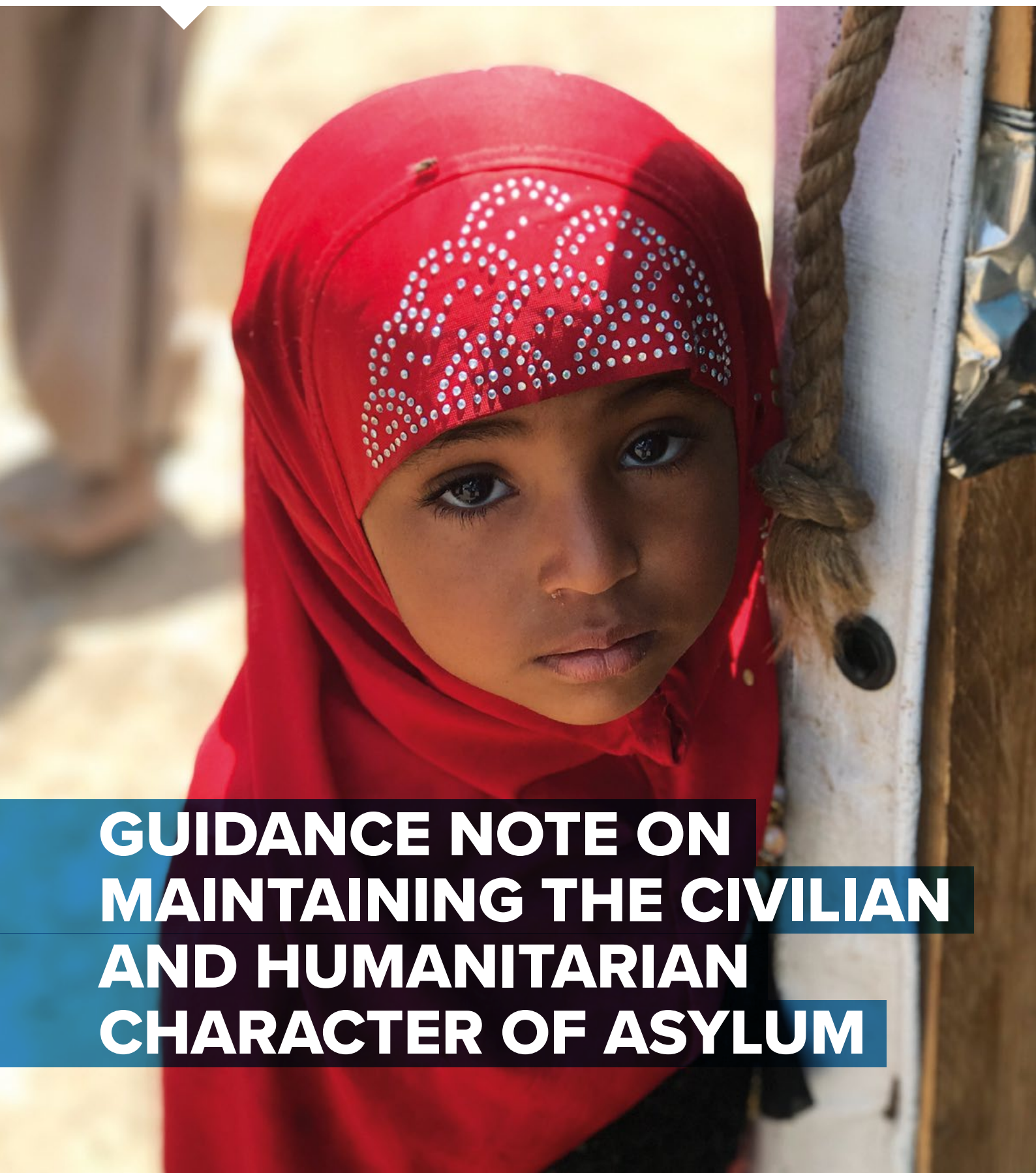




UNHCR
The UN Refugee Agency



**GUIDANCE NOTE ON
MAINTAINING THE CIVILIAN
AND HUMANITARIAN
CHARACTER OF ASYLUM**



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1. PURPOSE

This Guidance Note sets out the parameters of the civilian and humanitarian character of asylum as an international refugee standard and as a principle of international protection.

The purpose of the note is to guide and support host States, UNHCR, and other relevant actors¹ to proactively prepare for and respond to situations in which the civilian and humanitarian character of asylum is compromised, or is at risk of being compromised, based on a common understanding of the applicable principles and international legal framework.

To operationalize the principle of the civilian and humanitarian character of asylum, the note also sets out six key measures which are recommended considered in *all refugee operations*, with concrete and practical advice, and identified good practices.

These key measures include:

- 1) Preparedness planning;
- 2) Effective security management;
- 3) Disarmament of armed elements;
- 4) Identification of fighters/combatants;
- 5) Separation and control measures (including internment);
- 6) Verification of renunciation of military activities, so as to allow subsequent refugee status determination of former fighters/combatants who are seeking international protection.

The exact measures to be implemented in each refugee operation will depend on the risks identified within that particular context (see [Section 4.4](#)).

¹ Relevant actors in the context of this Guidance Note would normally include the various authorities of the host State, other States, other UN entities (including UN peace operations), and regional and international organizations, such as the ICRC. See [Section 6](#).



2. SCOPE

The Guidance Note applies to all refugee operations.² In practice, issues related to the civilian and humanitarian character of asylum are most likely to occur where there is a situation of, or proximity to, armed conflict or violence, including between States, between States and non-State armed groups or organized gangs, or violence between different groups in society.³

While applicable in all phases of cross-border displacement, the note is of particular importance in the early stages of emergency preparedness and response, to ensure that UNHCR, the host State, and other relevant actors are adequately prepared for situations in which the civilian and humanitarian character of asylum could be compromised,⁴ and to enable them to respond to such situations in a timely, effective and principled manner.

The note covers measures to prevent refugee sites and other refugee-hosting areas from being infiltrated or militarized, as well as measures to mitigate or contain the associated risks in situations where the civilian and humanitarian character has already been compromised.

The note is primarily directed towards UNHCR personnel and other partners involved in the refugee response. Successful implementation will require close cooperation and engagement with the authorities of the host State and the wider UN system, as well as other relevant actors, such as the ICRC, international and regional peace operations, where present (see [Section 6](#)).

- ² Refugees have a distinct legal status and rights under international law which guide UNHCR's response under this Guidance Note. However, the rationale and the policy objective of protecting displaced populations from violence and insecurity, as well as enabling humanitarian access, are nevertheless similar for internally displaced persons (IDPs). The key measures set out in this note, in particular preparedness and security management, may therefore also inform UNHCR's engagement in IDP operations. See also UNHCR-ICRC, *Aide Memoire: Operational Guidance on Maintaining the Civilian and Humanitarian Character of Sites and Settlements* ("UNHCR-ICRC Aide-Memoire"), available at: <http://www.refworld.org/docid/5b55c6fe4.html> for further guidance.
- ³ See UNHCR, *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions*, 2 December 2016, HCR/GIP/16/12, para. 5, available at: <http://www.refworld.org/docid/583595ff4.html>.
- ⁴ See UNHCR, *Policy on Emergency Preparedness and Response*, 2017 ("Policy on Emergencies"), paras. 4.1 and 6.1; the Preparedness Package for Refugee Emergencies (PPRE); and the High Alert List for Emergency Preparedness (HALEP).

3. RATIONALE

Challenges to the civilian and humanitarian character of asylum, including the militarization of camps, have been a recurring feature of refugee operations for more than half a century.⁵

Fighters and combatants have sought to mix in with, or stayed in close proximity of, refugee populations for a variety of reasons, including to visit family members, gain access to assistance or medical care, to hide, re-group or recruit, or to plan or launch military operations. The presence of such individuals or groups has been widely recognized as exacerbating the existing vulnerabilities of refugee populations, and exposing them, particularly women and children, to increased levels of violence and insecurity.⁶

Apart from the risk of direct military attacks against refugee sites and other refugee hosting-areas, the general breakdown of law and order and the flow of arms into such areas is known to increase the levels of physical violence, sexual and gender-based violence (SGBV), human trafficking, and the risk of forced recruitment, including of refugee children. Intimidation and extortion by fighters and combatants may also adversely affect refugees' decisions regarding return, and ultimately render the realisation of durable solutions, such as local integration or resettlement, less attainable.

In UNHCR's experience, when the civilian and humanitarian character of asylum is compromised, it often leads to increased tension with the host community and may, directly or indirectly, lead to greater restrictions on asylum-seekers' access to the country and their overall enjoyment of asylum and basic rights in country, thereby threatening the very core of international refugee protection.

In addition, the presence of fighters and combatants is known to generate security concerns for humanitarian personnel, and impact on humanitarian access. In extreme circumstances, the continuation of humanitarian assistance in such situations may lead to the diversion of aid, raise questions with regards the principle of 'do no harm', and lead to reduced support from host States and donors. As recognized by the UN Security Council, the presence of fighters or combatants may also contribute to deteriorating security for host communities, jeopardize national security, affect inter-State relations, or threaten regional stability.⁷

For UNHCR, preserving the civilian and humanitarian character of asylum means working to minimize these risks. In accordance with its international protection mandate, UNHCR's approach is therefore to advise, guide and support host States and other relevant actors on this issue with the aim of safeguarding the rights, safety and well-being of refugees, and ensuring their right to seek and to enjoy asylum.⁸

While UNHCR has been working proactively on this issue since the 1980s,⁹ and issued its first Operational Guidelines in 2006, the last years have seen a marked increase in requests for additional and updated guidance, reflecting the increasing complexity of today's armed conflicts, and the changing dynamics of humanitarian work. Despite the civilian and humanitarian character of asylum being a well-established principle of international protection, the response on the ground often remains inadequate or undesirable, with reluctance or inability on the part of States, but also on the part of the wider international community, to fully assume their responsibilities, or to do so in an effective way.

⁵ Maja Janmyr, *Protecting Civilians in Refugee sites: Unable and Unwilling States*, UNHCR, and International Responsibility ("Protecting Civilians"), page 9.

⁶ Executive Committee Conclusion ("ExCom") No. 94 (2002), preamble, paras. (d) and (h); and No. 99 (2004), para. (n).

⁷ S/RES/1296 (2000), para. 14.

⁸ United Nations, *Statute of the Office of the United Nations High Commissioner for Refugees* ("UNHCR Statute"), UN General Assembly Resolution 428 (V) of 14 December 1950, Annex, available at: <http://www.refworld.org/docid/3ae6b3628.html>.

⁹ UNHCR, *Report by Ambassador Felix Schnyder on Military Attacks on Refugee sites and Settlements in Sothern Africa and Elsewhere* ("Schnyder report"), UN Doc. No. EC/SCP/26 (1983); Executive Committee Conclusions ("ExCom") No. 27 (1982); No. 48 (1987); No. 72 (1993); No. 77 (1995); No. 84 (1997); No. 87 (1999); No. 94 (2002); No. 99 (2002); No. 107 (2007).

Over the last years, UNHCR has, in particular, noted an increase in requests for additional and updated guidance to reflect the complexity of today's conflicts, including the increase in non-international armed conflicts, the proliferation and diversity of armed non-State actors (including groups involved in terrorist acts),¹⁰ the urbanization of warfare, and the widespread violations of international law, all factors which are affecting the operational environment on the ground.

This Guidance Note represents part of UNHCR's ongoing response to the identified need for further elaboration and clarification of applicable standards within the changing operational environment.¹¹ It also seeks to reflect related policy developments at the UN level, such as the *UN Human Rights Due Diligence Policy*¹² and the *Human Rights Up Front* initiative.¹³

In light of the increasing complexity of armed conflicts, and of cross-border movements, engagement with a broader network of stakeholders is more important than ever. While the primary responsibility remains with the host State, in practice, experience has shown that a multi-stakeholder and partnership approach is required when faced with a refugee influx.¹⁴ This may include all pillars of the UN system (including human rights, development, and peace and security), other international and regional organisations, peace operations, and other States.

In particularly complex situations, such as those involving the arrival of groups or large numbers of active fighters or combatants in a host State, interventions may require a collective engagement of the UN Country Team/ Humanitarian Country Team as a whole, rather than by individual UN entities. This includes the search for political and practical

solutions for fighters or combatants who choose (or not) to repatriate, or to enter into disarmament, demobilization and reintegration (DDR), or similar programmes.

This Guidance Note seeks to provide guidance to the host State, UNHCR and other relevant actors on how such a collaborative and holistic approach can be implemented in practice, taking into consideration the complementary roles, capacities and mandates of the different actors involved, and while at the same time ensuring respect for the applicable international principles and legal standards, and retaining the primary responsibility of the host State.

¹⁰ The term "foreign terrorist fighters" is described in UN Security Council Resolution 2178 (2014) as "individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict" (at preambular para. 8). The more general term "foreign fighters" is also often used when referring to the phenomenon of individuals joining groups involved in armed conflict in countries other than their own. To the extent that "foreign (terrorist) fighters" may be present among or in the proximity of refugee populations, the same considerations with regard to measures required to preserve the civilian and humanitarian character of asylum apply to them as to any other person who meet the definition of "fighter/combattant" within the meaning of this Guidance Note (see Section 7).

¹¹ ExCom No. 94 (2002), paras. (d) and (h); and No. 99 (2004), para. (n).

¹² United Nations, *Human Rights Due Diligence Policy on UN Support to Non-United Nations Security Forces Document* ("UN Due Diligence Policy"), A/67/775-S/2013/110, available at: <http://dag.un.org/handle/11176/387416>.

¹³ United Nations, *Secretary General's Statement: Renewing our commitment to the peoples and purposes of the United Nations*, of 22 November 2013, available at: <https://bit.ly/2EHZcIK>.

¹⁴ *The global compact on refugees FINAL DRAFT UNHCR* ("GCR final draft"), available at: <https://www.unhcr.org/5b3295167.pdf>, para 33-36. UN General Assembly, *New York Declaration for Refugees and Migrants: Resolution adopted by the General Assembly* ("New York Declaration"), 3 October 2016, A/RES/71/1, para. 69, and its Annex I: *Comprehensive Refugee Response Framework*, paras. 2 and 5(a), (g) and (h), and 17, available at: <http://www.refworld.org/docid/57ceb74a4.html>.

4. THE PRINCIPLE OF THE CIVILIAN AND HUMANITARIAN CHARACTER OF ASYLUM

4.1 Overall objective

UNHCR's approach is to work with host States and other relevant actors to ensure that the civilian and humanitarian character of asylum is maintained and preserved to the fullest extent possible in all refugee situations.

This objective is based on three inter-related aspects of its international protection mandate, namely:

- i) **To protect refugees from violence or insecurity** related to the presence, proximity or actions of armed elements and fighters/combatants;
- ii) **To enable humanitarian access** for the purposes of providing international protection and delivering humanitarian assistance and services; and
- iii) **To safeguard the integrity of the institution of asylum by ensuring that fighters/combatants do not benefit from asylum**,¹⁵ and that the arrival and presence of such in a host State is managed appropriately, in accordance with relevant provisions of international and national law, with a view to prevent any adverse consequences to the asylum and protection space in the host State.

4.2 Legal bases and framework

The principle of the civilian and humanitarian character of asylum encompasses not only the inherently peaceful, social, humanitarian and non-political nature of the grant and enjoyment of asylum, but also the civilian and humanitarian character of refugee sites.¹⁶

This principle is derived from existing rules in international refugee law, human rights law, international humanitarian law (IHL), national criminal law, and the UN Charter:

- i) Under **international refugee law**, the grant of asylum, and UNHCR's function of providing international protection, are recognized as inherently peaceful, social, humanitarian and non-political acts.¹⁷ With a view to ensure that the grant of asylum is not regarded as an unfriendly act towards another State, it is inherent in the 1951 Refugee Convention that only peaceful individuals can benefit from international protection. It would be incompatible with refugee law for an asylum application of an active fighter/combatant to be considered.¹⁸ Moreover, the separation of fighters/combatants from the refugee population is an important prerequisite for the application of the basic rights and protections set out in international refugee law.
- ii) Under **international human rights law**, the host State has primary responsibility for the protection of people in its territory or subject to its jurisdiction. This includes the right to life,

¹⁵ ExCom No. 94 (2002), para. (c)(vii); UNHCR, *Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status* ("GIP No. 11"), 24 June 2015, HCR/GIP/15/11, para. 22 available at: <http://www.refworld.org/docid/555c335a4.html>; and 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* ("Guidelines on Mass Influx"), 7 February 2006, paras. 3 and 10, available at: <http://www.refworld.org/docid/43f48c0b4.html>.

¹⁶ 'Civilian' in this context derives from the principle of distinction in IHL, in which civilian objects are, during armed conflict, protected from direct attacks by parties to the conflict. See Rule 7, 9 and 10 of the *ICRC Customary Law Study*. See also UNHCR-ICRC *Aide-Memoire*, paras 2.1-2.2, for guidance on the difference between the civilian and humanitarian character of sites and settlements.

¹⁷ *UNHCR Statute*, para. 2; *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137 ("1951 Refugee Convention"), preamble; *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969* ("OAU Convention"), Articles 11(2) and III (1); *Declaration on Territorial Asylum of 14 December 1967*; S/RES/1208 (1998); S/RES/1265 (1999); S/RES/1296 (2000); S/RES/1674 (2006), para. 14; A/RES/2312 (XXII); A/RES/39/140 (1984); A/RES/42/109 (1987); A/RES/50/152 (1996), para. 13; A/RES/68/141 (2013), paras. 21 and 27; ExCom No. 48 (1987) and No. 94 (2002); *Cartagena Declaration on Refugees*, 22 November 1984, paras. III(4), (6), (7) and (8).

