum. States also have a recognized duty to guarantee the physical safety and security of refugees, and again recruitment into the armed forces would violate that obligation. Also, forced recruitment would be inconsistent with their basic right to (seek and) enjoy asylum.[70]

In the context of maintaining the civilian and humanitarian character of asylum, the following factors should be taken into account:

1 Host States have an international obligation not to recruit refugees into their national armed forces at times of war against the country of origin of the refugees. Moreover, it is recommended that host States refrain generally from recruiting refugees, during war or peace time, as failing to do so would be incompatible with the civilian and humanitarian character of asylum. Host States should also take steps to prevent the forced recruitment of refugees by armed groups.[71]

2 Host States should ensure adequate security measures for refugee camps so that military elements do not gain access to the camps for recruitment purpose.

3 The presence of combatants in or near refugee camps greatly increases the risk of recruitment. Refugee camps should be located away from borders to avoid easy access by cross border military elements.

4 Detailed and accurate registration data, including specifically the individuals' age must be maintained to facilitate identification of children at risk of recruitment.

5 Recruitment into national armed forces of the host State of children under the age of 15 is prohibited under any circumstances. There is growing international consensus that the minimum age of recruitment should be raised to 18.[72]

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[68] Art 4 of the 1907 Hague Convention respecting the Rights and Duties of Neutral Powers and Persons in Case of War and Land.
[69] Art. 23 of the Hague Convention
[70] With respect to the response to refugees who voluntarily join military forces, see Part II, Chapter I on Acts by Refugees Incompatible with the Civilian and Humanitarian Character of Asylum.
[71] Para. (e) of ExCom Conclusion 94 (LIII) of 8 October 2002.
[72] See note 44.

6 Children and adolescents should be kept as close to their families as possible. Educational opportunities and recreational activities should be reinforced especially for adolescents, including girls, to prevent attitudes of uselessness and idleness. The formation of youth groups should be encouraged. Engaging youths will help avert the desire to be engaged in military activities.

7 Due appreciation must be given to the fact that unaccompanied and separated children are more vulnerable to recruitment than other children. Tracing activities must be organised for unaccompanied and separated children, and family reunification take place as soon as possible. Pending tracing, suitable care arrangements should be provided to unaccompanied and separated children. Care by relatives or foster families are the preferred options.

Annex 1: Case Studies

TANZANIA

During 1994, north-western Tanzania saw an influx of 600.000 refugees from Rwanda. At the same time refugees continued to arrive from Burundi and DRC. Triggered by national security concerns and massive environmental degradation, the Tanzanian Government took the decision to revoke prima facie status of all Rwandan refugees and commence mass forced repatriation of especially Rwandans, but also Burundians. In January 1997, 126 Burundians that were refouled were executed by the Burundian military. This contributed to a more tolerant attitude of the Tanzanian Government towards Burundi refugees.

Camps hosting Burundian refugees in the Kigoma region were within walking distance from the border. The Tanzanian Government questioned internationally accepted standards of locating refugee camps away from the border, arguing that proximity to the border facilitates voluntary repatriation as a solution and allows refugees to remain in a culturally familiar area. There were serious indications that defeated insurgents, as well as rebel combatants on R&R, ended up in the camps. The Tanzanian Government stated that it considered the refugees a source of tension between Tanzania and Burundi as they were suspected to be associated with Burundian rebels. At the same time Burundi suspected that Tanzania condoned, if not supported, armed opposition groups.

In May 1997 a joint UNHCR and Tanzanian Government mission was conducted to evaluate security in the Kigoma and Kagera regions. Although the mission concluded that the camps were not “militarized”, it was recommended that refugees undermining the civilian character should be separated out of the camps. A lengthy process of negotiations started, culminating in the signing of a Memorandum of Understanding (signed in February 1999 by the Tanzanian Government) ensuring the full time presence of a civilian police contingent in the refugee camps. The terms of reference of the police included all aspects of maintaining law and order, with particular responsibilities with respect to the control and repression of “subversive activities” among the refugee population. The evaluation of the security package concluded that despite a number of weaknesses, in general it has enhanced law and order in the camps.

On the question of separation however, the project had little to no positive impact. It took UNHCR a long time to convince the Ministry of Home Affairs that an internment facility needed to be available for separated ex-combatants. Such a facility was finally initiated at Mwisa, shortly before the security package came into effect. A small group of Burundian ex-combatants were sent to the Mwisa separation facility, but within a few months all but a few had absconded. In May 2000 the issue was revisited and UNHCR provided financial and material assistance based on a Memorandum signed with the Ministry of Home Affairs. Although there is a legal basis for detention refugees or asylum seekers, its implementation had many flaws and the framework itself is generally inadequate to address the separation of ex-combatants. Arrangements for joint screening between UNHCR and the Government were not always respected and the criteria for separation were not properly defined, hence lacking transparency. This resulted in the wrongful internment of a considerable amount of persons, including common criminals. Both women and children were kept with male adults in the same facility.

Issues:

- Geo-political considerations favour the Tanzanian Government's more tolerant attitude vis-à-vis Burundian refugees as opposed to e.g. Rwandan refugees.
- The presence of refugees close to the border was considered by both Tanzanian and Burundian authorities as a source of tension between the two countries.
- The security package had a number of weaknesses, such as resources that only enabled a relatively cursory involvement in avoiding subversive activities, a lack of follow-up beyond identification, such as prosecution, punishment and separation.
- Mere penalisation of combatants ignores the basic principle of incompatibility in refugee law of combatants with refugee status.
- Gaining political will and commitment from national authorities to set up separation facility was problematic.
- A national legal framework is essential to uphold respect of basic legal and procedural standards of internment of ex-combatants.
- Criteria of separation need to be clearly defined and strictly adhered to in a transparent manner.
- Close monitoring, by either UNHCR or another agency, is key to avoid wrongful separation and internment.