¹⁸ See, for example, ExCom No. 48 (1997) and No. 94 (2002); *Guidelines on Mass Influx*, para. 10.

liberty and security,¹⁹ and the protection of children from recruitment.²⁰ This, on one hand, requires the State to ensure law and order, and to suppress violent and armed activities, illegal arms possession, sexual violence and forced recruitment, through its national legislation, law enforcement, and judiciary. On the other hand, refugees are obliged to conform to the laws and regulations of the host State.²¹

iii) In situations of armed conflict, **international humanitarian law** prohibits parties to the conflict from making civilians or civilian objects – which includes refugees and the sites in which they are sheltered (or parts of these) – the object of direct attack.²² Parties to the conflict which have such locations under their control must take all feasible precautions to protect the sites and the civilian population living inside them against the effects of attacks, most notably by avoiding, to the maximum extent feasible, locating military objectives inside them or in their vicinity.²³ IHL further specifically prohibits the recruitment of children and their use in hostilities,²⁴ sexual violence,²⁵ and the use of human shields,²⁶ all risks which are amplified if refugee sites or other refugee-hosting areas are militarized.

iv) During an international armed conflict, **the law of neutrality** further requires a neutral State to intern foreign troops entering its territory, which aims to ensure that combatants can be identified and separated from *bona fide* asylum-seekers who may be fleeing the hostilities across the same border.²⁷

v) Under the **duty of non-intervention and friendly relations between States**, as set out in the Charter of the UN,²⁸ States are obliged to act with due diligence to prevent the use of their territory by individuals whose purpose is to attack another State.²⁹

When the civilian and humanitarian character of asylum is compromised, the protection of refugees, as set out in international law, and the very institution of asylum is undermined. All actors – *States, parties to conflict, UN agencies, other relevant organizations, and refugees themselves* – therefore need to respect the civilian and humanitarian character of asylum.³⁰

This was reiterated by States in the adoption of the *New York Declaration on Refugees and Migrants* and its *Comprehensive Refugee Response Framework*, and in the *Global Compact on Refugees*.³¹

¹⁹ International Covenant on Civil and Political Rights (“ICCPR”), Articles 6 and 9; Universal Declaration of Human Rights (“UDHR”), Article 3.

²⁰ Convention on the Rights of the Child (“CRC”), Article 38, and its Optional Protocol 2000 (“CRC OP”); African Charter on the Rights and Welfare of the Child (“ACRWC”), Article 22(2); Convention concerning the Prohibition for the Elimination of the Worst Forms of Child Labour (“Convention No. 182”), Article 3.

²¹ 1951 Refugee Convention, Article 2; OAU Convention, Article III (1); ExCom No. 48 (1987).

²² Refugee sites are considered as *prima facie* civilian objects in terms of the principle of distinction. Moreover, the mere presence of fighters/combatants within a refugee site does not, in and of itself, turn these, or parts of these, into military objectives. See AP I, Articles 48, 51 and 52(2); APII, Article 13; ICC Statute, Articles 8(2)(b)(i) and (ii) and 8(2)(e)(i); *ICRC Customary Law Study*, Rule 8. Cross-border attacks may also breach the Charter of the United Nations (“UN Charter”), Article 2(4). Even if such refugee sites, or parts of these, are being used for military purposes in a manner that could turn them into military objectives, parties to the conflict remain obliged to respect the principles of distinction and proportionality, and the obligation to take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to sites or civilian objects located within such sites. See API, Art. 48, 51 and 57; and *ICRC Customary Law Study*, Rules 1, 7, 11, 13, 14 and 15. See also *UNHCR-ICRC Aide-Memoire*, para 2.1, for further guidance on the civilian character of sites and settlements hosting refugees under IHL.

²³ API, Art. 58; *ICRC Customary Law Study*, Rules 22 and 23.

²⁴ API, Article 77(2); Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol II), 8 June 1977 (“APII”), Article 4(3)(c); Statute of the International Criminal Court (“ICC Statute”), Article 8(2)(b)(e). Note that there is not, as of yet, a uniform practice with respect to the minimum age for recruitment. In any case, there is agreement that the minimum age should not be below 15 years of age, see *ICRC Customary Law Study*, Rules 136 and 137.

²⁵ Article 3 common to the four Geneva Conventions 1949 (“Common Article 3”); Fourth Geneva Convention relative to the Protection of Civilian Persons of 1949 (“GC IV”), Article 27; API, Articles 75-77; APII, Article 4; ICC Statute Articles 8(2)(b)(e).

²⁶ GC III, Article 23; GC IV, Article 28; API, Article 51; APII Article 13; and ICC Statute Article 8(2)(b)(xxiii).

²⁷ Convention respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land of 1907 (“1907 Hague Regulations”), Articles 1, 5, 11 and 12; GC III Article 4(B)(2); *UN IDDRS framework*.

²⁸ UN Charter, Articles 2(1), (3) and (4); A/RES/2625 (XXV) Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, of 24 October 1970.

²⁹ *Ibid.* See also OAU Convention, Article III (2).

³⁰ A/RES/68/141 (2013) on the Office of the United Nations High Commissioner for Refugees, paras. 19 and 21.

³¹ *UN General Assembly, New York Declaration for Refugees and Migrants: Resolution adopted by the General Assembly (“New York Declaration”), 3 October 2016, A/RES/71/1, para. 73, and Annex I: Comprehensive Refugee Response Framework, in particular paras. 5 (a), (g) and (h), available at: <http://www.refworld.org/docid/57ceb74a4.html>. See also GCR final draft, para. 56.*

4.3 Overarching principles and standards

Any measures taken to maintain the civilian and humanitarian character of asylum, by the host State, UNHCR or other relevant actors, need to respect and abide by the following overarching principles and standards, as set out in international law:

The primacy of State responsibility

The primary responsibility for the physical protection of refugees and for maintaining the civilian and humanitarian character of asylum lies with the host State.³² While support from other States or engagement with a broader network of stakeholders, including within the UN system, may be required, UNHCR and other humanitarian actors cannot assume responsibility for security functions of the host State, such as disarmament, or the identification or separation of fighters/combatants. They may, however, play an important advocacy, monitoring, advisory and, when appropriate, assistance role, in support of the host State.³³

The principle of non-refoulement and ensuring access to territory

State action to ensure security must not prevent persons from being able to seek international protection, nor lead to *refoulement*.³⁴ No one seeking international protection should be rejected at the border, or returned to their country of origin, on the mere suspicion that he or she is a fighter/combatant,

nor should borders be closed because there may be fighters/combatants amongst the asylum-seekers.³⁵

The right to liberty and security of person, and the prohibition of arbitrary detention

State action to ensure security must not lead to arbitrary detention.³⁶ Detention and internment may only be undertaken in accordance with and as authorized by national law, and in compliance with international law, including the minimum procedural safeguards,³⁷ the right to humane and dignified conditions of detention,³⁸ and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, including SGBV, during deprivation of liberty.³⁹

Access to refugee status determination procedures

Military activities are by nature incompatible with the civilian character of asylum. Persons identified as fighters or combatants cannot be admitted into refugee status determination procedures until such time that they have genuinely and permanently renounced such activities, and sought international protection.⁴⁰

Access to assistance and services

Persons identified as fighters or combatants should not be allowed to enter refugee sites, or have access to humanitarian assistance or services provided by UNHCR and its partners under its international protection mandate for refugees until such time as they have genuinely and permanently renounced

³² S/RES/1208 (1998), para. 3; S/RES/1265 (1999), preamble; S/RES/1674 (2006), para. 14; A/RES/68/141 (2013), paras. 7 and 21; ExCom No. 48 (1987), para. 4(b); No. 94 (2002), paras. (a), (b) and (c). See also [Section 6.2](#).

³³ 1951 Refugee Convention, Article 35; UNHCR Statutes; ExCom No. 46 (1987), para. (f); and No. (1993), para. (e). Any support provided to non-UN security forces needs to be compliant with the *UN Due Diligence Policy*.

³⁴ 1951 Refugee Convention, Article 33; UDHR, Article 14(1); ExCom No. 94 (2002), para. (c) (i).

³⁵ ExCom No. 94 (2002), para. (c)(i); OAU Convention, Article II(2) and (6).

³⁶ See UDHR, Article 3 and 8; ICCPR, Article 9; ACHPR, Article 6; the American Convention on Human Rights ("ACHR"), Article 7; and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 5.

³⁷ See, for example, ICCPR Article 9; ACHR Article 7; ECHR Article 5; and ACHRP Article 6 and 7.

³⁸ UN, *Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment*, adopted by GA/RES/ 43/173; *UN Standard Minimum Rules for the Treatment of Prisoners*, 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; and the *Basic Principles for the Treatment of Prisoners*, adopted by A/RES/45/111 on 14 December 1990.

³⁹ ICCPR, Articles 7, and 9-10; UDHR, Articles 5 and 9; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), Article 1.

⁴⁰ GIP No. 11, para. 22; *Guidelines on Mass Influx*, para. 10; ExCom No. 94 (2002), para. (c) (vii). This is equally relevant whether it is the host State or UNHCR conducting RSD. For further guidance, see UNHCR's Procedural Standards for RSD, available at: <http://www.refworld.org/docid/56baf2c84.html>.

military activity, and been admitted into asylum procedures.⁴¹

The protection of children

Children associated with armed forces or groups⁴² should benefit from special protection and assistance measures.⁴³ They should be regarded primarily as victims, regardless of how they were recruited or used, and their best interests need to be a primary consideration.⁴⁴

Priority shall be given to children during identification, demobilization and rehabilitation, as well as when verifying renunciation and assessing asylum claims, where appropriate.

Children should benefit from specialist expertise and age-appropriate procedures, taking into account their vulnerabilities and protection needs. Child protection agencies should be called upon to advise and assist the host State, and particular attention should be given to those, both girls and boys, who are survivors of SGBV.

Children should in principle *not* be interned or otherwise deprived of their liberty. For children 15 years and above, internment may be used as a *last resort only*, for the shortest possible period of time, taking into account their best interests as a primary consideration. If interned, children should be separated from, and at a distance away from, adults, unless accommodated with a parent (when this is in the child's best interests).⁴⁵

Protection considerations for women

The specific protection and assistance needs of women recruited by armed forces or groups need to be addressed, including those who may have been subjected to SGBV. If she decides to renounce military activity, priority should be given to the evaluation of her renunciation and asylum claim, whenever appropriate (for example due to her particular vulnerabilities or if she is accompanied by children). If women are interned, they should be interned in separate facilities from men, and, as far as possible, be under female supervision.⁴⁶

4.4 Applying a context-specific, risk-based and proactive approach

The growing complexity of today's crises and the serious and novel challenges to the institution of asylum⁴⁷ not only increase the risk of the civilian and humanitarian character of asylum being compromised, but also make it more challenging for States to undertake the measures needed to preserve it.

The majority of today's conflicts are non-international, which poses particular challenges, including in the identification of persons involved in armed conflict, who may not be easily distinguishable from civilians, or who may indeed be civilians who only at times directly participate in hostilities. And even if they are identifiable, safely disarming groups resisting disarmament often prove difficult in practice, and may even inadvertently put displaced populations at increased risk, for example where arms

⁴¹ Note, however, the obligations on States and parties to an armed conflict to provide and facilitate the provision of medical care and other humanitarian assistance in accordance with IHL (see, for example, GC I, Articles 4, 9, 12, 15, 23 and 27; GC II, Articles 9, 12, 15, 18 and 40; GC IV, Articles 10, 16, 17, 23, 55, 59 and 61; Common Article 3; AP I, Articles 8(a), 10, 19, 31, 68 to 71; AP II, Articles 7-8 and 18; ICRC Customary Law Study, Rules 55, 56, 109 and 110), and international human rights law (see ICCRP, Article 6; International Covenant on Economic, Social and Cultural Rights ("ICESCR"), Article 12; UDHR, Article 25).

⁴² See definition in [Section 7](#). In line with the Paris Principles, children associated with armed forces and groups are children who are, or have been, recruited or used by such forces or groups in any capacity (not limited to direct participation in hostilities).

⁴³ See ExCom No. 94 (2002), para. (c) (vii) and (e).

⁴⁴ CRC, Article 3(1) and *Paris Principles*, p. 3.6. See also UNHCR, *Guidelines on Formal Determination of the Best Interests of the Child; Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees* ("GIP No. 5"), HCR/GIP/03/05, 4 September 2003, para. 28; UNHCR, *Background Note on the Application of the Exclusion Clauses* ("Background Note on Exclusion"), para. 91-93; See [Section 5.8.2-5.8.3](#).

⁴⁵ *The Paris Principles*, p 7.12.

⁴⁶ *Ibid*, p. 7.24.1.

⁴⁷ ExCom No. 82 (1997), paras. (c) and (d)(vii); and No. 87 (1999), para. (q).

KEY ACTIONS:

- Take into consideration the **specificities of each operational context** when implementing measures to preserve the civilian and humanitarian character of asylum, while maintaining the overarching principles and standards (as set out in Section 4.3);
- Seek to implement a **proactive and preventive**, rather than a reactive, approach;
- Conduct (or advocate for) a **security risk management process** as part of the planning of any disarmament, identification or separation measures.

are carried for self-defence purposes. Matters can be further aggravated if the authorities of the host State do not have effective control of, or access to, the areas which are hosting refugees, for example due to control of territory by an armed non-State actor.

The measures taken by a host State need to ensure that populations can flee and reach safety, and preserve space for asylum, while addressing the threat to stability that fighters, combatants, and other armed individuals may represent.

There is not one procedural model applicable to such situations. Rather, it will depend on the specificities of each context, including the applicable legal frameworks (both national and international), the relevant actors, the political sensitivities, and the regional and international dynamics.

This note therefore seeks to provide important practical aspects for consideration and to offer flexible “good practices” for each of the key measures, while allowing for customization at field level.

Moreover, dealing with armed individuals in a refugee setting, including fighters or combatants, may lead to substantive security risks for humanitarian personnel, as well as for refugees, as the ideal conditions for undertaking such measures is the exception rather than the rule. **Disarmament, identification and separation measures need careful analysis, planning and implementation by the host State, or by international or regional forces, from an early stage.** Before such measures are undertaken, a thorough security risk assessment should always be conducted.

This assessment can evaluate whether the intended measures might, in fact, lead to heightened insecurity or risks to the refugee population, to humanitarian workers, and/or to security personnel. In certain circumstances, forcible disarmament or separation may not be immediately advisable or possible, and alternative measures need to be considered to mitigate or ‘contain’ the risks posed by fighters or combatants already present.

The key measures described in this note primarily seek to prevent refugee sites from being infiltrated or militarized, as it is, in UNHCR’s experience, more effective to prevent infiltration and militarization than to address a situation in which the civilian and humanitarian character has already been jeopardised. **Preparedness is therefore a critical part of UNHCR’s approach.**

While keeping in mind the practical considerations and constraints in each specific operational context, the civilian and humanitarian character of asylum remains a standard to continually strive for, and for which the six key measures set out in this note provide essential guidance.



5. KEY MEASURES FOR IMPLEMENTATION

5.1 Overview

It is essential that host States, with the support of UNHCR and other relevant actors, do *all within their capacity* to ensure the civilian and humanitarian character of asylum, in accordance with the overarching principles and standards set out above (see [Section 4.3](#)).

The six key measures that should be considered undertaken *in all refugee operations*, depending on the risks identified in that specific operational context, include:

- 1) Preparedness planning;
- 2) Effective security management in all refugee-hosting areas;
- 3) Identification of fighters/combatants;
- 4) Disarmament of armed elements;
- 5) Separation and measures of control required to ensure security (including, under certain circumstances, internment); and

- 6) Verification of renunciation of military activities, so as to allow subsequent refugee status determination for fighters/combatants who are seeking international protection.

The practical guidance on how to implement each of these six measures is outlined in greater detail, with accompanying good practices, in the following sections ([Section 5.2](#) – [5.8](#)).

5.2 Preparedness planning

5.2.1 Early analysis

Information about a (potential) influx will determine which measures and procedures are required, in that particular context, to maintain the civilian and humanitarian character of asylum.

If the presence of fighters/combatants can be anticipated, timely measures should be taken to identify and separate these upon arrival, and to avoid the protection risks associated with fighters/

A QUICK INTRODUCTION: WHAT DOES IT MEAN?

Early analysis and preparedness planning: To collect information from as early as possible about the nature of the ongoing conflict or violence, and the composition of anticipated population movements, including fighters/combatants, so as to allow for effective preparedness, planning and ongoing emergency management.

Effective security: Ensuring that refugee sites are located in a safe area, at a reasonable distance from the border and other areas of insecurity, and that all refugee-hosting areas (whether refugee sites, urban areas or other locations), benefit from appropriate and effective security measures, so as to prevent infiltration of fighters/combatants and weapons, reduce the risk of recruitment, and ensure the maintenance of law and order.

Disarmament: The safe removal, collection, documentation, control and disposal of small arms of any kind, light and heavy weapons, ammunition and explosives, from persons seeking to enter the host State, or already present on its territory.

Identification: Screening out fighters/combatants from amongst the arriving population by way of agreed, transparent and fair criteria, so as to separate them, in a timely manner, from refugees who are in need of international protection.

Separation: The physical separation of fighters/combatants from the asylum-seeker/refugee population through measures of control, as authorised by and in accordance with national law, so as to ensure the security of the refugee and host population. In certain circumstances, internment may be required.

Renunciation of military activity: Persons identified as fighters/combatants cannot be considered as asylum-seekers and have their claims assessed until it has been established that they have genuinely and permanently given up their involvement in military and/or armed activities.

(See also the terms and definitions in Section 7.)

combatants who are already present within refugee sites. Specific measures will also be required where an influx is anticipated to include children who have been recruited and used by armed forces and/or groups.

An understanding of the ongoing conflict or violence and any history of movements across the border may give an indication of the possible presence of fighters/combatants, as well as security concerns that can potentially be generated by the influx, and allow the relevant authorities to anticipate and plan adequate interventions.

Early analysis should facilitate and guide scenario-based contingency planning, and, when relevant, be included in the Preparedness Action Plan (PAP) developed with the host State and partners.⁴⁸

Continuous monitoring and analysis is also vital to the further management of the emergency operation as it evolves.