DRC

After an attempted coup d'état in May 2001, 25,000 refugees from CAR fled to Zongo, in the Equatorial Province of the DRC, controlled at the time by the Congo Liberation Front (Mouvement de Liberation Congolais, MLC and Front de Liberation Congolais, FLC). The local FLC forces identified a group of an estimated 1,000 combatants among the refugees. MLC president Jean-Pierre Bemba requested in writing to the SRSG for assistance with separation. The ex-combatants were suspected of having weapons. The High Commissioner for Refugees wrote to the SG expressing concern about the threat armed elements could pose to the refugees and suggested considering whether the MONUC mandate might include the oversight of the separation, disarmament and internment of the ex-combatants. An assessment mission of MONUC concluded that its mandate would not cover a separation operation. Intervention by the SRSG resulted in a limited role for MONUC of observing and escorting through a team of five military monitors. MLC identified a site at Bokilio, 150 kilometres from the CAR border. MONUC representatives withdrew after two weeks as ex-combatants refused to move, but returned after intervention with DPKO by UNHCR New York. It was chiefly FLC pressure that made the ex-combatants move. Their family members were also moved to the internment facility. After separation, UNHCR assessed their qualification for refugee status.

Issues:

- Refugee hosting territory controlled by a non-State armed group
- Commitment by the authorities to address the separation issue
- Request for assistance by authorities to the UN
- Ex-combatants were already separated from the refugee population
- UNHCR request to SG for assistance to review a peacekeeping mandate deemed to be too limited

- Very limited effectiveness by peacekeeping mission for the separation operation
- Re-location of combatants was mainly spurred by the threat of force from the local military
- Efforts to maintain family unity

SIERRA LEONE

Ever since the early 1990s, Liberians fled into Sierra Leone, but by late 2001 and early 2002, a disconcerting amount of Liberian combatants crossed into Sierra Leone for a variety of motives, including taking a break from fighting, desertion, escorting family members to safety, in search of food, or to abduct refugees. Encouraged by UNHCR and ICRC, the Office of National Security organised a High-Level workshop to address this issue, which brought together a broad variety of relevant national and international actors. A key recommendation was the establishment of an internment facility away from the Liberian border to accommodate combatants. In June 2002, the Office of the President designated the agencies represented as the workshop as a "Task Force on Internment", with the objective of designing, establishing and supervising the internment camp. The Task Force meets regularly under Chairmanship of the Sierra Leonean Police. The Mapeh internment facility became operational on October 21st, 2002.

UNHCR's role within the Task Force focused on: the treatment of internees in accordance to relevant human rights law; assessment on eligibility to enter into the asylum procedure; oversight of reintegration of former child soldiers; links with the civilian family members of internees. Women were accommodated separately, and a separate area had been allocated for former child soldiers pending transfer to the refugee camp. UNHCR, UNICEF and an implementing partner established an accelerated reintegration procedure for child former-combatants. UNHCR also facilitated tracing activities for former child soldiers. Basic services such as food, non-food and medical care were provided. Civilian members of the interned former combatants were accommodated in refugee camps. ICRC, in collaboration with UNHCR arranged family visits to the internment camp. Lobbying was conducted to render the facility sustainable.

Security screening was conducted by Sierra Leone security forces at the main entry points. If combatants were identified they were transported to the Mapeh internment camp. Assistance was sought from UNAMSIL to provide training on security screening. By-laws for the refugee camps were concluded to regulate the conduct of camp residents, while security wardens provided community protection.

An increasing number of Liberian former-combatants sought asylum, and UNHCR lacked resources to conduct proper assessments, also because special attention needed to be paid to possible exclusion consideration. This created an important backlog, which created the risk of tension and even re-recruitment.

Issues:

- The Resolution adopted by the Office of the President limited the policy to the disarmament of deserters, meaning those who voluntarily cease hostilities.
- The same Resolution allowed for visits of the Liberian Government officials to visit the internment facility upon notification to the Sierra Leone authorities.
- The Task Force on Internment has proven to be an excellent model for inter-agency collaboration.

- Accelerated reintegration procedure for child former-combatants was established.
- Lack of resources created a serious backlog to deal with former-combatants who sought asylum after demobilization and a period of internment.

GUINEA

In the autumn of 2000, concerned about several attacks on Guinea by Liberian armed forces, President Conte addressed the nation, triggering widespread harassment and abuse against refugees. Following sustained fighting between Guinean forces and Liberian troops the security situation in the Gueckedou area (close to the border with Liberia and Sierra Leone) seriously deteriorated. In September 2000, UNHCR Head of Office in Macenta, Mensah Kpognon, was killed as a result of Liberian attacks. UNHCR staff was evacuated and operations suspended. As the violence subsided somewhat, a decision was made to transport the refugees to a safer area inland. A MoU between the Guinean Government and UNHCR, signed on 27th February 2002, provided for a framework for this massive relocation operation of some 60,000 refugees. After settlement in the camps, refugees continued to be under threat of infiltration and it was decided to deploy a joint police/gendarmes contingent in order to maintain law and order in and around the camps. After a lengthy negotiating period, UNHCR entered into an agreement with the Royal Canadian Mounted Police, whose representatives assisted in establishing a structured training programme for both Guinean Mixed Brigade Officers and Refugee Security Volunteers. Standard incident reporting was established and standardized instructions, as well as a Code of Conduct, were developed. Continued attempts in 2002 and 2003 to discuss a strategy of identification and separation of combatants with the Government of Guinea yielded little success. UNHCR facilitated a visit of Government representatives to Tanzania and Zambia in order to study the issue in other contexts. Following the mission, potential sites were identified and a legal framework was produced and agreed upon. Unfortunately, the agreement has yet to be officially signed.

Issues:

- Massive relocation to improve security
- Cooperation with Royal Canadian Mounted Police
- Unnecessary long time of negotiation process between UNHCR and Canadian Government before RCMP deployment
- Negotiations on proposal for separation facility run by Guinean authorities

ZAMBIA

Since 1999, many former combatants, soldiers engaged with UNITA as well as political sympathizers, were denounced by the residents of the Meheba refugee camp and risked retaliation and lynching by the refugees. At the end of 2000 it was decided to create a separation facility in Ukwimi, a camp in the Eastern Province. In November 2000, the Government of Zambia, IOM and UNHCR signed an agreement for the transportation and accommodation of former combatants in the Ukwimi facility. The former UNITA combatants were barred from benefiting from prima facie refugee status, even though they had laid down their arms before coming to Zambia. Once it had been established that the group of Angolan former combatants had genuinely renounced their military activities, a screening mission was conducted in late 2001 whereby each applicant was

interviewed. Every asylum seeker was granted refugee status. Former-combatants from Burundi and Rwanda living in the same facility were also interviewed. Contrary to the Angolans, they had arrived in Zambia in uniform, carrying arms and spent at least one year in Mansa Prison. None of these former combatants were granted refugee status. The Zambian Government had offered no alternative to the Ukwimi facility for either the recognized refugees or the screened-out former combatants. This presented to unfortunate situation whereby both groups continued to live in the same facility without a prospect for an alternative solution.

Issues:

- MoU with the Government on separation and internment
- Lack of follow-up action upon recognition of refugee status

CHAD

Spurred by a military conflict in the spring of 2003 between the Sudanese government and two Sudanese rebel movements (SLM and JEM) in the Darfur region of western Sudan, Sudanese refugees fled into eastern Chad, numbering over 200.000 by the spring of 2004. This influx occurred in an already extremely complex political context. An uncertain allegiance existed between the Governments of Sudan and Chad, while the position of the Chadian President was challenged within his own clan as well as by rebel movements in Chad. Refugees initially experienced a warm welcome by the local population, in many areas of similar tribal descent, although in other areas tribal differences continued to be a source of tension.

Due to volatile security situation at the border, UNHCR's first priority was the relocation of all refugees in camps at a safer location inland. Despite negotiations with local and national authorities, some of the camps remained at an unacceptable close proximity to the border. The location of some of these camps and the fact that the majority of the population is composed of women and children lead to a risk that persons engaged in military activities on the Sudanese side of the border may visit the camps for a variety of reasons.

Given the burden that guaranteeing the security of the refugees in camps poses for the Chadian authorities, UNHCR has agreed, through a MOU signed with the Ministries of Defense and of Interior, to cooperate with the provision of the logistical means required to ensure the deployment of gendarmes to all the camps. The primary purposes of this program are: 1) to ensure that no one enters the camp in possession of arms; 2) to provide security in and around the camps; 3) to ensure law and order and 4) to protect humanitarian actors and assets. Particular emphasis is placed on the prevention of sexual and gender based violence and on prevention of presence of armed elements in the camps.

A contingent of gendarmes has been deployed to all the camps, by a ratio of 1 gendarme for each 1,000 refugees. Two female gendarmes should be posted in each camp. The MOU foresees an elaborate co-ordination between UNHCR and the Government to ensure the proper implementation of the MOU. Liaison between the security forces and UNHCR will be ensured at the departmental level through 5 Gendarmes Liaison Officers and the 5 UNHCR Heads of field office. Additionally, military coordinators are located in Abeche, Biltine and Bahai. At the regional level, coordination mechanisms under the authority of the Governor and the Prefect include UNHCR (Senior

Protection Officer), CNAR and the relevant administrative and military authorities. At the central level, the coordination mechanism is chaired by the Minister of Interior, in his capacity as President of CNAR, and includes the Minister of Defense, the Director General of the Gendarmerie, UNHCR (Deputy Representative/Protection) and the Permanent Secretary of CNAR.

Under the terms of the MOU, UNHCR insists on the deployment of at least two female gendarmes per camp. Gendarmes will not carry their arms when patrolling the camps and inform UNHCR and CNAR prior to any particular intervention in the camps. A weekly report on security incidents must be submitted by the gendarmerie to CNAR, UNHCR and the civil and military authorities. All the gendarmes deployed as part of this program must have followed a training program provided by UNHCR on refugee related issues. UNHCR has the authority to request the immediate separation of any security agent against whom there are suspicions of improper behavior.

UNHCR continued to engage the refugees in the security of camps through discussions with them, including refugee women and adolescent boys and girls, for the organization of “refugee security committees”. UNHCR promoted the establishment of voluntary refugee patrols, including women, assuming direct responsibility for the maintenance of law and order inside the camp, in close co-ordination with the Chadian gendarmes.

In addition to the Chadian military forces, there is a significant presence of the French military in Eastern Chad. The French military have been requested by the government of Chad to deploy to the area of the refugee camps in order to assist in securing them. The French military offered to defend the refugee camps in case of an external aggression to the refugees. Based in Abeche, the French military are undertaking regular patrols in the region and have on occasions visited the refugee camps to obtain information on the conditions of the refugees. They have established civil/military coordination mechanisms both in N’Djamena and in Abeche.

In order to maintain the humanitarian and civilian character of the camp, UNHCR indicated that it was not in a position to assist the French military with any visits to the refugee camps or organizing meetings with the refugees. The same approach was followed with respect to visits by African Union monitors investigating violations of the cease-fire agreement in Darfur. These teams routinely visited the camps unannounced which was a cause of concern as they consisted of representatives the SLA and JEM rebel movements.