Each step of the emergency preparedness and response can benefit from an analysis of:

NATURE AND BACKGROUND OF THE ARMED CONFLICT:

- updated political analysis of the armed conflict, its geographical scope, and effect on the wider region;
- information on the factions, groups or parties to the conflict, including their composition, behaviour, ideology and motivation;
- any alleged violations of human rights or IHL, including the unlawful recruitment of children and the use of sexual violence.

⁴⁸ See *Policy on Emergencies*, para. 6.4 (b), and the Advanced Preparedness Actions (APA) in UNHCR's Preparedness Package for Refugee Emergencies (PPRE).

CHARACTERISTICS OF THE (ANTICIPATED) INFLUX:

- the composition of arriving (or anticipated) refugees/asylum-seekers, including the likelihood of armed individuals, fighters/combatants, or former fighters/combatants being amongst them;
- the likelihood of children and women being among the fighters/combatants;
- the perceptions of the civilian population towards the armed forces/ groups.

APPLICABLE LEGAL FRAMEWORKS:

- national laws, regulations and/or procedures relevant to disarmament, and the identification and separation of fighters/combatants (in particular internment);
- the legal status and required treatment of fighters/combatants within that specific context, in accordance with IHL.

PRIORITY ISSUES RELATED TO THE CIVILIAN AND HUMANITARIAN CHARACTER OF ASYLUM, SUCH AS, FOR EXAMPLE:

- the location and security of (planned) sites or other refugee-hosting areas;
- the lack of screening or disarmament at informal and formal border entry-points, or potential challenges in identification;
- the lack of separation or control measures;
- the need for appropriate services and reintegration programmes for women and children formerly associated with armed forces or groups.

PERSPECTIVES AND CONCERNS OF THE HOST STATE:

- the perspectives of the host State on the ongoing conflict, and on particular armed groups, including any legitimate security concerns related to the arrival or presence of armed individuals and fighters/combatants;
- the inter/intra-State and regional dimensions affecting or influencing the ongoing conflict;
- the potential rationale and/or impediments for the host State to take action;
- if relevant, an analysis of the reasons for any hesitation, inaction and/or inadequacies in the host State's approach, i.e.:
 - *Is the host State aware of its legal responsibilities?*
 - *Is it facing political challenges, (and, if so, at the local, regional, national or international level)?*
 - *Is there a lack of resources?*
 - *Is specialised capacity-building needed to support the State in executing its duties?*

MANDATE AND CAPACITIES OF OTHER RELEVANT ACTORS:

- if the host State does not have the willingness or capacity to assume its responsibilities, the mandates and capacities of other relevant actors present in the host State;
- if the capacities of the host State and other actors on the ground are not adequate, the potential for mobilization of a broader network of stakeholders, including through the wider UN system, or other international and regional organizations.

KEY ACTIONS:

- As part of the emergency preparedness, **gather, analyse and share information about expected population movements** to anticipate issues related to the civilian and humanitarian character of asylum, and to allow for pre-planning, priority-setting and ongoing crisis management, including, in particular:
 - assessing whether those arriving may include fighters/combatants and armed elements, and whether there are women and children among them;
 - determine what measures are required and appropriate to maintain the civilian and humanitarian character of asylum in that particular context, and to prioritize these for advocacy interventions.
- Assess the **capacities and perspectives of the host State**, as well as the mandates and capacities of other relevant actors in-country. If appropriate, seek to engage with a wider range of stakeholders at an early stage, and to mobilize international support through the UN system or other international and regional organizations (including, if needed, the mobilization of additional resources).
- In medium and high risk operations, advocate with the host State authorities for the **planning of possible identification, separation and internment measures** as part of the advanced preparedness actions (APA), taking into consideration:
 - the need for such measures to be authorized by national law, and in accordance with national and international law;
 - the development of clear and transparent criteria for identification and separation, as well as minimum procedural standards;
 - the overarching principle of *non-refoulement* and that any security measures implemented need to ensure continuous access to territory for those seeking international protection.
- Maintain an **ongoing exchange with the ICRC**, taking into consideration the need for confidentiality and data protection, as well as the respective mandates of each organization.

5.2.2 Sources of information (including border monitoring and assessment missions)

There will be multiple sources of information available for this analysis, including:

- ➡ **Political and military information from the host State authorities** related to current or potential population movements.
- ➡ **Border and entry-point monitoring, or interviews with new arrivals, local authorities, border officials, and other stakeholders present at the border.** Relevant information and analysis may also be available from UNHCR or other humanitarian actors present in the country of origin.
- ➡ **First-hand observations regarding the presence of arms and/or suspected fighters/combatants** within refugee sites and other refugee-hosting areas.
- ➡ **Technical assessment missions to evaluate the security situation in refugee sites**, and to determine the extent of infiltration, if any, of fighters/combatants and weapons, and advice on appropriate security measures. Such missions could, when appropriate, be comprised of experts from the host State, UNHCR, and/or the Department of Peace Operations (DPO).⁴⁹
- ➡ **A multitude of secondary sources related to the ongoing conflict or violence**, including a wide variety of media sources and external reports (both in the country of origin and the country of asylum). These should be analysed with care, and, as far as possible, triangulated with primary sources of information.
- ➡ **UNHCR should seek to maintain an ongoing dialogue with the ICRC at operational level**, taking into consideration the respective mandates, as well as the need for confidentiality and data protection.

⁴⁹ ExCom No. 94 (2002), para. (g).

5.2.3 Advanced preparedness actions for high and medium risk operations

In operations which are considered to be at high or medium risk of a new (or escalated) emergency,⁵⁰ advanced preparedness actions (APA) should be implemented by the host State, with the support of UNHCR and other relevant actors, to prevent that the civilian and humanitarian character is compromised. This could include, as appropriate to each operation:

- 1) a **review of national legislation and regulations** as it pertains to disarmament, identification and separation, so as to ensure that such measures (if and when needed) are authorized by law, and in compliance with national/international law;
- 2) setting up, where needed, **procedures for disarmament** at border entry points, or as soon as possible upon entry into the State's territory;
- 3) establishing, where needed, **clear and transparent procedures for the identification and separation of fighters/combatants**, as well as for the verification of renunciation, and clearly identifying (or establishing) the relevant host State authorities to make such determinations, in line with national law;
- 4) assessing the **available options for separation and other control measures**, including, where necessary, internment facilities for fighters/combatants; and
- 5) **any other activities which may be considered necessary** to maintain the civilian character of asylum in that particular operational context.

Maintaining an **ongoing dialogue with the relevant host State authorities regarding their willingness and capacity to assume these responsibilities is essential**. This may also clarify any need for additional support, technical capacity building, engagement

with other relevant actors in the host State, and/or the mobilization of international support through the wider UN system, and through other international and regional organizations.

5.3 Effective security management

5.3.1 Providing effective security for all refugee-hosting areas

Security measures should be put in place in *all areas hosting refugees*, whether these are planned or spontaneous sites, camps, collective, transit or reception centres, or other refugee-hosting areas, such as urban settings. While more detailed guidance can be found in UNHCR publications, such as the *Manual on Security of Persons of Concern*,⁵¹ and *Operational Protection in Camps and Settlements*,⁵² a few good practices are listed below for reference.

Good practices in prevention include:

- **Visible and effective presence of police and law enforcement** in and around refugee-hosting areas to deter infiltration, enforce law and order, and prevent refugees from engaging in activities incompatible with asylum;⁵³
- **Continuous monitoring by police and law enforcement** in and around refugee-hosting areas, as well as in border areas, to determine if fighters/combatants are present and to curtail the flows of arms into such areas;⁵⁴
- **Involving refugees** in promoting their own security through (unarmed) community-based neighbourhood watch schemes, and other appropriate self-protection measures;

⁵⁰ As listed in UNHCR's High Alert List for Emergency Preparedness (HALEP), see *Policy on Emergencies*, para. 6.4.

⁵¹ UNHCR, *Manual on Security of Persons of Concern* ("Manual on POC Security"), November 2011, First Edition, available at: <http://www.refworld.org/docid/4f6313032.html>.

⁵² UNHCR, *Operational Protection in Camps and Settlements: A Reference Guide of Good Practices in the Protection of Refugees and Other Persons of Concern* ("Camp Reference Guide"), June 2006, available at: <http://www.refworld.org/docid/44b381994.html>

⁵³ ExCom No. 48 (1987), para. 4(c); No. 72 (1993), paras. (b) and (d); No. 75 (1995), para. (q); No. 94 (2002), paras. (a) and (c)(iv); No. 99 (2004), para. (c)(ii); EC/49/SC/INF.2, 14 January 1999, para. 4; *Manual on POC Security*, Chapter 1.9, 2.20 and 2.21.

⁵⁴ *Ibid.*

- **Refugee leadership and coordination structures** which are democratically chosen, and encouraged to promote and maintain the civilian character of asylum;
- **Regular dialogue with the host community and local leadership structures**, as well as other confidence building measures and conflict resolution mechanisms;
- **Enhanced training and response capacity** for law enforcement and other host State authorities who are working within the refugee setting;
- **Ensuring prompt, unhindered and safe access for UNHCR** and, as appropriate, other humanitarian organizations, to all refugees and asylum-seekers.⁵⁵
- **Offer enhanced educational, after-school, sports and recreational activities for children and youth** to reduce the risk of recruitment, especially of refugee children;
- **Advocate for the monitoring of any identified fighters/combatants and their activities** by police/security authorities, in particular to avoid military recruitment and training of refugees or weapons or ammunitions trade in the host State;
- **Advocate for criminal offences committed by fighters/combatants, including recruitment**, to be handled in accordance with the criminal law of the host State and in line with international law;
- **In refugee sites, a secure and guarded weapons depot at the entrance** can be considered appropriate under certain circumstances (as a last resort).

Good practices to mitigate the risks associated with fighters/combatants already present:

- Where feasible and secure, **establish dialogue with the fighters/combatants, including their leadership**, to explain why the presence of fighters/combatants is problematic and creates potential security risks for the refugee population;
- **Seek to avoid that fighters/combatants assume leadership positions in refugee coordination structures**, or to take any active role in the distribution or monitoring of assistance or services;
- **Undertake dissemination campaigns** offering rehabilitation, livelihoods or education activities, with the aim of promoting voluntary self-identification;
- **Initiate awareness raising campaigns to ensure that refugees are aware of the risks associated with military activities**, and are informed of their obligations to adhere to the laws and regulations of the host State;

Good practices within an urban refugee context include:

- **Ensure regular dialogue with the urban refugee population** through community outreach, regular participatory assessments, and other two-way channels of communication (such as, for example, refugee “hotlines”, regular protection/reception hours, and the use of mobile messaging applications);⁵⁶
- **Allow for confidential and secure complaints mechanisms for refugees** on the presence of fighters and weapons, and advocate for targeted follow-up action by the authorities;
- **Establish contact with law enforcement agencies** in urban areas and seek their support for ensuring the security of refugees within their geographical areas (in particular raising any concerns related to forced recruitment or child recruitment);

⁵⁵ A/RES/68/141 (2013) on the Office of the United Nations High Commissioner for Refugees, para. 21.

⁵⁶ See also UNHCR, *Policy on Refugee Protection and Solutions in Urban Areas* (“Urban Policy”), September 2009, Part IV (e) – (g), available at: <http://www.refworld.org/docid/4ab8e7f72.html>.

- Offer educational, after-school, sports and recreational activities for children and youth, as well as school retention schemes, to reduce the risk of child recruitment;⁵⁷
- Initiate child-appropriate sensitization and awareness campaigns in schools;
- Promote peaceful coexistence and access to child friendly spaces and safe spaces through the support of neighbourhood centres, community centres and local NGOs.
- Sites to be located at a safe distance (50 km/ 31.6 miles) from the border and other areas affected by conflict, insecurity or violence.⁵⁹ While distance provides no guarantee against infiltration, it aims to act as a deterrent for fighters/combatants who may otherwise easily travel back and forth, and use the site as a base.
- If the current location of a site is negatively affecting its civilian or humanitarian character, the possibility of relocating the site (or those most directly affected) should be carefully considered. Relocation may also offer an opportunity to verify existing registration and to identify and separate fighters/combatants (see Sections 5.5.3 – 5.5.4). Careful consideration should be given to how a relocation is planned, announced and explained to the refugees and to other humanitarian actors present in the site.

Good practices in sites (including camps and collective/transit/reception centres) include:

- Explicitly prohibiting fighters/combatants and armed elements from residing in, transiting through or visiting refugee sites, even for shorter periods of time, and ensuring adequate screening for this to be effectively implemented in practice;
- Explicitly prohibiting the holding, trading or bringing of weapons, arms, or ammunition into refugee sites (enforced through weapons searches, if needed);
- Elaboration and promotion of site regulations and by-laws, in close consultation with refugees. This includes regulations specifically prohibiting refugees from engaging in armed or military activities incompatible with refugee status;⁵⁸
- Transparent site administration and management, which maintains regular dialogue and information sharing with refugees and their leadership;

5.3.2 Preventing the recruitment of refugees, including refugee children

Particular attention should be given to the potential recruitment of refugees, including refugee children, in areas where fighters/combatants are present.

The recruitment of children and their use in hostilities, whether forced or voluntary, is prohibited and should be carefully monitored.⁶⁰ Children who have been associated with armed forces or groups in the past, who have family ties to such groups, who are unaccompanied or separated from their families, or who have suffered past negligence, violence or abuse, may be at particular risk of both voluntary and forced recruitment. **Children should always to be regarded as victims, regardless of how they were recruited.**⁶¹

In certain circumstances, the recruitment of adult refugees is also prohibited. For example, during an

⁵⁷ *Ibid*, Part IV (h) – (i).

⁵⁸ EC/49/SC/INF.2, 14 January 1999, para. 4.

⁵⁹ ExCom No. 94 (2002), para. (a).

⁶⁰ See Convention on the Rights of the Child (“CRC”), Article 38, and its Optional Protocol 2000 (“CRC OP”); African Charter on the Rights and Welfare of the Child (“ACRWC”), Article 22(2); Convention concerning the Prohibition for the Elimination of the Worst Forms of Child Labour (“Convention No. 182”), Article 3; Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I), 8 June 1977 (“API”), Article 77(2); Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol II), 8 June 1977 (“APII”), Article 4(3) (c); Statute of the International Criminal Court (“ICC Statute”), Article 8(2)(b)(e). There is not yet a uniform practice with respect to the minimum age, but it should not be below 15 years, see *ICRC Customary Law Study*, Rule 136.

⁶¹ *UN Children’s Fund (UNICEF), The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (“Paris principles”)*, February 2007, p. 3.6, available at: <http://www.refworld.org/docid/465198442.html>.



international armed conflict, neutral States must prevent recruitment on their territory,⁶² and refugees must not be forced to fight in the armed forces of the host State against their country of origin.⁶³ Apart from these provisions, there is no specific prohibition against the recruitment of refugees in IHL *per se*, but their forced recruitment is inconsistent with their right to seek and enjoy asylum, and can violate the principle of *non-refoulement*.⁶⁴ Moreover, military conscription of refugees by a host State is inconsistent with its primary responsibility to ensure the security and protection of refugees. **Host States should therefore refrain from the recruitment of refugees, and should take all feasible steps to prevent the forced recruitment of refugees by any armed groups present on their territory.**⁶⁵

Should refugees choose to enlist on a voluntary basis, their actions would be incompatible with their refugee status, and procedures to cancel or revoke their legal status may, in some circumstances, be instituted. Any assistance from UNHCR and its partners would normally be suspended. Refugees who take up military or armed activities may also be prosecuted for such activities, in line with the criminal law of the host State (see [Section 5.8.4 – 5.8.5](#)).

Apart from the good practices listed in Section 5.3.1 above, some additional actions that may reduce the risks of recruitment, in particular of refugee children, include:

- Protection of legal rights of refugees, particularly through **timely and updated registration and documentation of children identified as being at heightened risk;**
- Prioritising **family reunification for separated/unaccompanied children** (if considered to be in their best interests), and providing suitable care arrangements, when needed;
- **Ensuring that schools remain safe spaces for children**, and facilitating after-school, sports and recreational activities for children and youth, while continuously monitoring drop-out rates (as a potential proxy indicator of recruitment);
- Maintaining regular dialogue and cooperation with **national child protection services and specialized family or child protection units within the local police to develop (context-specific) prevention strategies and activities;**

⁶² Convention respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land of 1907 (“1907 Hague Regulations”), Article 4.

⁶³ Fourth Geneva Convention relative to the Protection of Civilian Persons of 1949 (“GC IV”), Article 40; 1907 Hague Regulations, Article 23.

⁶⁴ Universal Declaration of Human Rights (“UDHR”), Article 14(1); ExCom No. 94 (2002), para. (e); S/PRST/2004/46 (2004).

⁶⁵ ExCom No. 94 (2002), para. (e).

- **Initiating awareness raising campaigns targeting children and youth**, and child-friendly procedures to report protection concerns;
- **Empowering children and youth through the use of community coaches, mentors or peers**, and providing meaningful opportunities for children and youth to contribute to their own communities;
- **Seeking the support and collaboration of specialized agencies**, such as the United Nations Children’s Fund (UNICEF) and other child protection actors who are present.

5.3.3 Roles and responsibilities

The primary responsibility for the security of refugees lies with the host State. Law enforcement and security personnel should receive sufficient training and resources to enable them to fulfil their duties in a professional and efficient manner within a refugee context.

In its advisory and assistance role, **UNHCR will liaise with relevant government counterparts regarding the security needs of refugees, and can request additional interventions**, when needed, from the local police, military forces, or government officials, and, if appropriate, from other States, or international or regional peace operations or police forces. UNHCR will also work with development agencies to help build national capacity in the security sector.