Issues:

- Volatile political and security situation
- Proximity of refugees to the border with the conflict area
- Massive relocation of refugees in adverse conditions
- Risk assessment of militarization of camps
- MoU with the Government for contingent of gendarmes to improve security

Annex 2: Executive Committee Conclusion on the Civilian and Humanitarian Character of Asylum

Conclusion on the civilian and humanitarian character of asylum
Date: 8 Oct 2002 | Executive Committee Conclusions
Document symbol: No. 94 (LIII) - 2002

The Executive Committee,

Remaining seriously concerned by the continuing occurrence of military or armed attacks and other threats to the security of refugees, including the infiltration and presence of armed elements in refugee camps and settlements,[1]

Recalling the relevant provisions of international refugee law, international human rights law and international humanitarian law,

Recalling its Conclusion No. 27 (XXXIII) and Conclusion No. 32 (XXXIV) on military attacks on refugee camps and settlements in Southern Africa and elsewhere; Conclusion 72 (XLIV) on personal security of refugees; Conclusion No. 48 (XXXVIII) on military or armed attacks on refugee camps and settlements; Conclusion No. 47 (XXXVIII) and Conclusion No. 84 (XLVII), on refugee children and adolescents, as well as Conclusion No. 64 (XLI) on refugee women and international protection,

Recalling also United Nations Security Council resolution S/RES/1208 (1998) and S/RES/1296 (2000), and the two reports of the United Nations Secretary-General on the Protection of Civilians in Armed Conflict[2], noting in particular the recommendations made therein with respect to enhancing the security of refugee camps and settlements,

Welcoming the discussion which took place on the civilian character of asylum in the context of the Global Consultations on International Protection,[3]

Noting that several international meetings have recently been held, aimed at identifying effective operational strategies for maintaining the civilian and humanitarian character of asylum,[4]

Reiterating that refugee camps and settlements should have an exclusively civilian and humanitarian character, that the grant of asylum is a peaceful and humanitarian act which should not be regarded as unfriendly by another State, as stated in the 1969 OAU

[1] For the purpose of this Conclusion, the term "armed elements" is used as a generic term in a refugee context that refers to combatants as well as civilians carrying weapons. Similarly, for the purpose of this Conclusion, the term "combatants" covers persons taking active part in hostilities in both international and non-international armed conflict who have entered a country of asylum.
[2] S/1999/957;S/2001/331.
[3] EC/GC/01/8/Rev.1.
[4] Workshop on the Potential of International Police in Refugee Camp Security (Ottawa, Canada, March 2001); Regional Symposium on Maintaining the Civilian and Humanitarian Character of Refugee Status, Camps and other locations (Pretoria, South Africa, February 2001); International Seminar on Exploring the Role of the Military in Refugee Camp Security (Oxford, UK, July 2001).

Convention Governing the Specific Aspects of Refugee Problems in Africa and a number of Executive Committee conclusions, and that all actors, including refugees themselves, have the obligation to cooperate in ensuring the peaceful and humanitarian character of refugee camps and settlements,

Recognizing that the presence of armed elements in refugee camps or settlements; recruitment and training by government armed forces or organized armed groups; the use of such camps, intended to accommodate refugee populations on purely humanitarian grounds, for the internment of prisoners of war; as well as other forms of exploitation of refugee situations for the purpose of promoting military objectives are likely to expose refugees, particularly women and children, to serious physical danger, inhibit the realization of durable solutions, in particular voluntary repatriation, but also local integration, jeopardize the civilian and humanitarian character of asylum and may threaten the national security of States, as well as inter-State relations,

Recognizing the special protection needs of refugee children and adolescents who, especially when living in camps where refugees are mixed with armed elements, are particularly vulnerable to recruitment by government armed forces or organized armed groups,

Reaffirming the importance of States, UNHCR and other relevant actors, integrating safety and security concerns from the outset of a refugee emergency into refugee camp management in a holistic manner,

(a) *Acknowledges* that host States have the primary responsibility to ensure the civilian and humanitarian character of asylum by, inter alia, making all efforts to locate refugee camps and settlements at a reasonable distance from the border, maintaining law and order, curtailing the flow of arms into refugee camps and settlements, preventing their use for the internment of prisoners of war, as well as through the disarmament of armed elements and the identification, separation and internment of combatants;

(b) *Urges* refugee-hosting States to respect the civilian and humanitarian character of refugee camps by preventing their use for purposes which are incompatible with their civilian character;

(c) *Recommends* that action taken by States to ensure respect for the civilian and humanitarian character of asylum be guided, inter alia, by the following principles;

i. Respect for the right to seek asylum, and for the fundamental principle of non-refoulement, should be maintained at all times;

ii. Measures for the disarmament of armed elements and the identification, separation and internment of combatants should be taken as early as possible, preferably at the point of entry or at the first reception/transit centres for new arrivals;

iii. To facilitate early identification and separation of combatants, registration of new arrivals should be conducted by means of a careful screening process;

iv. Refugee camps and settlements should benefit from adequate security arrangements to deter infiltration by armed elements and the strengthening of law and order;

v. Once identified, disarmed and separated from the refugee population, combatants should be interned at a safe location from the border;

vi. Where the granting of refugee status is based on group determination, civilian family members of combatants should be treated as refugees and should not be interned together with them;

vii. Combatants should not be considered as asylum-seekers until the authorities have established within a reasonable timeframe that they have genuinely and permanently renounced military activities, once this has been established, special procedures should be put in place for individual refugee status determination, to ensure that those seeking asylum fulfill the criteria for the recognition of refugee status, during the refugee status determination process, utmost attention should be paid to article 1F of the 1951 Convention, in order to avoid abuse of the asylum system by those who do not deserve international protection;

viii. Former child soldiers should benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation;

ix. Where necessary, host States should develop, with assistance from UNHCR, operational guidelines in the context of group determination to exclude those individuals who are not deserving of international refugee protection;

(d) Further to para (c)(ii) above, *calls* upon UNHCR to convene a meeting of experts in support of the elaboration of measures for the disarmament of armed elements and the identification, separation, and internment of combatants, including the clarification of relevant procedures and standards, in consultation with States, United Nations Secretariat entities and agencies, and interested organizations, such as the ICRC, and *report* back to the Executive Committee on progress achieved;

(e) *Calls* upon States to ensure that measures are taken to prevent the recruitment of refugees by government armed forces or organized armed groups, in particular of children, taking into account also that unaccompanied and separated children are even more vulnerable to recruitment than other children;

(f) *Calls* upon the relevant United Nations organs and regional organizations, in pursuance of their respective mandates, as well as the international community at large, to mobilize adequate resources to support and assist host States in maintaining the civilian and humanitarian character of asylum, in line with the principles of international solidarity, co-operation, burden and responsibility sharing;

(g) *Calls* upon UNHCR and the Department of Peacekeeping Operations of the United Nations Secretariat to enhance collaboration on all aspects of this complex matter, and as appropriate, to deploy, with the consent of host States, multi-disciplinary assessment teams to an emerging crisis area in order to clarify the situation on the ground, evaluate security threats for refugee populations and consider appropriate practical responses;

(h) *Calls* upon UNHCR to explore how it may develop, in consultation with relevant partners, its own institutional capacity to address insecurity in refugee camps, inter alia by assisting States to ensure the physical safety and dignity of refugees, building, as appropriate, upon its protection and operational expertise.

Annex 3: Conclusions and Preliminary Issues Raised at the Expert Roundtable on Civilian and Humanitarian Character of Asylum

Maintaining the Civilian and Humanitarian Character of Asylum
Geneva, 9-11 June 2004

Conclusions and Preliminary Issues Raised

A. General Themes

1. The host State is primarily responsible for the protection of refugees and ensuring the civilian and humanitarian nature of asylum, which includes the disarmament of armed elements and the identification, separation and internment of combatants.

2. The international community has a responsibility to ensure the political will, and where necessary and warranted support the capacity, of the host State to fulfill its responsibilities in this regard.

3. The disarmament of armed elements and the identification, separation and internment of combatants is a vital component of a comprehensive approach to ensuring refugee security within camps, settlements and the surrounding communities.

4. Defining the possible roles (within existing mandates) of UN agencies, including DPKO, OCHA, OHCHR, WFP, WHO, UNICEF, UNHCR and others, along with international organizations such as ICRC and any other relevant actors, is required. These roles may vary according to the operational context and may helpfully be coordinated by a designated lead agency within an interagency framework. Regional bodies also have a role to play given the frequent regional security dimensions at stake.

5. UNHCR and other humanitarian actors should, when necessary, make use of Security Council Resolutions 1208 and 1296, which stress the importance of humanitarian agencies bringing to the attention of the Security Council situations of refugee insecurity that can threaten the maintenance of international peace and security.

6. Adequate and more predictable funding is critical for ensuring the effectiveness and sustainability of the disarmament of armed elements and the identification, separation and internment of combatants, as well as other activities related to maintaining the civilian and humanitarian character of asylum.

7. There is a need to highlight gender issues in order to, *inter alia,* address the inequality of treatment between male and female ex-combatants; to recognize and respond to the gender differentiated impact of armed conflict on ex-combatants and other affected persons; as well as to respond to the specific needs of abducted girls and women, ex-combatants' families, and women and girls in host communities. Support is required for the role of women in peace-building at the family and community levels to tackle social fragmentation and accelerate post-conflict recovery.

8. Operational guidelines should highlight gender issues, in particular the needs of girl and women soldiers and those otherwise associated with military groups (e.g. as fighters, cooks, porters, wives, sexual slaves).

9. The early involvement of local authorities in disarmament, identification, separation and internment is critical. The host State should take ownership of the process.

10. Factors that affect how soon identification and separation may occur include the willingness of the host State to act; the willingness of the international community to assist when required to do so; the importance and ability to involve the refugee and local, traditional and community leaders; and willingness of armed elements and combatants to self-identify, disarm and separate.

11. Operational guidelines are necessary, but they need to be practical and flexible enough to respond to a variety of situational environments and to comply with relevant laws. There is not one procedural model that is applicable to disarmament, identification, separation and internment; it will depend on the specificities of the context.

12. Most issues addressed at this Roundtable need further exploration. Therefore, this Roundtable is viewed as a key part on an ongoing process to develop guidelines and to report back to the Executive Committee. Smaller expert group discussions will assist UNHCR facilitate this process.

B. Definitions and Legal Framework

1. The legal framework pertaining to maintaining the civilian and humanitarian character of asylum lies at the interface of refugee law, the law of neutrality, human rights law and international humanitarian law. Human rights law is relevant, *inter alia*, in setting standards of treatment during internment. Under the 1951 Convention Relating to the Status of Refugees, Art. 9 and Art. 31 are of particular relevance.

2. The law of neutrality as laid down in the Fifth Hague Convention of 1907 requires neutral states to separate and intern foreign combatants involved in an international armed conflict who enter their territory. It is the view of the ICRC that the obligations of neutral states under the law of neutrality have attained the status of customary law, and by analogy are also applicable in relation to foreign fighters involved in internal armed conflicts.

3. While international humanitarian law does not apply in neutral states, it nonetheless provides useful guidance for determining who is a combatant that should be separated and interned. In addition to members of states' armed forces, persons who take a direct part in hostilities can also be targeted during armed conflict.

4. In the context of maintaining the civilian and humanitarian character of asylum and security of refugee camps, there was general agreement to use the terms "armed element" and "combatant" as defined in ExCom 94.

5. Discussions also centered on whether the terms "combatant" were sufficient to include all categories of persons which may pose a threat to refugee security and the civilian and humanitarian character of asylum. In this context, questions were asked if "political agitators", "persons with a hidden military agenda", and persons who were unarmed but "associated with armed groups" could be included for separation and internment. It was suggested that the terms "persons who have not given up the armed struggle" or "foreigners with military agenda" could be employed to more accurately describe the persons to be separated and also to avoid possible confusion with the notion of "combatants" under international humanitarian law. Issues were also raised in relation to the proper ambit of "armed elements".

6. A view was expressed that while the rationale for interning "combatants' under the law of neutrality is to preserve the neutral position of the host state, this does not necessarily coincide with what is necessary to preserve refugee security, and there may be justification to intern other categories of persons apart from combatants. Other categories discussed included mercenaries and deserters.

7. In general, the participants felt that there was a need for clarity of definitions and clear distinction between the terms "combatant" and "armed element" so that guidance could be provided as to who should be identified, separated and interned. It was highlighted that these two terms need to be used accurately and precisely in the different contexts.