If the host State lacks the capacity to deal with the increased security requirements that large-scale arrivals may entail, **other States or the wider international community need to consider entering into cooperation agreements with the host State to maintain law and order** in refugee-hosting areas. Such agreements may include financial and material assistance, as well as training and capacity building activities (see [Section 5.3](#)). Ensuring security is a core element of international refugee protection, and should be a critical element of any donor budget.

Support to national or state security forces and regional peacekeeping forces by the UN, including UNHCR, needs to comply with the *UN Human Rights Due Diligence Policy* (See [Section 6.4.5](#)).⁶⁶

⁶⁶ *UN Due Diligence Policy*. Please see [Section 6.4.5](#) below.

KEY ACTIONS:

- Advocate with the relevant national and local authorities for **adequate security measures for all refugees**, whether they are accommodated in sites, or other refugee-hosting areas, such as urban centres, based on identified good practices;
- Ensure that **refugee sites are located at a safe distance** (at least 50 km/ 31.6 miles) from the border and other areas affected by armed conflict, insecurity or violence;
- If the location of a refugee site contributes to concerns regarding its civilian or humanitarian character, and other measures are not feasible or have been unsuccessful, **relocation should be carefully considered**;
- If the host State lacks the capacity to deal with the security requirements posed by an influx or an emergency situation, **work closely with development agencies to help build national capacity in the security sector and seek to encourage cooperation with other States and to mobilize the wider international community**;
- **The recruitment of refugees, in particular of refugee children**, needs to be closely monitored and responded to, in line with identified good practices. Seek the support of specialized agencies, such as UNICEF and national child protection services, when refugee children are believed to be at risk of recruitment.

5.4 Disarmament of armed elements

5.4.1 Screening and confiscation of weapons upon entry to territory

The host State needs to make available sufficient security resources (police, border guards and armed forces, if required) to **allow for the systematic screening and confiscation of weapons at border points, or as soon as possible thereafter**,⁶⁷ in accordance with national law and in line with the *UN International Small Arms Control Standards*.⁶⁸

All weapons and arms should be safely disarmed.⁶⁹ This may include weapons from civilians who are carrying them for reasons unrelated to military activity (for example for hunting or self-defence purposes).

Information on the process and requirement to surrender weapons prior to admission to the territory should be clearly communicated at border points, as well as upon entry into refugee sites or other refugee-hosting areas. **Those refusing to surrender their weapons should not be considered as asylum-seekers, and need not be admitted.**⁷⁰

Only individuals identified as fighters/combatants, or others who pose a threat to the civilian and humanitarian character of asylum,⁷¹ need to be separated. Other disarmed individuals may be admitted into refugee sites, and enter into asylum procedures, unless they are found by the host State to pose a particular security threat to the refugee or host population (see [Section 5.6.5](#)).

Where it is difficult to immediately distinguish, the only viable option may be to **temporarily accommodate all disarmed individuals in separate facilities**, until proper identification can take place. In other words, the carrying of weapons does not make a person a “fighter/combatant”, but in exceptional

situations, it may provide a need for temporary, short term, separation while awaiting further screening. Such separation should be conducted in accordance to grounds and procedures established by law, and in conformity with the host State’s international legal obligations, including international human rights obligations.

5.4.2 Monitoring and searching for weapons in sites and other hosting areas

Although disarmament should take place upon entry to the territory, the number of arrivals and other factors may render this impossible in practice. In such a situation, weapons screening may need to be conducted *after* entry to the territory.

Continuous monitoring is also required to detect the presence of weapons and arms of any kind, including improvised weapons carried to inflict harm, inside refugee sites. This may require the systematic screening of luggage and other personal belongings at entry points into the refugee site itself.

If there are credible indications that weapons are present in a site, **it will usually be in the best interest of the refugees that weapon searches are conducted.** It is recommended that such searches are conducted by police, rather than by the military. It is further recommended that refugee leaders and humanitarian actors are informed before such a search take place, whenever feasible, and that they are involved in any awareness raising with the refugee community and other community-based security efforts to support the exercise.

Any weapons surrendered or confiscated should be documented and securely stored or destroyed by the host State. It is a key protection interest for UNHCR and other humanitarian actors to advocate for such weapons not to be recycled back into unlawful use.

⁶⁷ A/RES/68/141 (2013), para. 21; S/2004/431 (2004), para. 22; S/PRST/2002/6 (2002); ExCom No. 94 (2002), para. (c)(ii).

⁶⁸ UN, *International Small Arms Control Standards* (“ISACS”), Modules 5.40 (collection of illicit and unwanted small arms and light weapons), 5.50 (destruction) and 5.60 (border controls and law enforcement cooperation), available at: <http://www.smallarmsstandards.org/isacs/>.

⁶⁹ With the exception of weapons which are authorized by the law of the host State, for example weapons which are carried by the host State’s police and armed forces.

⁷⁰ However, international human rights law or IHL might nevertheless prevent their *refoulement* at the border. See [Section 5.6.3](#).

⁷¹ See [Section 5.6.5](#) for guidance on other categories that may require separation.

5.4.3 Roles and responsibilities

The primary responsibility for disarmament lies with the relevant authorities of the host State (border or law enforcement officials, or, where relevant, security or military forces).

For areas which are **not under the effective control of the host State**, for example due to control of territory by an armed non-State actor, UNHCR and other humanitarian organizations may advocate for similar measures to be taken by these actors, if and when appropriate.

UNHCR and other humanitarian organizations do not undertake disarmament operations. If the authorities of the host State cannot assume these responsibilities, it should seek the support of other States, or from international or regional peace operations or police forces. The existing structures for civil-military coordination can advise the State to this regard.

UNHCR and other humanitarian actors may seek to be present at entry points/border areas for monitoring purposes. They may also provide protection analysis, and contribute to ongoing dialogue with the refugee population, and, when safe and appropriate, directly with fighters/combattants, regarding the presence of weapons in refugee sites, and advocate for the need to preserve the civilian character of such sites.

When faced with particularly complex situations, **interventions may require a collective engagement of the UN as a whole**, rather than by individual UN entities. This is particularly relevant when faced with the presence of large numbers or groups of active fighters/combattants, and where the host State is either unable or unwilling to ensure effective security for refugee sites and other refugee-hosting areas. Such situations should be brought to the attention of the UN Country Team/ Humanitarian Country Team.

KEY ACTIONS:

- Advocate for the **systematic screening and confiscation of weapons** at border entry points, or as soon as possible thereafter, in accordance with national law;
- Advocate for the **continuous monitoring of weapons and arms of any kind inside refugee sites**, and for weapons searches to be conducted by the police, if needed;
- A **security assessment** should always be conducted prior to forced disarmament and/ or weapons searches inside refugee sites, so as to assess the risks to refugees, humanitarian workers, and the security personnel themselves. In exceptional circumstances, such exercises may not be advisable at that point in time and efforts will instead need to be focused on mitigating or containing associated protection risks;
- Disarmament is a security operation, which humanitarian agencies (including UNHCR) do not undertake. They may, however, **monitor border areas, provide protection analysis, and contribute to dialogue with refugee populations**, or directly with fighters/ combattants, when this is considered safe and appropriate;
- Where disarmament is a priority concern in the particular context (for example, if weapons are easily brought across the border or into a refugee site), UNHCR may advocate with the host State, and with other relevant actors, for screening and disarmament measures, including with the **support of other States or international or regional peace operations or police forces, as appropriate.**
- Complex security situations affecting refugees, such as **the presence of large numbers or groups of active fighters/combattants for which the host State is either unable or unwilling to ensure an appropriate response**, should be brought to the attention of the UN Country Team/ Humanitarian Country Team.

5.5 Screening and identification of fighters/combatants

5.5.1 Promoting voluntary self-identification

Voluntary self-identification of fighters/combatants and former fighters/combatants should be encouraged and facilitated. This can be done through the dissemination of information on procedures and services available to them, and safe sites where they can register for such.

Self-identification may also, in some cases, be pre-negotiated with the host State by a group before entry, for example if seeking medical care or intending to surrender or desert. In other situations, individuals already living in the host State may decide to present themselves to the authorities to benefit from voluntary repatriation, DDR, or similar programmes.⁷²

In many circumstances, however, fighters/combatants may seek to mix in with civilians, concealing their weapons, identity, or military activities. **The host State therefore needs to be prepared with trained security and border personnel to screen new arrivals, and refer suspected fighters/combatants to an authority responsible for taking decisions on their identification and separation.**

5.5.2 Screening and identification at border entry points

Initial screening upon entry into the territory is normally conducted by host State authorities, using physical evidence, outward appearance, and basic interaction to identify suspected fighters/combatants.

Such screenings are often combined with (or simultaneous to) disarmament. Initial indicators (not determinative) may include, for example:

- ➡ the carrying of weapons;
- ➡ the wearing of military uniform or clothing/ attire associated with armed groups;

- ➡ scars or wounds which may indicate participation in hostilities;
- ➡ noticeable differences in circumstances from other arrivals (for example a group of men arriving without accompanying family members); and/or
- ➡ knowledge of the ongoing conflict (for example members of the losing party fleeing from a recent or ongoing battle across the border).

Suspected fighters/combatants may be **temporarily separated from other asylum-seekers until a more in-depth identification interview can be conducted by the relevant authority**, in line with established criteria and procedures (see [Sections 5.5.5 – 5.5.6](#)). Such temporary separation should be conducted in accordance to grounds and procedures established by national law, and in conformity with the host State's international legal obligations.

5.5.3 Screening and identification of fighters/combatants in-country

In complex situations, screening and identification at border points may not be possible, or adequate. **Indications that an individual may be associated with armed activities and require further assessment may arise at various times and settings, including:**

- ➡ in transit, reception or collective centres, or similar facilities, based on protection monitoring, community dialogue, or information received from the refugee community, UNHCR or its partners, or other third parties;
- ➡ as part of the pre-registration or registration processes (see [Section 5.5.4](#));
- ➡ after the arrival in a refugee site or other refugee-hosting area, including as part of community outreach, protection monitoring, case management, and assistance and protection programmes (women and children associated with armed forces/groups are, for example, often identified during SGBV or child protection activities);

⁷² UN, *Integrated DDR Standards ("IDDRS")*, December 2006, available at: <http://www.unddr.org/iddrs-framework.aspx>.

- ➡ by security forces or law enforcement, for example when intercepting cross-border movements, operations, weapons/ ammunition transfers or other criminal activities;
- ➡ during individual procedures, such as voluntary repatriation or resettlement.

The assessment leading to the identification of a fighter/combatant **may therefore take place in any of the above settings, or at any other time during the person's stay in the host State.** It could occur when new information comes to light about a person, or when a person previously recognized as a refugee becomes a fighter/combatant due to subsequent conduct.

In such circumstances, **careful consideration will need to be given about how best to conduct a proper identification procedure, and how to safely separate identified fighters/combatants from the refugee population.** While the criteria and procedures in [Sections 5.5.5 – 5.5.6](#) may provide an overall framework, the appropriate strategies to conduct identification and separation will often be context-specific, and based on an ongoing security risk assessment.

5.5.4 The registration processes as a tool for screening and identification

Where screening and identification processes at the border points were not possible, or not effective, the initial registration (or pre-registration) may be the first opportunity to assess the presence of suspected fighters/combatants. **Faced with a potential influx, registration can support the maintenance of the civilian and humanitarian character of asylum** and alert the host State to related protection and security needs. In such circumstances, the registration process may include appropriate and careful screening for suspected fighters/combatants.⁷³ This is recommended to take place as soon as possible upon entry, and ideally prior to any relocation to a more permanent refugee site or other refugee-hosting area.

⁷³ ExCom No. 94 (2002), para. (c)(iii).

⁷⁴ UNHCR Handbook for Registration, available at: <https://www.unhcr.org/registration-guidance/chapter3/develop-registration-standard-operating-procedures>.

Personnel carrying out registration need sufficient training about the admissibility criteria for registration, and how these will be determined, as well as appropriate responses and referral pathways for suspected fighters/combatants.⁷⁴

Basic screening may be carried out by informing all asylum-seekers about the civilian and humanitarian character of asylum, in general terms, and/or by simply “flagging” concerns about inadmissibility for future follow-up as part of continuous registration or verification exercises. Alternatively, it may be a more formal process, consisting of several steps and techniques to determine admissibility through interview techniques (using, for example, checklists or standard questionnaires).

Whatever the degree or type of screening selected in the particular context, it does not replace (or constitute) a formal identification process as such, or determine eligibility for refugee status. **Following the initial screening, suspected fighters/combatants should be referred to the appropriate authority for a more in-depth identification interview, in line with pre-determined criteria and procedures, as set out below ([Sections 5.5.5 – 5.5.6](#)).**

As active fighters/combatants are not persons of concern to UNHCR, they should in principle not be registered. In certain operations, the host State and/or UNHCR may, however, see it necessary to exceptionally enroll or register their basic biographical and biometric data (as “not of concern”). This could be judged necessary for operational reasons, such as:

- ➡ Maintaining the integrity of processes and the civilian character of asylum, *i.e.* to ensure the availability of a record identifying the person as a fighter/combatant (which may also be useful in the context of any subsequent verification of renunciation);
- ➡ Enabling the tracking of persons referred to government screening procedures;
- ➡ Providing a record of family members of registered asylum-seekers or refugees.

5.5.5 Possible criteria for the identification

The criteria used by the host State should be reasonable in the circumstances, and should meet the purpose of the identification exercise, which is to **establish whether an individual needs to be separated due to his/her involvement in military or armed activities, in order not to compromise the civilian and humanitarian character of asylum, or put refugees at risk.**

The criteria should not be so broad as to include persons who are merely sympathising with an armed group, nor those who may be pretending, or have been coerced, to do so for their own protection, nor civilian family members of identified fighters/ combatants.⁷⁵

The assessment is whether the person, due to his or her activities, poses a threat to the refugee population, or to the integrity of the asylum system. This could include, for example, persons who are not armed or directly participating in hostilities, but who are recruiting (whether voluntary or by force) or training refugees, who are in a command or decision-making position, or who are otherwise contributing substantially to the overall war effort (see [Section 5.6.5](#) for further guidance).

The criteria listed in the text boxes are examples only. They are neither exhaustive, nor prescriptive, and need to be adapted to the local context and operating environment. Neither of the criteria are decisive, but rather to be part of a holistic assessment of each case at hand.

Care must be taken to avoid stigmatization of specific groups, for example based on religion or ethnicity.

⁷⁵ See [Section 5.6.6](#) for further guidance on family members of identified fighters/ combatants.

PHYSICAL OBSERVATIONS AND BEHAVIOURS:

- the carrying of weapons, whether openly or in hiding;
- wearing of military attire or insignia (full or partial uniform, or clothing associated with military or armed groups);
- physical attributes which may indicate membership of an armed force or group (if relevant in that context), such as haircuts, tattoos or marks;
- scars or wounds which may indicate participation in hostilities;
- signs of military training and/ or behaviour (commanding, aggressive manners, specific communication techniques, the use of signs, etc.).

STATEMENTS AND VIEWS:

- self-declaration as a fighter/ combatant or former fighter/ combatant;
- statements of intention or wish to return to country of origin to fight;
- statements of past participation in military or armed activities;
- statements of support to specific armed groups or armed forces;
- detailed knowledge linked to the ongoing conflict, in particular military operations;
- views and perceptions on the ongoing armed conflict.

ACTIONS:

- long or repeated absences from the refugee site or other refugee-hosting area (without credible explanation or reasons);
- known returns to the country of origin (without credible explanation or reasons);
- reliable reports, testimony or observations of the individual conducting recruitment or training of refugees, or taking part in other military activities;
- close association with other known fighters/ combatants or with specific military activities (for example, if observed in a military vehicle or inside a recruitment centre).



Identified good practices include:

- The use of standard checklists or questionnaires to support registration/security personnel of the host State during the initial screening;
- The criteria used for screening and identification are adapted to the specific operational context, based on updated information and analysis of the ongoing armed conflict, factions or parties to the conflict, and their composition, behaviour, and ideology (see [Sections 5.2.1 – 5.2.2](#) above for guidance);
- Personnel conducting screening and making identification decisions have adequate training on the relevant indicators in that context and on how to ask appropriate, age- and gender-sensitive questions, and to effectively elicit the required information. Indirect questions are normally considered most effective, for example, by asking how the person was affected by the fighting, and why he or she left his or her country of origin;
- Where information is received from other refugees, this information need to be sought verified or corroborated by other sources, to the extent possible, and be treated confidentially, with the source's safety as a paramount consideration;
- As the ability to recognize signs of military hierarchy and behaviour requires familiarity with military structure and thinking, the task of determining and evaluating such indicators can benefit from the advice or guidance of experts within this area;
- A security risk assessment to precede and be a continuous part of any screening or identification exercise, and guide the approach taken in that specific context. The security of both screening personnel and refugees, as well as humanitarian actors, needs to be taken into consideration.

5.5.6 Procedural aspects of identification

It is recommended that clear and transparent procedures are in place on beforehand to ensure basic principles of fairness and to prevent any manipulation of the identification process, for example, where political or personal opponents risk being labelled as ‘fighters/combatants’, or where internment is used to circumvent or replace feasible criminal prosecution.

The following aspects are recommended covered by such procedures:

- i. the composition of, and terms of reference for, the decision-making authority;
- ii. the criteria or indicators used for considering whether an individual is considered to be a fighter/combatant;
- iii. how information is collected and investigations are conducted, including the standard of proof and how information from third parties is verified;
- iv. the proceedings before the body, including the possibility for the individual to appear in person and rebut evidence (with an interpreter, when required);
- v. age- and gender-appropriate procedures for dealing with the identification of women and children who are suspected to be associated with armed forces or groups;
- vi. the recording of decisions, and the reasons for such;
- vii. the confidentiality of procedures, and the safe storage of records, so as to avoid any retaliation or threats against identified fighters/combatants, their families, or witnesses.

As a procedural safeguard, **a separate mechanism is recommended to consider requests for review from an individual claiming to have been wrongfully identified.** Such requests could be processed by a different entity within the same authority, or by a separate authority.