C. Disarmament and Identification

1. Disarmament, identification and separation methods and procedures should, to the extent possible, be transparent. There are many benefits to transparency, including increasing the possibility that combatants will self-identify, reducing security risks and increasing the good will in the refugee camp or settlement.

2. There must be clear, consistent and easily accessible communication to all, including refugees and arrivals, of the existence of special measures for combatants.

3. Generally, identification regimes should only be established when there is credible information (from various sources including military intelligence) or evident circumstances that movements of populations across the border are of a mixed character, with a significant number of combatants.

4. Identification and separation always entail security concerns which should be fully considered before deciding to embark upon the exercise and effectively addressed prior to and during the implementation of the process.

5. Different models of identification and the actors involved in these models were discussed, including those used in Zambia, Tanzania and Sierra Leone.

6. There are various methods of identification, such as self–identification and denunciation. Information could be derived from different sources. Some thought that reports from other refugees in identifying combatants and armed elements were valuable, but others expressed concerns about security repercussions and the possibility of personal motives for the identification. Interview and assessment by persons with military expertise would be extremely

helpful. Given the number of factors around such a sensitive issue, the actual methodology can be determined through an analysis of the operational situation and may be composed of a combination of methods.

7. In situations of sudden and/or mass influx of mixed populations, the identification process may not be feasible or may have to be rudimentary in nature, which could result in incorrect internments. This raised the need for a review process.

8. If possible, identification should be done immediately or as soon as possible after entry into the host country. However, mechanisms should be in place at other stages of the refugee operation to enable identification and separation. For example, host-State structures that already exist could be used for this purpose (i.e. the District Joint Operations Committee in Zambia, a permanent administrative unit comprised of various government security forces that conducts screening of new arrivals, and which exists even when there is no influx of refugees). Views were also expressed that, in some situations, there can be benefit to doing the identification at a later stage, since if there is transparency in the process, there may be more self-identification. However, it is critical to disarm as soon as possible after entry into the host country; the actual screening process can be done at a later date, depending on the circumstances.

9. Child soldiers should be promptly identified in order that they may benefit from appropriate rehabilitation programmes.

10. The failure to identify and for female soldier to self-identify was highlighted; there needs to be a more proactive approach to deal with this. Women and girls are not getting the necessary information regarding their rights and available assistance.

11. The military expertise of DPKO can be helpful in assessing the situation; DPKO may also have a role to play in training the military in the host States to conduct the identification and separation processes.

12. In order not to violate the principle of *non-refoulement*, the host State must not, *inter alia*, refuse entry to anyone at the borders who seeks asylum.

D. Separation

1. All armed elements must be disarmed but may not need to be separated or interned. The general consensus was that all combatants must be disarmed, separated and interned; however, there was some discussion that there may be situations where separation of combatants may not be possible without an unacceptable risk to the security of a refugee camp or settlement. Thus, issues of security need to be balanced with the destabilization effect a separation exercise may have on the surrounding environment.

2. While as a matter of principle, separation should be undertaken as early and as quickly as possible; this may not always be feasible as a matter of reality, in particular, where there is a mass influx situation. In some situations, it would be more appropriate to conduct separation at a later stage of the influx.

3. Through the use of early warning mechanisms and contingency planning, there is a need to obtain information on the background and profile of the refugee influx as part of the planning of the separation operation.

4. The challenges of identification, disarmament and separation are particularly complicated in situations where state authorities are absent (e.g. no functioning government, presence of non-state actors). This may require that the UN, and, where appropriate, regional and sub-regional organizations, adopt a more active role.

5. Separation is considered primarily a security related exercise and therefore approached with all security arrangements in place. In this context, the possible role of DPKO and peace-keepers was highlighted, although there may be restrictions as to their mandates. There are particularly serious security risks relating to conducting separation activities inside refugee camps and settlements. This requires careful risk management.

E. Internment

1. The Sierra Leone experience is a good case study, with a comprehensive approach and a successful coordination mechanism in the form of an interagency Task Force on Internment comprised of officials from concerned government bodies, as well as international agencies, including UNHCR. The team from Sierra Leone agreed to provide a written report which could be used as a case study.

2. There are different approaches to dealing with military hierarchies in the internment facilities, which vary from using the hierarchies to maintain camp discipline to dismantling them. There are advantages and disadvantages to each approach depending, in part, on the circumstances of the population profile.

3. The importance of family unity was discussed; different views were expressed about having families in the internment camp, having a separate nearby facility, or their remaining within the main refugee camp.

4. In principle, child soldiers should not be interned.

5. While the length of internment was not examined in detail, there was some discussion that the length of internment should be determined on an individual basis and be flexible, depending on relevant factors (such as the individual's rank and position, length of service and nature of the activities, if the recruitment was voluntary or forced).

6. Conditions of internment, at a minimum, must comply with the treatment of prisoners of war in the Third Geneva Convention of 1949. The national law of the host State and human rights law may offer additional protections. Another aspect of the human rights dimension of an internment regime is the issue of a review process to challenge the designation of combatant.

7. Internees should not be quartered in the same facility as ordinary criminals and vice versa.

8. It is important to consider and deal with the tensions that can arise with the host community and the refugee community. If internees are treated better (i.e. the nature of the services provided) than those in the host community or refugee community, the resulting friction will need to be addressed.

9. Since internment may create female-headed households in the refugee camp, there should be increased monitoring and other measures to address their security and possible vulnerability.

10. Durable solutions for ex-combatants determined to be refugees should constitute part of the internment strategy given the particular difficulties of identifying such solutions in view of their background.

F. Assessment of Genuineness of Renunciation of Military Activities

1. The standard of proof regarding the assessment of genuineness needs to be resolved, whether it is a reasonable degree of likelihood or balance of probabilities, or another standard.