While there is no specific legal principle on the applicable standard of proof in these instances, the serious consequences of being identified as a fighter/combatant require a high threshold. At the same time, the difficulties in securing reliable evidence of military activities and/or intentions of an individual who is (or has been) operating in another country should not be underestimated. A useful standard of proof can be drawn from international refugee law in the context of exclusion, which requires “serious reasons for considering” that exclusion is necessary. This note therefore suggests that the identification authority assess whether “serious reasons exist” for considering that a person is a fighter/combatant.

5.5.7 Roles and responsibilities

Within the relevant Government structures, **an authority needs to be identified as responsible for the identification process.** Such a body will be responsible for three main functions:

- i. ensuring that the required legislative or administrative authority and procedures are in place in the host State for the identification process;
- ii. assessing evidence or information in the cases presented; and
- iii. taking the decision whether an individual is considered to be a fighter/combatant, and referring those meeting the established criteria for separation, if required.

An existing government entity can be tasked with these functions, or the body could take the form of an *ad hoc* committee, panel or task-force comprising of representatives from relevant government agencies. Financial and material assistance, capacity building and technical support can be sought from other States, or international or regional forces, if needed.

UNHCR and other humanitarian organisations should not be responsible for individual identification decisions. However, subject to capacity, mandate and security considerations, representatives of international agencies could be called upon to advise and support the relevant authority. UN peace operations may also offer specialist technical and legal advice, support and guidance, if present in-country.

KEY ACTIONS:

- Where fighters/combatants are suspected to be present amongst arrivals, in the refugee site or other refugee hosting area, advocate with the host State for the **establishment and implementation of criteria and procedures** for their identification and separation by an appropriate host State authority;
- Advocate for **screening and identification upon entry into the territory**, or as soon as possible after this. Where this is not possible or adequate, screening can be part of a registration processes, or fighters/combatants may come to the attention of the authorities through law enforcement action, assistance, or other interventions;
- Encourage **voluntary self-identification of fighters/combatants (and former fighters/combatants)**;
- Highlight the need for **specific age- and gender-appropriate procedures** for the screening and identification of women and children associated with armed forces and groups, who should be given priority for processing, whenever appropriate;
- **Mobilize or seek assistance and support from other States**, or from international or regional peace operations or police forces, when this is necessary and appropriate;
- Particularly complex situations, such as the **presence of large numbers or groups of active fighters/combatants in the host State, for which the State is either unable or unwilling to ensure an appropriate response**, should be brought to the attention of the UN Country Team/ Humanitarian Country Team;
- If appropriate, UNHCR and other international agencies may provide technical advice or support to the **inter-agency taskforce or body tasked with identification**.

UNHCR ASSESSMENTS OF ADMISSIBILITY

In situations where UNHCR is conducting registration on behalf of the host State, and if there are no other effective means to screen out fighters/combatants, UNHCR may decide to conduct basic screening to assess admissibility for registration. This is for the purposes of preserving the integrity of UNHCR's registration data and humanitarian assistance programmes only, and should not be equated with a formal identification process.

5.6 Separation and control measures (including internment)

5.6.1 Separation and the imposition of other control measures

Individuals identified as fighters/combatants should be separated from the refugee population in order to:

- i) maintain the civilian character of asylum;
- ii) prevent them from resuming military or armed activities in the host State or against another State; and
- iii) ensure the security of both refugee and host populations.⁷⁶

This means that they should not be allowed to enter, transit through, visit, or reside in refugee sites of any kind, even for shorter periods of time.⁷⁷

The host State may also subject fighters/combatants on their territory to other measures of control to

⁷⁶ A/RES/68/141 (2013), para. 21; S/RES/1208 (1998) para. 4; S/2004/431 (2004), para. 22; S/2001/331 (2001), paras. 28-47; S/2002/1300 (2002), paras. 31-40; ExCom No. no. 94 (2002); ExCom No. 99 (2004); ExCom No. 100 (2004); OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969 ("OAU Convention"), Article 3(2).

⁷⁷ In highly exceptional circumstances, for example if the number of fighters/combatants is low and the associated security concerns are considered manageable, the host State may decide to accommodate these in, or in proximity to, refugee-hosting areas, provided that other appropriate control measures are in place. In such situations, they should not be accommodated together in one area, but rather be integrated with their families to the extent possible. The views and perceptions of the refugee population should always be a primary consideration when determining whether this is an appropriate arrangement, and what the potential risks are.

ensure security. Such measures could include regular reporting to government authorities, limitations to movement perimeters (such as assigned residence or not travelling outside a defined area), or, under some circumstances, internment. Such measures should be necessary and proportionate, and authorized by, and in accordance with, national law.⁷⁸

5.6.2 Specific considerations for internment

Legal framework

Internment is a form of deprivation of liberty for reasons of security during an armed conflict.⁷⁹ By comparison to criminal detention, it is initiated/ordered by the executive branch, not by the judiciary, and without any criminal charges being brought against the internee.⁸⁰ Different rules and procedures may apply, depending on the type of armed conflict in question and the applicable national and international law:

a) When a host State is not party to an international armed conflict, the law of neutrality provides a specific legal framework for the separation and control of members of foreign armed forces who enter the State. The State must prevent its territory from being used as a base for military action or for the passage of troops, and is therefore **under an obligation to disarm and intern any troops of a belligerent State entering its territory until the end of hostilities.**⁸¹ This

obligation aims to maintain the neutral status of the host State. The internees are to be treated akin to prisoners of war.⁸²

b) When a host State is not a party to a non-international armed conflict, it will need to have in place, or quickly enact, suitable domestic legislation, authorising and governing any security measures required to maintain the civilian and humanitarian character of asylum, including the use of internment. **The legality principle requires that internment only be carried out according to grounds and procedures established by law.**⁸³ The national law further needs to be in conformity with the host State's international legal obligations, including international human rights obligations.⁸⁴

c) When a host State is itself party to an armed conflict, whether international or non-international, and seeks to intern fighters/ combatants of the opposing side in its territory, it must comply with the applicable rules of IHL governing their treatment *i.e.* as prisoners of war, or as civilian internees in an international or non-international armed conflict. While IHL applicable in international armed conflicts provides a legal basis and detailed rules for the grounds and procedures for various types of internment,⁸⁵ this is not the case in non-international armed conflicts, for which there are only very few treaty provisions (see Annex 6).⁸⁶

⁷⁸ The exception to this is internment by a neutral State during an international armed conflict, in accordance with the law of neutrality, where an additional legal basis in domestic law is not required. 1907 Hague Regulations, Articles 1, 5, 11 and 12.

⁷⁹ ICRC, *Opinion Paper: Internment in Armed Conflict: Basic Rules and Challenges*, November 2014 ("ICRC Opinion Paper"), pages 1, 5 and 6.

⁸⁰ ICRC, *How does law protect in War, ICRC Commentary on API*, Article 75 (3), para. 3063. See also J. Pejic, "Procedural Principles and Safeguards for Internment/Administrative Detention in Armed Conflict and Other Situations of Violence", *International Review of the Red Cross*, Vol. 87, No.858, June 2005, pp.375-376.

⁸¹ 1907 Hague Regulations, Articles 1, 5, 11 and 12; Third Geneva Convention relative to the Treatment of Prisoners of War 1949 ("GC III"), Article 4(B)(2).

⁸² GC III, Article 4(B)(2); 1907 Hague Regulations.

⁸³ See, for example, International Covenant on Civil and Political Rights ("ICCPR"), Article 9(1). Note that there are different positions on the legal grounds for internment in non-international armed conflicts, including the possibility of deriving an "inherent power to intern" from customary and treaty law, see *ICRC Opinion Paper*, page 7-8. In line with the principle of legality, States should ensure that they have grounds for internment in domestic legislation, and that this legislation is in line with its treaty obligations.

⁸⁴ See, for example, ICCPR, Article 4. While most of the Conventions prohibit arbitrary deprivation of liberty, the European Convention of Human Rights ("ECHR") instead contains a specific list of lawful grounds for detention in its Article 5(1), which does not include detention on security grounds in relation to armed conflict or counter-terrorism. Lawful derogation would presumably therefore be required in line with Article 15. Other Conventions do not allow for any derogation.

⁸⁵ See GCIII, Section II (for prisoners of war); GC IV Articles 41-43, 78, and Section IV (for civilians); AP I Article 75.

⁸⁶ Article 3 common to the four Geneva Conventions 1949 ("Common Article 3"); AP II Article 4-6; United Nations, *Basic Principles for the Treatment of Prisoners* ("UN Basic Principles"), adopted by A/RES/45/111 on 14 December 1990, para 96.

Material grounds for internment

The use of internment is considered an exceptional measure that may, during an armed conflict, be justified by imperative reasons of security.⁸⁷

Internment should not be used as an alternative to criminal proceedings, and needs to be determined on an individual case-by-case basis (if not, it could potentially amount to collective punishment or infringe on the principle of non-discrimination).⁸⁸

Collective internment, for example based on nationality or ethnicity, is not considered a proportionate response, regardless of the circumstances.⁸⁹

In practice, a host State may need to use internment if it receives a large number of fighters/combatants at the same time as, or together with, the arrival of refugees, and where this presents a threat to the safety and security of the refugee and/or host population in the State. In such situations, internment may be necessary to maintain or re-establish security in border and refugee-hosting areas, and to prevent military activities inside (or from) the host State.

Children should in principle not be interned. For children 15 years and above, internment may be used as a last resort only, taking into account their best interests as a primary consideration, including with regard to the duration and conditions of detention.⁹⁰ The internment should be for the shortest possible

period of time. Children who are less than 15 should not be interned.⁹¹

Procedural principles and safeguards

Because of its exceptional nature, certain procedural principles and safeguards need to be in place in order to minimise the risk of civilian internment being (or becoming) arbitrary detention.⁹² These include (at a minimum):

- i) All internees must be **appropriately and accurately registered**,⁹³ and held in recognized places of detention⁹⁴.
- ii) The internee should be **informed of the reasons and grounds for internment**, and the grounds and required procedures must be sufficiently clear, transparent and accessible to allow the internee to challenge the initial decision on internment before an independent and impartial body.⁹⁵
- iii) **Procedures must be put into place to allow for individual recourse (appeal) in the event of alleged wrongful identification.** Such procedures are without prejudice to the rights of an internee to challenge his or her detention in *habeas corpus* or similar proceedings that may exist under domestic law.⁹⁶
- iv) Regardless of whether an internee introduced a challenge or not, **the legality of the internment should be initially, and then periodically, reviewed on a regular basis (at least every 6**

⁸⁷ UN Human Rights Committee, *General Comment No. 35: Article 9 (Right to Liberty and Security of Persons)*, 16 December 2014, CCPR/C/GC/35 ("HRC General Comment No. 35"), para. 15. See also *ICRC Opinion Paper*, page 3.

⁸⁸ HRC General Comment No. 35, para. 18; AP I, Article 75 (2) (d). See also *J. Pejic*, pp 381.

⁸⁹ *J. Pejic*, p.382.

⁹⁰ CRC, Article 37; GC IV Articles 24, 50, 68 and 76; API Articles 70 and 77(4); AP II Articles 4(3) and 6(4). HRC General Comment No. 35, para. 18; Committee on the Rights of the Child, *General Comment No. 6 (Treatment of unaccompanied and separated children outside their country of origin)*, CRC/GC/2005/6, 1 September 2005 ("CRC General Comment No. 6"), para 61. See also UN, *Rules for the Protection of Juveniles Deprived of their Liberty*, A/RES/45/113 ("Rules for the Protection of Juveniles"), available at: <http://www.refworld.org/docid/3b00f18628.html>; UN, *Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*, A/RES/40/33 of 29 November 1985, available at: <http://www.refworld.org/docid/3b00f2203c.html>.

⁹¹ CRC, Articles 37(b) and 38; GC IV Articles 24, 50, 68 and 76; API Articles 70 and 77(4); AP II Articles 4(3) and 6(4).

⁹² *J. Pejic*, pp. 375-391. See also *ICRC Customary Law Study*, Rule 99.

⁹³ These records, together with all information collected through the screening and registration also become important for subsequent verification of renunciation of military activity.

⁹⁴ Human Rights Committee, *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, para. 11.

⁹⁵ ICCPR, Article 9(4); *ICRC Opinion Paper*, page 9.

⁹⁶ ICCPR, Article 9(2); *HRC General Comment No. 35*, paras. 24-30.

months), by an independent and impartial body,⁹⁷ to ensure that the internment ceases as soon as the threat has ceased to exist.

- v) Children shall be given priority for review, with procedures that are accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.⁹⁸

UNHCR offices and other humanitarian actors should advocate for these procedural principles and safeguards to be upheld, and work closely with the ICRC in its efforts to promote and monitor such standards, including through capacity building for the host State, where needed.

Treatment and facilities during internment

Persons deprived of their liberty need to be held in suitable conditions for their physical and mental health and wellbeing, as well as their personal security. IHL and international human rights standards set out some provisions, including on suitable accommodation, food, hygiene, physical exercise, and allowing for contact with family and the outside world.⁹⁹

A few key principles include:

- As internment is non-punitive in nature (not based on criminal prosecution), **the conditions should likewise not be prison-like, nor should internees be held alongside convicted criminals or prisoners of war.**¹⁰⁰ At the same time, to ensure the civilian and humanitarian character of asylum, fighters/ combatants should not be accommodated within a refugee site (even within a section of the site).

This means that a separate facility will need to be identified or created by the host State, which in turn requires sufficient resources, both for the initial establishment and continuous running costs.

- **Torture and cruel, inhuman or degrading treatment are prohibited in all circumstances.**¹⁰¹ Internationally recognised standards also set out provisions limiting confinement, punishment, and the use of restraints.¹⁰²
- **The specific needs and potential vulnerabilities of women, girls and boys, the elderly and the disabled should be taken into account.**¹⁰³
- **Children should be held separate from, and at a distance away from, adults, with sufficient security measures to prevent harassment and abuse.**¹⁰⁴ Unless accommodated with a parent or caretaker (when this is in the child's best interests), children who are interned should be held in separate, child-appropriate facilities.¹⁰⁵ Information to children should always be provided in an age and gender sensitive manner.¹⁰⁶
- **Women are not to be held together with men and should, as far as possible, be under the supervision of women,**¹⁰⁷ with adequate measures to prevent SGBV.¹⁰⁸
- **New-borns and infants may stay with their mothers, while special arrangements should be sought, to the extent possible, for the care of other children, in line with their best interests.** To ensure family unity, family visits are to be facilitated.¹⁰⁹

⁹⁷ See Article 43(1) and 78(2) of the Fourth Geneva Convention, and ICRC Commentary to the Fourth Geneva Convention, pp. 261, 368-369, for international armed conflicts, and ICRC Opinion Paper, page 9, for non-international armed conflicts.

⁹⁸ UN, *Standard Minimum Rules for the Treatment of Prisoners*, 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 ("UN Standard Minimum Rules"), Rule 58; ICRC Opinion Paper, page 9.

⁹⁹ UN Standard Minimum Rules, Rule 58; *Rules for the Protection of Juveniles*, para. 59; GC III, Article 4 (B) (2).

¹⁰⁰ See, for example, GC III, Article 22; GC IV, Article 84.

¹⁰¹ UN, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), Articles 1 and 3.

¹⁰² UN Standard Minimum Rules, paras. 63- 71, Rule 11.

¹⁰³ *The Paris Principles; the Beijing Rules; Rules for the Protection of Juveniles*.

¹⁰⁴ *The Paris Principles*, p. 7.12.

¹⁰⁵ UN Standard Minimum Rules, Rule 29. If children are in prison with an interned parent, they are not to be treated as internees.

¹⁰⁶ *The Paris Principles*, p. 7.21.4.

¹⁰⁷ *Ibid*, p. 7.24.1.

¹⁰⁸ *Ibid*, p. 7.21.1

¹⁰⁹ UDHR, Article 16(3); ICCPR, Article 23(1); ExCom No. 85 (1998), paras. (u), (v), (w).

- **The possible protection concerns of other categories of internees, if housed together, need to be considered.** For example, based on the specific context, it may not be appropriate to accommodate deserters and active fighters/combatants together, nor military and non-military internees, nor members of opposing enemy forces.
- **The ICRC should have access to places of internment in order to monitor the treatment and conditions of internment in accordance with its mandates and operating modalities.**¹¹⁰
- UNHCR should have access to all persons believed to be persons of its concern. Other humanitarian organizations may also be granted access.

5.6.3 Repatriation of fighters/combatants to their country of origin

The framework for the repatriation of active fighters/combatants to their country of origin goes beyond the scope of this Guidance Note. The legal framework applicable will depend on whether there is an ongoing armed conflict,¹¹¹ whether this conflict is international or non-international,¹¹² and whether the host State is party to the conflict.¹¹³

In any circumstance, the **repatriation of a fighter/combatant can only take place if in compliance with the principle of *non-refoulement***. Where there's a real

risk of violations of fundamental rights if returned, such as torture or arbitrary deprivation of life, he or she must not be repatriated.¹¹⁴

5.6.4 Criminal prosecution of fighters/combatants

Where a fighter/combatant is suspected of having committed a criminal offence over which the host State has jurisdiction, **she or he should be investigated and prosecuted in accordance with national and international law.**¹¹⁵

Criminal prosecution is often an appropriate response to acts that may put the civilian and humanitarian character of asylum at risk, such as the recruitment or forced **recruitment of refugees, including of children, or the conduct of military training on the territory of the host State**. Such acts can be committed both by refugees and nationals. For certain crimes, international law requires the State to either prosecute or extradite.¹¹⁶

Internment should not be used in place of criminal prosecution where criminal prosecution is suitable and feasible, neither should it aim to punish an individual for previous conduct.¹¹⁷ At the same time, criminal prosecution and pre-trial detention on minor charges should not be used to avoid having to establish an appropriate internment facility for fighters/combatants.