2. The evidence used should include information gathered throughout the period of identification, separation and internment. Monitoring the activities of the individual concerned during internment would facilitate assessing the genuineness. In this context, registering the movements of the internee in and out of internment facilities and eliciting his/her intention for leaving the internment facility would contribute to understanding the real motives of the internee concerned.

3. The timing of the assessment of genuineness needs to be flexible; in the past, some host States (i.e. Sierra Leone) have used a one year benchmark as the time period for the observation and verification process while in other operations the period was considerably shorter.

4. There was a suggestion that there are four different categories of internees for the verification process. The categories are: those who should never have been interned; those who had been militarily active and have genuinely and permanently given up the armed struggle; those who were militarily active, present themselves as having renounced but are not credible; and those who have not renounced military activity. The main challenge of the verification process is to assess the sincerity of the renunciation for the internees in the second and third category. It was suggested that some indications of sincerity are expressions of regret for the victims of the conflict; some form of regret for past activities; signs of exhaustion or weariness and general feeling of homesickness; and clear signs of dissatisfaction with their military or political organization.

5. Renunciation is more likely to be genuine if there are real alternatives for a civilian livelihood in reach, perhaps through DDRR programs.

6. There needs to be a mechanism to identify incorrectly interned individuals and provide a remedy for those incorrectly interned; such mechanisms and remedies need to be based on domestic, refugee and human rights law.

G. Refugee Status Determination and Exclusion

1. Asylum applications by former combatants determined to be civilians should be examined in individual refugee status determination procedures. Such procedures should include a thorough assessment of the applicability of the exclusion clauses set out in Article 1F of the 1951 Convention.

2. For exclusion to be justified, it must be established, on the basis of an individualized assessment, that there are serious reasons for considering that the applicant has committed acts within the scope of Article 1F. Moreover, the exclusion procedure must offer adequate safeguards, including, in particular, an opportunity for the individual concerned to comment on the information which links him/her with excludable acts, and a right to appeal a decision to exclude.

3. Not all former combatants are excludable. The fact of having participated in armed conflict does not as such give rise to exclusion, nor does it of itself establish a presumption of individual responsibility for excludable acts. Such a presumption may, however, arise for members of particularly violent groups or military units; procedural fairness requires that the individual concerned be given an opportunity to rebut the presumption.

4. It should be noted that the exclusion clauses are not primarily concerned with safeguarding the civilian and humanitarian character of asylum, but rather with preventing the abuse of asylum by individuals considered not to be deserving of international refugee protection. Moreover, in view of the arrangements which need to be in place to permit the conduct of proper exclusion procedures, the application of Article 1F cannot form part of the immediate emergency response to a mixed influx.

H. Child Soldiers

1. Child soldiers should be promptly identified in order that they may benefit from appropriate rehabilitation programmes.

2. The Sierra Leone practice of considering all ex-child soldiers as *prima facie* refugees was noted. This allowed ex-child soldiers to be protected as refugees and to benefit from appropriate refugee assistance and programmes.

3. The approach for the rehabilitation of children should be community based and should focus on activities, such as education, skills training, reconciliation and psycho-social counseling.

4. The reintegration of child soldiers into the community should be as quick as possible.

5. Child soldiers' acceptance is facilitated by providing them with meaningful roles and skills which they can bring to receiving communities. Symbolic reconciliation or healing ceremonies or rituals may also be helpful in some cultures.

6. It was suggested that where there are large numbers of child soldiers, they should not all be placed in the same refugee camp but instead should be accommodated amongst the refugee camps in the host State for security reasons and to increase the likelihood of acceptance by the refugee community.

I. Security Measures

1. While the primary responsibility for ensuring refugee security lies with the State, the refugees also have duties, including under the laws of the host State, the 1951 Refugee Convention and the 1969 OAU Convention.

2. Some of the activities that help maintain law and order in a refugee camp include use of early warning systems; suiting the camp particulars to the operational environment (i.e. the size, layout, and the location away from the

border and conflict areas); rapid deployment of humanitarian and government personnel to establish an early presence in camps and points of entry; a dedicated police presence in and around the camps; empowerment of refugees; and an appropriate and adequate gender distribution in camp management, representation and security mechanisms.

3. Different complaint mechanisms for the refugees were explored. It was generally agreed that they should be situation-specific but should include a designation of a particular person to address grievances of the refugees. Such measures are part of good governance of camp administration. It was also emphasized that the mechanisms should fit into the host environment and that the redress for the complaints should accord with international, to the extent they do not conflict, national standards.

4. Other security measures include monitoring the movement of refugees in and out of the camp through the use of gate passes, information provided by implementing partners and vigorous maintenance of police presence in refugee areas.

5. The importance of access to domestic justice systems was stressed.

6. There was discussion about traditional justice systems, which often might not be in accord with human rights standards. Other elements stressed were the recording of crimes and the empowerment of refugees through rights awareness.

7. Relocation of refugee camps far from the border was offered as an alternative to separation in the case where the camp has been infiltrated by combatants and/or as an ongoing deterrence, such as in the case of Guinea.

J. UN Initiatives on Protection of Civilians as They Relate to Safeguarding the Civilian and Humanitarian Nature of Asylum

1. In terms of policy statements, it is important to bear in mind that while the civilian character of asylum is a critical international refugee protection standard, failure to address breaches may also develop into threats to international peace and security. It follows that the involvement of the UN "political organs" on the issue is fully justified.

2. The attention provided this issue by various UN bodies can be used as a basis for advocacy with States. The adverse impact of armed elements and combatants amongst refugee populations has become, since 1999, a recurrent theme in the UN Secretary General's reports to the Security Council on the "Protection of Civilians in Armed Conflict." Further, the Security Council, in its Resolution 1296 (OP 14), has also tasked the Secretary-General to bring to the attention of the Security Council those situations where the presence of armed elements in refugee/IDP settings may pose threats to regional peace and security.

3. The revised "Aide-Memoire" adopted by the Security Council in December 2003 provides a further basis for the Security Council to review situations where support is required to obtain disarmament of armed elements as well as disarmament, identification, separation and internment of combatants.