¹¹⁰ During international armed conflict, the ICRC is mandated under international law to assist and protect detainees (GC III, Article 126; GC IV, Article 143). In other situations, it has a right of initiative to offer its services (see Common Article 3; the Statutes of the International Red Cross and Red Crescent Movement, Article 5). See also *ICRC Customary Law Study*, Rule 124.

¹¹¹ If there is no armed conflict, the internment of other States' armed forces in this situation may, depending on the circumstances, create a belligerent relationship between the two States, i.e. an international armed conflict, as per GC II Article 2. See *ICRC, Commentary on the First Geneva Convention*, Cambridge University Press, 2016 ("*ICRC Commentary GC I*"), paras. 236-244.

¹¹² In international armed conflicts, for example, repatriation of prisoners of war is regulated in GC III Articles 109-117 (before the end of active hostilities), and 118-119 (after the end of active hostilities), and Annex I: Model Agreement. Regarding the repatriation of fighters in non-international armed conflicts, see *ICRC Commentary GC I*, paras. 708-716.

¹¹³ For neutral States during international armed conflicts, see the 1907 Hague Regulations, Articles 1, 5, 11 and 12.

¹¹⁴ Under international human rights law and/or IHL, as applicable. See CAT, Article 1 and 3; ICCPR, Article 7; HRC General Comment No. 20, para. 9; HRC, General Comment No. 31 on the *Nature of the General Legal Obligation on States Parties to the Covenant*, U.N. Doc CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 12; CRC General Comment No. 6, para. 27; GC IV Article 45; Common Article 3; *ICRC Commentary GC I*, paras. 708-710.

¹¹⁵ Note that members of State armed forces participating in an international armed conflict cannot be prosecuted for lawful acts of war ("combatant immunity"). They can, however, be prosecuted for war crimes. See, for example, API, Article 43(2).

¹¹⁶ Such as grave breaches of the Geneva Conventions and of Additional Protocol I, see GC III, Article 129 and 130; GC IV Articles 146 and 147 and API Article 85. IHL also contains an obligation for States to investigate war crimes allegedly committed by their nationals or armed forces, and, if appropriate, prosecute the suspects. See, notably, *ICRC Customary Law Study*, Rules 156 and 158, as well as *ICRC GC I Commentary on Common Article 3*, in particular paras. 881-888. There are also specific obligations for Member States of the UN to prosecute, rehabilitate and reintegrate foreign terrorist fighters, including in S/RES/2178 (2014) and S/RES/2396 (2017). Regarding extradition request against asylum-seekers whose claims have still not been determined, see [Sections 5.6.3](#) and [5.8.5](#).

¹¹⁷ *J. Pejić*, pp. 375-391.

5.6.5 Other categories to be identified and separated from the refugee population

While this Guidance Note mainly provides guidance for the identification and separation of fighters/combatants, *i.e.* members of armed forces or groups (as defined in [Section 7](#)), there are also **other individuals who may pose a threat to the refugee population, or to the principle of the humanitarian character of asylum.**

Ensuring that fighters/combatants do not enter refugee sites is essential for maintaining their *civilian* character (*i.e.* in ensuring the protection of such sites from direct attacks). Under IHL, the most important consequence associated with fighter/combatant status is the loss of civilian status and thereby the loss of protection against direct attack. The presence of active fighters/combatants inside or in proximity of refugee sites thereby increases the risk of military attacks against the sites,¹¹⁸ as well as the risk of refugees becoming collateral damage.

Similarly, civilians lose their protection against direct attack for such time as they take direct part in hostilities (as defined in [Section 7](#)). In other words, only for such a time may they be directly attacked *as if they were fighters/combatants*. **Individuals who are taking direct part in hostilities may therefore also need to be identified and separated from the refugee population**, if their activities are, for example, conducted from inside or in proximity of a refugee site, or they otherwise pose a serious security threat to the refugee population.

Other civilians, who are not taking direct part in hostilities, but rather contributing to the general war effort (as defined in [Section 7](#)) do not lose their protection against direct attacks according to IHL, and therefore do not pose a threat to the *civilian* character of refugee sites. Their presence may, however, put into question the *humanitarian* character

of the site, as well as the peaceful, social and non-political nature of the grant of asylum. Their acts may also run counter to their obligation to abide by the laws and regulations of the host State.

For such individuals, an assessment is required to determine the potential security risk to the refugee or host community, and whether the individual needs to be separated and subject to other control measures for such reasons. The emphasis needs to be whether the individual, because of his or her involvement with armed or military activities, pose a threat to refugees, or to the overall integrity of the institution of asylum. This could, in particular, be relevant for individuals who are recruiting (whether voluntary or by force) or training refugees for military or armed activities, who are in a political or administrative decision-making position, or who are otherwise substantially contributing to the overall war effort.

Finally, the host State may find it necessary to **separate other individuals for reasons linked to security or criminal justice**. These may include refugees who are accused of serious crimes, presenting a security threat to the host State (while not falling into the categories above), who are excluded from refugee protection, or undergoing exclusion, cancellation or revocation procedures. There may exceptionally be grounds for the separation and confinement of such individuals, but at all times, the legal basis and procedures for the various measures (including internment or detention) in national law need to be clear and transparent.¹¹⁹ When subjecting such individuals to internment or detention, relevant distinctions due to the reason for deprivation of liberty (including, as appropriate, separate facilities) should be respected, and due regard should be given to the protection needs of each individual or group of individuals.

¹¹⁸ Refugee sites are considered as *prima facie* civilian objects in terms of the principle of distinction under IHL. However, the mere presence of fighters/combatants within a refugee site does not, in and of itself, turn these, or parts of these, into military objectives. See AP I, Articles 48, 51 and 52(2); APII, Article 13; ICC Statute, Articles 8(2)(b)(i) and (ii) and 8(2)(e)(i); ICRC Customary Law Study, Rule 8. It's also worth noting that, even if such refugee sites, or parts of these, are being used for military purposes in a manner that could turn them into military objectives, parties to the conflict remain obliged to respect the principles of distinction and proportionality, and the obligation to take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to sites or civilian objects located within such sites. See API, Art. 48, 51 and 57; and ICRC Customary Law Study, Rules 1, 7, 11, 13, 14 and 15.

¹¹⁹ 1951 Refugee Convention, Articles 9, 26 and 31; UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html>.

In very specific circumstances, individuals or groups may voluntarily seek separation as a self-protection measure, for example, should a particular group not be accepted by the majority of the refugee population. To avoid the misuse of separation measures, other protection measures should be put in place for such cases instead, such as for example humanitarian evacuation or relocation.

5.6.6 Families of identified fighters or combatants

The identification of an individual as a fighter/ combatant does not preclude his or her civilian family members or extended family (who are not considered as fighters or combatants) from seeking and obtaining refugee status, including on a *prima facie* basis.¹²⁰

The civilian family members of a fighter/ combatant should not be separated, subjected to control measures, or in any other way treated differently from other refugees solely based on their family ties.

The best interests of the child should be the determining factor when assessing whether infants or children may stay in internment facilities with their mothers, or with other caretakers or family members, or if other and more appropriate care arrangements can be identified.¹²¹ During any period of separation from family members, **family unity must be maintained in other appropriate ways, such as regular family visits and communication.**¹²²

If required, measures should be taken by UNHCR and other humanitarian actors to minimize protection risks for family members of identified fighters/ combatants, including extended family, as a consequence of the community's or the host State's perceptions, such as verbal or physical threats, reprisals, or collective punishments.

As the separation of fighters/ combatants may lead to a number of female-headed households in a refugee

site, increased monitoring and other protection measures may also be required.

5.6.7 Roles and responsibilities

The responsibility for separation measures lies with the relevant authorities of the host State (border or law enforcement officials, or, where relevant, security or military forces).

In the exceptional circumstances where the host State is either unable or unwilling to fulfil these responsibilities, **engagement with other relevant actors, such as UN or regional peace operations**, may be required. Such situations may require a collective engagement of the UN Country Team/ Humanitarian Country Team, rather than by individual UN entities, in particular when faced with a large number of, or groups of, active fighters/ combatants.

UNHCR and other humanitarian organisations cannot assume responsibility for separation and control measures applied to persons identified as fighters/ combatants. They may, however, **provide technical support and advice to the host State on such measures, and, where appropriate, financial and other support.**¹²³ Technical support and advice is, in particular, relevant to the legal framework, procedural safeguards, and conditions for internment, as well protection analyses of the specific protection needs of women and children, and of civilian family members.

¹²⁰ UNHCR, *Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status* ("GIP No. 11"), 24 June 2015, HCR/GIP/15/11, para. 24, available at: <http://www.refworld.org/docid/555c335a4.html>.

¹²¹ United Nations, *Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders* ("Bangkok Rules"), General Assembly Resolution 2010/16, Rules 49 and 52.

¹²² UDHR, Article 16(3); ICCPR Article 23(1); ExCom No. 85 (1998), paras. (u), (v), (w).

¹²³ Any support provided by UNHCR or other UN agencies for internment and other control measures need to be in compliance with the *UN Human Rights Due Diligence Policy*. See [Section 6.4.5](#) for guidance.

KEY ACTIONS:

- Advocate for the host State to **separate fighters/combatants from refugees**, and, where necessary, impose other measures of control, in line with national and international law;
- Highlight the **special needs of women, girls and boys** in any control measures (in particular for internment);
- UNHCR and other humanitarian actors may provide **technical support and advice, and, where appropriate, financial and other support**, to the host State (provided that, for UN agencies, such support is in compliance with the *UN Human Rights Due Diligence Policy*);
- In the case of internment, **advocate for an appropriate legal basis, procedural standards and safeguards, and minimum standards of treatment and facilities**, and provide protection analyses of the protection needs of women, girls and boys, and family members of interned fighters (see Annex 6 for a quick reference guide);
- **UNHCR should maintain dialogue and cooperation with the ICRC** on the separation and internment of fighters/combatants.

5.7 Verifying renunciation

5.7.1 Access to asylum procedures

Persons identified as fighters/combatants cannot gain access to asylum procedures until they have been found to have genuinely and permanently renounced military activities.¹²⁴ In the context of the civilian and humanitarian character of asylum, renunciation is deemed to be *permanent* if there is little likelihood that the individual will resume such activities, and *genuine* if the claim is to be found credible based on the information available during the verification.

Renunciation will normally remove the threat posed to the civilian and humanitarian character of asylum, and to refugee and hosting communities. The grounds for separation and other control measures against the individual will therefore generally no longer apply.¹²⁵

If former fighters/combatants seek international protection after renunciation has been verified by the relevant authority of the host country, they should be able to have their claims examined, with particular attention paid to the possible application of the exclusion clauses. At this stage, the individuals may benefit from assistance or services available to other asylum-seekers, and, in the absence of other security concerns, gain access to a refugee site. They may also benefit from available rehabilitation, skills training or peace education, DDR or similar programmes, where such programmes are available.

Children formerly associated with armed forces or groups are primarily to be considered as victims. They are therefore to be prioritized for verification of renunciation, using simplified or accelerated procedures, when appropriate. Such procedures need to be age-appropriate, and take into account vulnerabilities and protection needs.

¹²⁴ ExCom No. No. 94 (2002), para. (c)(vii); GIP No. 11, para 22.

¹²⁵ With the exception of prisoners of war (PoW) and internment in the context of the law of neutrality. See, for example, GC III, Articles 7, 109 and 118. See also M. Sassoli, 'The Status, Treatment and Repatriation of Deserters under International Humanitarian Law', International Institute of Humanitarian Law, Yearbook 1985 (Villa Nobel, San Remo 1985), page 25.



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5.7.2 Procedure for the verification process

The procedures for verification of renunciation will depend on the legislation, regulations and practices of the host State. The following have been identified as good practices:

- A fighter/combatant who expresses his or her wish to renounce is able to do so, verbally or in writing, to a **competent authority identified as such by the host State**.
- The individual is provided with the opportunity to **clarify his or her intentions through interview(s)**, conducted in a language in which he/she is comfortable.
- Interviews are complemented with **observations about the individual's behaviour since arriving in the host State**. Centralised record-keeping and case management – throughout registration, screening/identification, and separation – can help support this process, and facilitate the assessment of genuineness.
- Consideration is given to **outside factors or circumstances that may influence the person's desire or ability to continue his or her military activities**, such as political changes in the country

of origin, the defeat or surrender of an armed group, the individual's family circumstances, and his or her physical condition.

- **Verification takes place over a certain period of time**. Depending on the circumstances, this could range from 1-12 months.
- **Priority is given to the swift verification of renunciation by children**, so as to ensure their timely and appropriate access to appropriate care arrangements and other protection measures, in line with their best interests.
- The processes of verifying renunciation is **kept confidential so as to avoid any recrimination or retaliation against the individual or his/her family members**. During the verification period, the person may also need to be held separately from individuals who have *not* renounced (for example if the individual complains of undue influence or intimidation by military structures or personnel inside the internment facilities).

The guiding standard of proof is whether there are “serious reasons for considering” that the individual has *not* genuinely and permanently renounced his or her intentions to take up arms or military activity, taking into account the evolving behaviour of the individual, and any changes in his

or her circumstances or the situation in the country of origin. The inherent difficulty of an internee presenting “evidence” or “proof” should be taken into consideration, with a focus on whether he or she, through interview(s) and/or behaviour, has credibly manifested his or her intention not to resume armed or military activities.

Where the relevant authority makes a negative decision regarding renunciation and the individual concerned seeks a review of this decision, it should, when possible, be **reviewed by a different entity of the responsible body, or by a separate body**. A regular review should take place (at least every 6 months) to take into account his or her evolving behaviour, any changes in his or her circumstances, and/or in the country of origin (see [Section 5.6.2](#)).

5.7.3 Possible indicators of genuineness and permanence

In making its determination of whether a renunciation is genuine and permanent, the relevant authority may take into account the following (non-exhaustive) factors as indicators:

BACKGROUND AND INDIVIDUAL CIRCUMSTANCES:

- the individual's background, occupation and rank in the armed forces/group and length of service (personnel with a long military career or an ingrained way of life may have more difficulty detaching from it);
- whether recruitment was forced or voluntary (those who were forcibly recruited, or ill-treated during service, may have a stronger desire to end their involvement);
- whether demobilisation was forced or voluntary (deserters or those who have come forward through self-identification can be assumed to have renounced, and shorter verification periods and procedures would normally be appropriate);
- whether the individual was personally involved in violent acts (the more active and/or violent the involvement, the longer time it may take to verify renunciation);
- length of time since demobilization (if a long time ago, a shorter period of verification would normally be required).

VIEWS AND STATEMENTS DURING INTERVIEW(S):

- the individual's views, feelings or perceptions of the ongoing armed conflict or violence;
- the individual's views, feelings or perceptions of his or her past or future role in the conflict;
- expressions of empathy for the victims of the conflict or regret for past involvement;
- demonstration of general exhaustion, weariness or homesickness;
- dissatisfaction with the armed forces or group, its leaders, or political aspects of the conflict;
- prospects for family reunion, or particular hardship caused by the separation from family (those with family members in the host State may have a different motivation to renounce);
- views on his or her possibilities of earning an alternative living once returned to civilian life.

COMPLEMENTARY INFORMATION FROM OTHER SOURCES:

- relevant and credible information about the individual's behaviour or activities since entering the host State (including possible returns to the country of origin or, if relevant, travel to areas in the host State affected by armed conflict or violence);
- whether the individual has expressed an interest to participate in (or participated in) rehabilitating programs, peace education, skills or vocational training, reintegration schemes, counselling, or similar programmes;
- whether the individual has completed a DDR or similar programme in the host State, or expressed an interest in such;
- whether the individual's health or age would lessen his or her opportunities for future military involvement (for example, due to limited mobility);
- the nature of the ongoing conflict and its parties (e.g. level of violence and occurrence of atrocities, entrenched political divisions, the surrender of groups etc.).

5.7.4 Written undertakings

In some circumstances, the **host States may require fighters/combatants (or former fighters/combatants) to sign an undertaking not to engage in military activities**, either at the time of their identification and separation, or during the verification of renunciation.

If such undertakings are used, **the individual should be informed about the obligations of signing such an undertaking, and the consequences of non-compliance**. He or she should be counselled as to his or her rights and obligations in the host country, the need to answer truthfully regarding his or her activities (and the consequences of not doing so), and the available protection from forced return to the country of origin, if relevant.

Some host States have also requested individuals to sign an undertaking not to return to the host State when they are re-entering their country of origin (for example to prevent fighters from going back and forth across the border). Should circumstances change and the person seeks entry for the purposes of seeking asylum, the previous signing of such an undertaking will not justify *refoulement*.

5.7.5 Fighters/combatants who do not renounce or do not seek international protection

Fighters who do not renounce may be held in internment by the host State, provided that lawful grounds for that internment continue to exist.¹²⁶

That means that, outside the specific legal framework for neutral States during an international armed conflict (see [Section 5.6.2](#)), as soon as the person no longer presents an imminent threat to the State's security which necessitates internment, she or he should normally be released. This may or may not coincide with the renunciation of military activities. Other, less restrictive, measures to control security could still be applied, if necessary and reasonable in the circumstances.

Fighters who renounce, but do not seek international protection, as well as prisoners of war who are not interned or are released on parole, are in principle subject to the regular immigration and residency laws as a foreigner in the host State. The State may choose to provide the person with legal residence in the country, or, in certain circumstances, repatriate him or her to the country of origin (see [Section 5.6.3](#)).

Individuals who do not renounce, or renounce but do not seek international protection, remain outside the scope of UNHCR's mandate.

Those who are deprived of their liberty in relation to an armed conflict or other situation of violence should benefit from visits from the ICRC.¹²⁷

5.7.6 Roles and responsibilities

Within the host State, **an authority needs to be identified** as responsible for taking decisions on whether an individual has genuinely renounced military activities. This authority may, in practice, be the same as the one identifying fighters/combatants (see [Section 5.5.7](#) above).