4. In situations where there is a UN peacekeeping operation on the ground, it is important that it maintains a strong relationship with the SRSG.

5. While there were concerns expressed that DPKO seems reluctant to accept a broader role in the protection of individuals, it was noted that newly established peacekeeping operations have been given a clear mandate to protect UN facilities and civilians under imminent threat, albeit mostly with the caveat "within its capabilities and areas of deployment." Furthermore, peacekeeping operations have a mandate to operate within the area of responsibility (i.e. the host country and usually not beyond the borders).

6. For the military planning process and related force generation issues, it is important for DPKO to be aware of expected refugee or returnee flows, possible locations and expected requests for assistance from the humanitarian community.

7. To be able to plan and include capacity to deal with refugee and returnee security issues, information available to UNHCR on expected locations, numbers, composition or anticipated security issues should be shared at an early stage with DPKO. It is equally important to agree well in advance on the proper response to various issues including the following: security; disarmament of armed elements amongst the refugees inside or outside the camps; use of force, if required.

8. The discussion also highlighted the potential operational role of other UN entities in mechanisms related to disarmament, identification, separation and internment, such as OHCHR, WFP and UNICEF.

9. A proposal was also tabled for consideration of a subsequent meeting in New York to further consolidate a UN inclusive process with respect to the issues addressed at this Roundtable and the broader issues of conflict resolution.

10. Third countries are encouraged to accept for resettlement former combatants who have been determined to be refugees and for whom no other appropriate durable solutions are available.

K. International Support and Cooperation

1. International support and cooperation can come not only in the form of financial support but also through the use of political influence.

2. International support and cooperation was focused on four areas: advocacy, standard setting and political support; resources; technical support and capacity building; and durable solutions.

    a. In relation to advocacy, security issues in the refugee camps need to be identified as a key concern at the outset of operations. There should be regular regional and sub-regional workshops to share best practices and identify the possibilities of cooperation. Staff training and pooling of resources is also important, as is coordination with NGOs and within country teams. There is a need to examine closely how to provide useful guidelines to various actors in the field to support their advocacy role. Additionally, academics have a very useful part to play in advocacy through their writings and analysis of

issues which could feed into thinking at the governmental policy level. The role of international agencies was also emphasized, as was the need for States to intercede to apply political pressure when the host State is unwilling or unable to create conditions which minimize insecurity in refugee camps.

b. With regard to donor finance, resources were needed in a number of areas, including in implementing security packages and overcoming bureaucratic obstacles. Security is a core element of refugee protection in camps and therefore should be a critical element of any budget. Donors can provide funds for security packages that could include tools for the local police, both in and around camps.

c. Technical and capacity building could take various forms. Developing the role of the international police and the military, along the models of the Ottawa Workshop ("Workshop on the Potential Role of International Police in Refugee Camp Security," Ottawa, Ontario on March 22-23, 2000) and the United Kingdom Workshop ("Exploring the Role of the Military in Refugee Camp Security: International Seminar—Summary Report," Eynsham Hall, UK on July 10-12, 2001) could be one important area, as is support to the local police, rather than replacing them. Technical and capacity building in relation to stand-by arrangements, as well as deployment of HSOs, should also be examined. Other areas for technical and capacity building include refugee status determination, correction of wrongful internment, and developing judicial processes to end impunity for crimes committed in refugee camps and settlements.

d. In relation to durable solutions, political and diplomatic efforts and resources should support all three durable solutions – local integration, voluntary repatriation and resettlement. The difficulties of resettling ex-combatants and ex-child soldiers was noted and a suggestion was made that the resettlement of these difficult cases could be viewed as part of addressing the issue of residual caseloads as a component of a comprehensive approach to durable solutions; it will remain a difficult issue to resolve. An issue in relation to child soldiers is whether resettlement is in their best interest, given that they have already undergone a great deal of trauma. Similarly, the issue of resettlement of women associated with combatants also remains problematic. These matters should also be addressed in the resettlement working group.

3. The use of private security firms in armed conflicts to provide security is problematic. Most participants thought they should only be used as a last resort, if at all. Reference was made to existing reports and recommendations about their use.

Annex 4: List of Relevant Documents

- Maintaining the Civilian and Humanitarian Character of Asylum, Legal and Protection Policy Research Series, Rosa de Costa, UNHCR Consultant, PPLA/2004/02, June 2004
- Under What Circumstances Can a Person Who Has Taken an Active Part in the Hostilities of an International or Non-International Armed Conflict Become and Asylum Seeker?, Legal and Protection Policy Research Series, Stephane Jaquemet, UNHCR, PPLA/2004/01, June 2004
- UNHCR Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees; HCR/GIP/03/05; 4 September 2003
- 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
- Operational Protection in Camps and Settlements; A reference guide of good practices in the protection of refugees and other persons of concern, UNHCR 2006
- UNHCR Handbook for Registration; Procedures and Standards for Registration, Population Data Management and Documentation; Provisional Release September 2003
- The Security, Civilian and Humanitarian Character of Refugee Camps and Settlements: Operationalizing the "Ladder of Options", Executive Committee of the High Commissioner's Programme, Standing Committee, 18th meeting, UN Doc. EC/50/SC/Inf.4 (27 June 2000)
- The Civilian Character of Asylum: Separating Armed Elements from Refugees, Global Consultations on International Protection, 1st meeting, UN Doc.EC/GC/01/5 (19 February 2001)
- Aide Memoire for the Consideration of Issues Pertaining to the Protection of Civilians, Office for the Coordination for Humanitarian Affairs, Policy Development and Studies Branch, New York 2004
- Guidelines on Negotiations with Armed Groups, Office for the Co-ordination of Humanitarian Affairs, Gerard McHugh and Manuel Bessler, New York January 2006.
- DDR Resource Centre @ www.undrr.org
- Norwegian Refugee Council Camp Management Toolkit; available at http://www.nrc.no/NRC/eng/frames/camp.htm