Subject to capacity and mandates, **representatives of international agencies may be called upon to participate or to provide general advice and guidance on verification procedures**. Such organisations would typically include the UNHCR or UN peace operations.

UNHCR and other humanitarian actors may also, when appropriate, support the verification of genuineness and permanence through **protection analysis regarding potential security risks to specific individuals and/or groups**.

¹²⁶ In international armed conflicts, combatants who have fallen into the power of an adverse party to the conflict are to be considered as prisoners of war and may be interned until the end of hostilities, as per GC IV.

¹²⁷ ExCom No. 94 (2002), para. (c)(vii); GIP No. 11 para 22.

KEY ACTIONS:

- **Verification of renunciation of military activities** should be conducted by a relevant authority of the host State, over a reasonable period of time, assessing the individual's personal circumstances, expressed views and statements, and information regarding the individual's behaviour and activities since entering the host State;
- Priority should be given to the **renunciation by children formerly associated with armed forces or groups**;
- Former **fighters/combatants** who have genuinely and permanently renounced military activities, and who seek international protection, **should be able to have their claims to asylum determined, access refugee sites, and receive assistance and services at par with other asylum-seekers**;
- Where there are concerns or questions about the process of verifying renunciation, **UNHCR and other humanitarian organisations may, as appropriate, advice and support the host authorities**, including through protection analysis. UN peace operations and other UN entities may also, if present, provide specialized guidance.

5.8 Refugee status determination of former fighters/combatants

5.8.1 Non-applicability of *prima facie* recognition of refugee status

Although a *prima facie* approach may have been applied, for example in the context of large-scale arrivals of persons in need of international protection, **deserters and former fighters/combatants who have renounced military activities should not be granted refugee status on a *prima facie* basis.**¹²⁸ Their applications should be determined individually.

¹²⁸ GIP No. 11, para 22; UNHCR, *Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the Context of Article 1A (2) of the 1951 Convention and/or 1967 Protocol*, HCR/GIP/13/10/Corr.1, 12 November 2014 ("GIP No. 10"), para II.

¹²⁹ See [Section 7](#).

¹³⁰ UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees* ("GIP No. 5"), HCR/GIP/03/05, 4 September 2003, para. 28; UNHCR, *Background Note on the Application of the Exclusion Clauses* ("Background Note on Exclusion"), para. 91-93; *Guidelines on Mass Influx*, para. 15. See also OAU Convention, Article I (5).

¹³¹ GIP No. 10, para II.

¹³² GIP No. 8, in particular paras. 19-23 and 52 (iii).

The same applies to **all persons identified as having been associated with armed forces or groups, but not necessarily falling within the definition of a fighter/combatant**,¹²⁹ such as persons who conducted military activities a long time ago, in a previous conflict.

5.8.2 Examination of inclusion and exclusion clauses

Asylum claims of former fighters/combatants should undergo an individual assessment which allows for a **thorough examination of the refugee inclusion criteria, as well as the possible application of the exclusion clauses in Article 1F** of the 1951 Convention. UNHCR's guidance for the exclusion clauses are set out in the *Guidelines and Background Note on the Application of the Exclusion Clauses and the Guidelines on the Application in Mass Influx Situations of the Exclusion Clauses*.¹³⁰ Persons claiming asylum due to desertion from, or conscientious objection to, military service, should be considered in line with the *Guidelines on Claims to Refugee Status related to Military Service*.¹³¹

Children claiming asylum related to the recruitment or use by armed forced or armed groups should be considered in line with the *Guidelines on Child Asylum Claims*.¹³²

The assessment of the potential application of the exclusion clauses contributes to safeguarding the integrity of the institution of asylum, as it prevents abuse by individuals who are not deserving of international refugee protection.

However, not all former fighters/combatants are excludable from refugee status. **Having participated in an armed conflict does not, in and of itself, constitute grounds for exclusion, nor does mere membership of a particular armed force or group, or the fact of having been separated and interned as a fighter/combatant.**

An assessment of the individual applicant’s conduct is required. If there is evidence that the individual has been involved in a conflict which is characterised by serious violations of IHL or human rights law, the question of individual responsibility should be examined. Where the particular armed force or group is known to have been particularly violent, membership, if voluntary, may raise a rebuttable presumption that the individual concerned has contributed to the commission of violent crimes. In such cases, the burden of proof is reversed. Caution must, however, be exercised when applying a presumption. It is necessary to examine the group’s organisational structure, the individual’s position in it, and his or her ability to influence its activities at the relevant time. Regard must also be had to the possible fragmentation of the group, as one faction may not be able to control another, as well as the possibility that unauthorized acts may have been committed in the name of the group. Any defences or other circumstances negating individual responsibility should also be examined accordingly.¹³³

Special protection concerns arise where children have been forced into recruitment and service, or have “volunteered” for military activities. A child’s vulnerability and immaturity make him or her particularly susceptible to coerced recruitment and obedience, and must be taken into account during the determination of a claim.¹³⁴ See also the particular considerations related to the application of the exclusion clauses highlighted in [Section 5.8.3](#).

5.8.3 Procedural aspects

In practice, the assessment of military activities and determination of eligibility for refugee status may occur as one single process. Procedural fairness requires a thorough examination of each individual case, and the appropriate standards of due process

need to be ensured, including:

- ➡ a personal interview by a qualified officer;
- ➡ advice on the nature and purpose of the proceedings;
- ➡ access to a trained interpreter;
- ➡ case review by trained and competent government (and/or UNCHR) officials;
- ➡ notification in writing of the reasons for rejection or exclusion decisions;
- ➡ review/ appeal procedures.¹³⁵

The individual being assessed has a duty to present a truthful and complete statement, and the decision-maker has a reciprocal duty to assist the applicant in presenting the elements that are material to determining eligibility. Non-cooperation in the assessment, or lack of credibility of the applicant’s statements may, in certain circumstances, result in the rejection of a claim, but are an insufficient basis on their own to assume the applicant’s individual responsibility for excludable acts.¹³⁶ The applicable standard of proof for the application of exclusion based on Article 1F of the 1951 Convention is “serious reasons for considering” that the individual has committed acts within the scope of this provision.¹³⁷

In cases concerning children, special procedural and evidentiary safeguards apply. A greater burden of proof will fall on the decision maker than in other claims for refugee status, especially if the child is unaccompanied.¹³⁸ The exclusion clauses apply in principle, but only if the child has reached the age of criminal responsibility and possesses the mental capacity to be held responsible for crimes within the scope of Article 1F of the 1951 Convention.¹³⁹ Great care should be exercised in considering exclusion with respect to children, and defences such as duress should, in particular, be examined carefully.¹⁴⁰

¹³³ See, in particular, GIP No. 5, paras. 10-30.

¹³⁴ UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08 (“GIP No. 8”), in particular paras. 19-23, and 52 (iii); GIP No. 10, paras. 37-41; GIP No. 5, para. 28;

¹³⁵ For further guidance, see UNHCR’s Procedural Standards for RSD, available at: <https://www.unhcr.org/4317223c9.pdf>.

¹³⁶ *Guidelines on Mass Influx*, para. 29.

¹³⁷ GIP No. 5, paras. 34-35.

¹³⁸ GIP No. 10, paras. 70-72; GIP No. 8, paras. 65-77; ExCom No. 107 (2007).

¹³⁹ GIP No. 5, para. 28. See also GIP No. 8, paras. 60-61.

¹⁴⁰ *Ibid.*



5.8.4 Cancellation and revocation procedures

If information comes to light indicating that an individual should have been identified as a fighter/ combatant when he or she was recognized as a refugee, whether through group-based recognition or individual RSD, cancellation procedures may need to be instituted to assess whether he/she was wrongly recognized.

It needs to be re-assessed whether the individual was admissible into the asylum procedure at the time of the initial determination, and, if this is found to be the case, all relevant information will need to be considered with a view to determining whether the inclusion criteria were met at the time of the initial recognition and/or any current international protection needs which may not have existed previously, and whether or not an exclusion clause should have been applied. In cases where refugee status is cancelled because the individual was found to be a fighter/combattant at the time of the initial determination, it is necessary

to determine whether he or she has genuinely and permanently renounced military activities since then, and if this is the case, whether the refugee criteria are met at the present time.¹⁴¹

If a refugee is found by the relevant authority to have taken up (or resumed) military activities after recognition as a refugee,¹⁴² the individual may need to be removed from the refugee site (if relevant), and separated or subjected to control measures, in line with [Section 5.6](#) above. Military activities are by nature incompatible with the civilian and humanitarian character of asylum, and active fighters/ combatants are therefore not to benefit from international refugee protection.

Refugees who have taken up (or resumed) military activities after recognition have engaged in acts which are incompatible with their status, and should not benefit from protection or humanitarian assistance

¹⁴¹ UNHCR, *Note on the Cancellation of Refugee Status* ("Cancellation Note"), 22 November 2004, para. 1(i); UNHCR, *Guidelines on the Cancellation of Mandate Refugee Status* (internal) ("Guidelines on Cancellation"), 22 November 2004; UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* ("RSD Handbook"), para. 141; Guidelines on Exclusion, 4 September 2003, para. 6; Background Note on Exclusion, para. 16.

¹⁴² As defined in [Section 7](#). See [Sections 5.5.5 – 5.5.6](#) above on the procedures for identification.

provided by UNHCR and its partners under its international protection mandate for refugees.¹⁴³

Revocation of the individual's refugee status may be appropriate if there are serious reasons for considering that he/she has committed acts covered by Article 1F(a) or (c) of the 1951 Refugee Convention.¹⁴⁴ The host State may also wish to pursue criminal prosecution, in accordance with national law, for military activities conducted after arrival in the host State.¹⁴⁵

The individual may still, depending on the circumstances, be protected from *refoulement* in accordance with IHL or international human rights law.¹⁴⁶

5.8.5 Criminal prosecution and extradition of former fighters/combatants

If the host State has jurisdiction over the acts that gave rise to the exclusion, or other crimes committed prior to renunciation, **criminal proceedings in the national justice system may be initiated.**¹⁴⁷ For certain crimes, international law requires the State to prosecute or extradite.¹⁴⁸

If an extradition request is submitted against an individual who has renounced military activity and been admitted to the asylum procedure, **he or she is protected from *refoulement* by virtue of Article 33(1) of the 1951 Convention, and international customary law.**¹⁴⁹ This precludes the extradition of the individual until a final rejection of his/her asylum claim.¹⁵⁰

5.8.6 Reintegration of former fighters/combatants

Where former fighters/combatants are granted refugee status and return to civilian life in a refugee site or other refugee-hosting area, **protection and gender-sensitive measures should be considered to assist their reintegration.** Such reintegration programmes should be initiated in close collaboration with relevant development actors, such as UNDP, and be aligned with programmes targeting other fighters/combatants in the country or region, where relevant.

Reintegration could include livelihoods, educational opportunities, or psycho-social support, where appropriate, and should be carefully planned and implemented to avoid any tension within the refugee community or with the host community. The *UN Integrated DDR Standards (IDDRS)* should be consulted for further guidance, in particular module 4.30 on reintegration, and modules 5.10, 5.20 and 5.30 on the reintegration of children, youth and women.¹⁵¹

UNHCR and child protection partners should seek to ensure that **children formerly associated with armed forces or groups are prioritized and immediately included in case management and multi-sectoral support according to their needs and gender.** Key areas include alternative care, life skills education, psycho-social assistance, education and livelihoods programmes, and health interventions, as well protective measures to prevent re-recruitment.¹⁵²

Efforts to trace and reunify children with their families should be guided by the child's best interests,

¹⁴³ See [Section 4.3](#) ("Access to assistance and services").

¹⁴⁴ *GIP No. 5*, para. 6; *Background Note on Exclusion*, paras. 11 and 17; *Cancellation Note*, para. 1(ii); Guidelines on Cancellation, para. 3(ii).

¹⁴⁵ 1951 Refugee Convention, Article 2; ExCom No. 72 (1993).

¹⁴⁶ Including CAT Article 3 and ICCPR Article 7. See also *HRC General Comment No. 20*, para. 9. See [Section 5.6.3](#).

¹⁴⁷ Note that members of State armed forces participating in an international armed conflict cannot be prosecuted for lawful acts of war ("combatant immunity"). They can, however, be prosecuted for war crimes. See, for example, API, Article 43(2).

¹⁴⁸ See *supra*, 115.

¹⁴⁹ UNHCR, *Note on the Principle of Non-Refoulement*, November 1997, available at: <http://www.refworld.org/docid/438c6d972.html>; Cambridge University Press, *Summary Conclusions: The Principle of Non-Refoulement*, June 2003, available at: <http://www.refworld.org/docid/470a33b00.html>; UNHCR, *Intervention before the Court of Final Appeal of the Hong Kong Special Administrative Region in the case of C, KMF, BF*, 31 January 2013, Civil Appeals Nos. 18, 19 & 20 of 2011, available at: <http://www.refworld.org/docid/510a74ce2.html>.

¹⁵⁰ Even in the case of a final rejection of an asylum claim, the person may still be protected from *refoulement* based on international human rights law or IHL. See CAT, Article 1 and 3; ICCPR Article 7; *HRC General Comment No. 20*, para. 9. See also [Section 5.6.3](#).

¹⁵¹ UN, *Integrated DDR Standards ("IDDRS")*, 2006, Modules 4.30 (reintegration), 5.10 (women, gender, and DDR), 5.20 (youth and DDR) and 5.30 (children and DDR), available at: <http://www.unddr.org/iddrs-framework.aspx>.

¹⁵² The Paris Principles, pp. 7.33 – 7.84 on family reunification and care arrangements, support for families and communities, prevention of re-recruitment, material assistance, health, education, vocational/skills training, livelihoods, and psychosocial aspects.

KEY ACTIONS:

- Former fighters/combatants who have subsequently renounced military activities, and who seek international protection, **need to undergo individual refugee status determination and should not benefit from *prima facie* status.** The possible application of the exclusion clauses should be given due consideration during the determination of refugee status;
- If the host State has jurisdiction, **criminal proceedings through the national justice system may be initiated against former fighters/combatants;**
- If an extradition request is submitted against an individual who has been admitted to the asylum procedure, he/she is **protected from *refoulement* in line with Article 33(1) of the 1951 Convention, and international customary law;**
- UNHCR may, in line with its mandate, **support and provide assistance to the host State** in the form of training, technical support, legal advice or guidance;
- The wider UN system, in particular UN peace operations, UNICEF, and development actors, such as UNDP, may, where present, **provide support to the host State on issues related to reintegration,** including for children.

in line with the *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*,¹⁵³ and *UNHCR's Guidelines for Determining the Best Interests of the Child*.¹⁵⁴

5.8.7 Roles and responsibilities

Refugee status determination, criminal prosecution and the handling of extradition requests for former fighters/combatants is the responsibility of the host State.

In accordance with its mandate, UNHCR may undertake mandate RSD, in particular if a State has not yet acceded to international refugee instruments or established effective national procedures. In other situations, UNHCR's role consists of supporting and providing assistance to the host State on RSD in the form of training, technical support, legal advice, or guidance.

Where present, the wider UN system, in particular UN peace operations and relevant development actors (such as UNDP), may provide support to the host State on issues related to the reintegration of former fighters/combatants.

Specialized child protection agencies, such as UNICEF, should be brought in to support the reintegration of children formerly associated with armed forces and groups, including the provision of multi-sectoral support.

¹⁵³ *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, available at: <https://bit.ly/2z46i9l>.

¹⁵⁴ UNHCR, *Guidelines on Determining the Best Interests of the Child*, May 2008, available at: <http://www.refworld.org/docid/48480c342.html>.

6. RELEVANT ACTORS, ROLES AND RESPONSIBILITIES

6.1 Applying a multi-stakeholder and partnership approach

This Guidance Note is built on the premise that **solutions to complex security challenges – such as maintaining the civilian and humanitarian character of asylum – must be sought in a holistic manner.** While the primary responsibility rests with the host State, a multi-stakeholder and partnership approach is often required in practice. Such an approach should be based on a shared understanding of States' experiences and genuine security concerns, and be guided by the overarching principles and standards of international law (see [Section 4.3](#)).

In light of the increasing complexity of armed conflicts, and of cross-border movements, engagement with a broader network of stakeholders is more important than ever.¹⁵⁵ This may include, when appropriate, all pillars of the UN (human rights, development, and peace and security), other international and regional organisations, and other States.

In particularly complex situations, which invoke aspects of international peace and security, for example due to the presence of a large number of, or groups of, active fighters/combatants, **interventions may require a collective engagement of the UN Country Team/ Humanitarian Country Team as a whole, rather than by individual UN entities.** As complex situations are often intertwined with high risk security environments, the need to consider related activities within the UN Programme Criticality assessment process may also be warranted.

This Guidance Note seeks to provide guidance to UNHCR and other relevant actors on how such a collaborative and holistic approach can be implemented in practice, taking into consideration the complementary roles, capacities and mandates of the various actors involved, and at the same time maintaining the primary responsibility of the host State.

6.2 Primary responsibility of the host State

The primary responsibility for the protection of refugees and asylum-seekers lies with the host State.¹⁵⁶ The authorities of the host State therefore need to do all within their capacity to ensure that the civilian and humanitarian character of asylum is maintained, and to offer effective security for *all areas hosting refugees*.

The key measures put forward in this Guidance Note are issued by UNHCR, pursuant to its mandate, and as part of its guidance, support and assistance to States on the protection of refugees.¹⁵⁷ It seeks to **provide the host State with practical and concrete examples on what maintaining the civilian and humanitarian character of asylum might entail in practice,** depending on the operational context and the risks identified within that context.

First and foremost, **the host State needs to ensure that sufficient security resources, personnel and training is made available to allow for key measures to be undertaken as early as possible.** This includes, during emergency preparedness, to identify the relevant authorities responsible for security, disarmament, identification and separation measures, and, where necessary, enact national legislation and procedures for such measures, in conformity with the State's international legal obligations. A range of government entities may need to be involved, including foreign affairs, refugee/humanitarian agencies, border security, police, immigration, the armed forces (if required), and regional and local authorities. Existing structures can be used to manage the response, or a specific coordination mechanism, such as an interagency taskforce, can be established. Where possible and required, a task-force is recommended led by the host State, with the support of UNHCR and other relevant partners.

¹⁵⁵ GCR final draft, paras. 33-36. New York Declaration, paras. 69 and 73, and its Annex I, paras. 2 and 5(a), (g) and (h), and 17.

¹⁵⁶ GCR final draft, paras. 33 and 56; New York Declaration, para. 73; S/RES/1208 (1998), para. 3; S/RES/1265 (1999), preamble; S/RES/1674 (2006), para. 14; A/RES/68/141, paras. 7 and 21; ExCom No. 48 (1987), para. 4(b); ExCom No. (2002), paras. (a), (b) and (c).

¹⁵⁷ See UNHCR Statute, para. 8(a); 1951 Refugee Convention, para 35; Article II of its 1967 Protocol.

Secondly, the authorities of the host State, advised as required by UNHCR and other relevant partners, should **assess whether additional support, technical guidance or advice, or capacity building is needed** from other States, UNHCR and other UN entities, regional or international peace operations, and/or other organisations, such as the ICRC.

Good practices include:

- The establishment of an “Inter-Agency Task Force” to bring together all relevant actors (such as local and central government authorities, law enforcement, security, immigration, UNDP, UNICEF, DPO, national and international NGOs), under the leadership of the host State, and supported by UNHCR;
- The development of a “National Plan of Action for Maintaining the Humanitarian and Civilian Character of Asylum”, with the support of UNHCR and the UN Country Team;
- The involvement of and consultation with local and regional authorities, including local police and border officials, from the earliest stages of emergency preparedness;
- Development of standard operating procedures by the host State, with UNHCR support, for the identification of fighters/combatants during large-scale arrivals of persons in need of international protection.

6.3 Support from other States

If the host State lacks the capacity to deal with the increased security requirements that a mass refugee influx may entail, or is otherwise unable to discharge its responsibilities, **other States and regional organizations are encouraged to assist and support the host State in maintaining the civilian and humanitarian character of asylum**, in line with the principles of international solidarity, cooperation and

burden-sharing.¹⁵⁸ This commitment was reiterated by States in the consultation process for the Global Compact on Refugees.¹⁵⁹

Such support and cooperation may include, where relevant:

- i) advocacy, standard-setting and political support;
- ii) mobilising adequate resources to support and assist the host State, including providing material resources (such as personnel, equipment, training or logistics, technical advice, and consultation); and
- iii) support for reintegration of individuals who have renounced military activity. Other States should also seek to support the provision of durable solutions (*i.e.* voluntary repatriation, local integration, and resettlement), as appropriate.

During an ongoing armed conflict, UNHCR and other humanitarian actors should be particularly mindful of promoting adherence to the humanitarian principles, and to maintain a clear distinction between humanitarian and military/political objectives of States.¹⁶⁰

Good practices include:

- Direct bilateral (“State-to-State”) support for refugee sites and other refugee-hosting areas, and protection-sensitive security measures for refugees;
- Participation of key States (including donors) in the inter-agency coordination mechanism or task-force (on invitation from the host State);
- Mobilisation of support to the host State through the UN Security Council, the UN General Assembly, or through relevant regional organisations, such as for example the African Union (AU) or the Economic Community of West African States (ECOWAS).

¹⁵⁸ GCR final draft, para. 3; New York Declaration, para. 68; S/RES/1674 (2006), para. 13; A/RES/68/141 (2013), paras. 7 and 37; ExCom No. 48 (1987), paras. 3 and 4(b); ExCom No. 94 (2002), para. (f); No. 100 (2004), para. (j); UNHCR, Standing Committee, *The Security, Civilian and Humanitarian Character of Refugee sites and Settlements: Operationalizing the “Ladder of Options”* (“Ladder of options”), EC/50/SC/INF.4, 27 June 2000, para.6; Common Article 1 to the four Geneva Conventions of 1949.

¹⁵⁹ GCR Final Draft, para. 5. See also New York Declaration, para. 68.

¹⁶⁰ OCHA on Message: Humanitarian Principles, June 2012, available at: <https://bit.ly/2FewLFS>

6.4 UNHCR's role

6.4.1 Supervisory, monitoring, assistance and advisory function

As highlighted above, working to preserve the civilian and humanitarian character of asylum falls within UNHCR's international protection mandate.¹⁶¹ In particular, UNHCR has the supervisory, monitoring, advisory and assistance role in support of the host State,¹⁶² which requires all its field operations to, at a minimum:

- ➔ Engage with host State authorities on the civilian and humanitarian character of asylum – both during the emergency preparedness stage¹⁶³ and by raising potential concerns and advocating for action during the response stage – based on the overarching principles and standards outlined in [Section 4.3](#) above;
- ➔ Advise, as appropriate, the host State on arrangements to ensure the safety and security of *all areas hosting refugees* (see [Section 5.3](#) above);
- ➔ Facilitate, if needed, the mobilization of the wider international community or other relevant actors which can advise, support and assist the host State (see [Section 6.4.3](#) below);
- ➔ Work closely with refugee communities with the aim of ensuring understanding and awareness on the civilian and humanitarian character of asylum, and the obligations of refugees to abide by national law and regulations (see [Section 6.4.4](#));
- ➔ Keep the UN Secretary-General informed of situations of concern (see [Section 6.5.3](#)).¹⁶⁴

In light of the complexity of some of these responsibilities, further guidance on particular aspects related to UNHCR's work are outlined in the sections below ([Sections 6.4.2 – 6.4.5](#)).

6.4.2 Limitations in UNHCR's role and mandate

Although promoting the civilian and humanitarian character of asylum falls squarely within UNHCR's mandate, humanitarian organisations, such as **UNHCR, neither have the mandate, nor the means, to assume the responsibility for security functions of a State**, such as disarmament or separation and control measures for fighters/combatants. For the same reasons, UNHCR and other humanitarian organizations should, in principle, not assume responsibility for individual decisions related to identification or verification of renunciation.

UNHCR may **provide technical advice and guidance to the relevant authorities** and assist them in determining the procedures and measures to be carried out. It may also, where deemed appropriate, choose to participate or support a task-force dealing with these processes.

UNHCR may also **provide financial and other support to the relevant host State authorities**, in particular in their efforts to ensure effective security for refugee sites and hosting areas. Ensuring physical security is a core element of refugee protection, and should be a critical part of any operational planning, in situations where the host State requires additional support.

While active fighters/combatants do not fall within UNHCR's mandate, **support to identification and separation measures may also, in exceptional operational circumstances, be justified for the purposes of maintaining the civilian and humanitarian character of asylum, and ensuring the safety and well-being of the refugee population**. Any such support needs to comply with the *UN Human Rights Due Diligence Policy*, and particular care should be taken to avoid support, financial or otherwise, to internment or screening facilities, due to the risk of such facilities leading to the arbitrary deprivation of liberty, or other serious human rights violations.

¹⁶¹ See UNHCR Statute, para. 8(a); 1951 Refugee Convention, Article 35; and Article 2 of its 1967 Protocol.

¹⁶² 1951 Refugee Convention, Article 35; ExCom No. 46 (1987), para. (f); No. 72 (1993), para. (e). Any support provided to non-UN security forces needs to be in compliance with the *UN Human Rights Due Diligence Policy*. See [Section 6.4.5](#).

¹⁶³ This includes early analysis, and is particularly relevant operations at high or medium risk, as defined in the HALEP.

¹⁶⁴ S/RES/1208 (1998); S/RES/1296 (2000); A/AC.96/904, 7 September 1998.

When support is provided to the relevant host State authorities, **a good practice is to clearly set out the conditions for such support on beforehand, through a Memorandum of Understanding (MOU),** with explicit reference to the *UN Human Rights Due Diligence Policy*. The Policy itself also requires a risk assessment and, if relevant, mitigating measures, monitoring, and interventions with the host State, in the case of real risk of grave violations of IHL, human rights, or refugee law (see [Section 6.4.5](#)).

6.4.3 Advocacy and mobilization of actors

Principled advocacy involves UNHCR **initiating and maintaining dialogue with the host State authorities and other relevant stakeholders on the importance of the civilian and humanitarian character of asylum,** and why it is in the interest of both refugee and host communities.

Such advocacy will always be based on practical arguments around security and protection, but firmly grounded in international law and the humanitarian principles, including the overarching principles and standards set out in [Section 4.3](#) above.

In the exceptional circumstances where the host State is unable and/or unwilling to fulfil its responsibilities in disarmament, identification and separation, **UNHCR will act as a catalyst and engage with and mobilize other relevant actors, such as regional or international peace operations, which can advise and assist the authorities of the host State,** or, when required and appropriate in the concrete circumstances, support or substitute government action.

The UN Country Team/Humanitarian Country Team should be kept informed of situations of concern and support the mobilisation of other UN entities and actors, in particular on issues related to active fighters/combatants and the need for DDR or similar programmes. The UNHCR Representative may seek such support directly from the most senior UN official in country (the Special Representative of the Secretary-General (SRSG), Resident Coordinator (RC), or Humanitarian Coordinator (HC)).

The existing structures for civil-military coordination (UN-CMCoord) at country level may also be helpful in raising issues related to the civilian and humanitarian character of asylum, with the support of OCHA. This in particular to ensure effective interaction, coordination and advocacy towards any military actors involved (whether the armed forces of the host State, international or regional forces, or armed non-State actors).

6.4.4 Dialogue with refugee and host communities, as well as with armed actors

UNHCR will maintain regular dialogue with refugee and host communities, including regarding the dangers of allowing armed elements, fighters/ combatants, or weapons and ammunition into refugee sites or other refugee-hosting areas. UNHCR will work closely with refugees to reinforce their understanding of their rights, as well as their obligation to respect the laws and regulations of the host State.

Engaging the parties to an armed conflict in appropriate dialogue about the civilian and humanitarian character of asylum is also important. A pragmatic approach requires UNHCR and its partners to engage, if and when appropriate, with relevant armed groups or actors to encourage respect for relevant international law, for the civilian and humanitarian character of asylum, and to continue their humanitarian functions.

6.4.5 Human Rights due diligence for support to security forces and regional peacekeeping

Any support provided to (non-UN) security forces or regional peacekeeping forces by UN entities, including UNHCR, needs to comply with the *UN Human Rights Due Diligence Policy on United Nations Support to Non-United National Security Forces*.¹⁶⁵

The purpose of this Policy is to ensure that any such support – including to government forces, militias, border control agents, and regional peacekeeping missions – is consistent with the UN Charter and with international law. This includes any financial support (such as the payment of salaries, allowances, and expenses); training, capacity- and institution-building to enhance operational capabilities; and support to civilian or military authorities directly responsible for the management, administration, or command and control of such security forces. The Policy does not, however, prevent activities aimed at training and sensitizing such forces regarding international refugee law, human rights or humanitarian law, nor any capacity support directly related to implementing and promoting compliance with such laws.

If such support is provided, the Policy specifically requires the implementation of four steps:

- i) communication of the Policy to national authorities and other external partners;
- ii) a risk assessment and, if relevant, mitigating measures;
- iii) monitoring; and
- iv) interventions in the case of a real risk grave violations of IHL, human rights, or refugee law.

The most senior UN official in country (the SRSG/HC/RC) can be approached for further guidance and support.

6.5 Inter-agency cooperation

The wider UN system, as well as other relevant international and regional organizations (such as the AU and ECOWAS), are encouraged to cooperate with host States, provide assistance, and make every effort to promote conditions which ensure the safety and security of refugees.¹⁶⁶

Engagement with development actors is particularly important to address justice and security gaps, as identified through UNHCR's and its partners' work on the civilian and humanitarian character of asylum. NGOs, civil society and community based organisations can also play an important role in promoting the conditions for effective protection of refugees.¹⁶⁷

6.5.1 United Nations coordination

In line with its leadership and coordination role for refugee operations, UNHCR remains the lead UN entity on the civilian and humanitarian character of asylum.¹⁶⁸ It will seek to keep the UN Country Team/ Humanitarian Country Team regularly informed of its operational aspects, in particular to alert on situations of concern, and, when needed, mobilize other UN entities at the national and global level on issues such as the presence of active fighters/combatants, and the need for DDR or similar programming.

Effectively ensuring the civilian and humanitarian character of asylum will require a collaborative UN effort and requisite UN expertise. **Several UN entities can significantly contribute to the key measures set out in this note, in line with their respective mandates and leveraging their specific expertise and capacities.**

¹⁶⁵ *UN Due Diligence Policy*. See also UNHCR, *Human Rights Due Diligence Policy on Support for Non-United Nations Security Forces (HRDDP)*, IOM/087-FOM/088/2011, 27 December 2011. See also UN Secretary-General (UNSG), *Identical letters dated 25 February 2013 from the Secretary-General addressed to the President of the General Assembly and to the President of the Security Council*, 5 March 2013, A/67/775-S/2013/110, available at: <https://www.refworld.org/docid/537dd44a4.html>.

¹⁶⁶ *New York Declaration*, para. 69, and its Annex I, paras. 2 and 5(a), (g) and (h), GCR final draft, paras 33-36, and 17; S/RES/1208 (1998), paras. 3 and 4; S/RES/1625 (2005), paras. 10 and 11; S/RES/1674 (2006), para. 13; ExCom No. 48 (1987), paras. 3 and 4(b)(c); No. 94 (2002), preamble and para. (f); No. 99 (2004), para. (j).

¹⁶⁷ GCR final draft, para. 40.

¹⁶⁸ In mixed situations, for example when refugees and IDPs are present in the same location, see UNHCR/OCHA, *Joint UNHCR-OCHA Note on Mixed Situations Coordination in Practice* (2014), available at: <http://www.refworld.org/docid/571a20164.html>.

Below is a non-exhaustive list of such areas of expertise and capacities, and some of the relevant UN entities:

- Advising on and strengthening local capacities for **preparedness, early warning and early analysis** (DPA/OHCHR/UNOCC/UN OCT/UNDP/UNICEF);
- Advising on and strengthen the capacities of border security personnel, police, immigration and other law enforcement authorities, community based and local governance mechanism and, if required, armed forces to **ensure rule of law** (UN Global Focal Point on Police, Justice and Corrections,¹⁶⁹ co-chaired by DPO and UNDP, and UNDP/UNODC/DPO where present and mandated);
- Advising on and supporting **disarmament, identification, separation and reintegration measures** (UNDP and UN peace operations where present and mandated) and supporting the establishment of DDR and similar programmes (by operational members of the Inter-Agency Working Group on DDR, such as UNDP, DPO/peace operations where present and mandated, IOM and others);
- Advising on **humanitarian civil-military coordination**, as a component of any interaction, coordination and advocacy towards the military (whether the armed forces of the State, UN or regional forces, or armed non-State actors) in order to promote and maintain the civilian and humanitarian character of asylum (OCHA);
- Advising on and strengthening national capacities to support **children associated with (or formerly associated with) armed forces and groups** (UNICEF);
- Advising on and strengthening national capacities for the **protection of women and girls and addressing gender and sexual based violence** (UN WOMEN/UNFPA).

A specific coordination mechanism, such as an inter-agency taskforce, can be useful to help support the host State's response, in particular in complex environments. Where possible, this should be led by the host State, with the support of UNHCR.

Such a mechanism may be aligned with other relevant coordination structures, such as the wider UN Country Team/ Humanitarian Country Team, groups related to the rule of law, security and human rights under the National Development Plan, and existing platforms or structures for UN civil-military coordination (UN-CMCoord). The ICRC may also be invited to attend as an observer.

Good practices include:

- The establishment of an inter-departmental and inter-agency task-force to assess risks, plan and carry out the required implementation measures to maintain the civilian and humanitarian character of asylum;
- Where the level of seriousness or complexity of a situation requires it, international agencies may decide to 'mirror' the domestic-level taskforce with inter-agency discussions at the international (Headquarters) level;
- Using existing platforms or structures for civil-military coordination (UN-CMCoord) to raise issues of the civilian and humanitarian character of asylum, with the support of OCHA, can be helpful to ensure effective and transparent communication with the armed forces of the host State, and with regional or international forces (where present);
- Memorandums of Understanding can set out the specific duties of a deployment, capacity-building activity, or assistance package to the host State. Such agreements can set out operational needs and expectations, terms of implementation, the responsibilities and accountabilities of all parties, and other legal obligations.¹⁷⁰

¹⁶⁹ See: <https://bit.ly/2G96wP9>.

¹⁷⁰ See *Manual on POC Security*, pp. 344, 349-252.

6.5.2 United Nations and regional peace operations

UN peace operations have, over the last two decades, increasingly been mandated to offer protection to civilians, including to refugees and asylum-seekers. In that regard, DPO defines three complementary “tiers” for the implementation of its protection of civilians-mandate:

- ➔ **Tier 1: Protection through dialogue and engagement** (e.g. advocacy to deter violence against civilians, conflict resolution, and mediation);
- ➔ **Tier 2: Provision of physical protection** (e.g. show or use of force, or ensuring presence in areas where populations are at risk as a preventive and early-warning strategy);
- ➔ **Tier 3: Establishment of a protective environment** (e.g. through longer-term, more structural efforts, such as support to the political process, DDR, promotion of the rule of law, training, mentoring, or supporting national military and security staff).¹⁷¹

UN peace operations concrete work for refugees will depend on the specific mandate, presence and operational capacity of the mission. A few examples may, however, include:

- Under Tier 1, UN peace operations can support and promote an understanding of the civilian character of asylum, and the civilian character of refugee sites (i.e. as protected from direct attacks under IHL), among armed forces and groups;
- Under Tier 2, UN peace operations can ensure security in and around refugee sites and other refugee-hosting areas,¹⁷² and support voluntary returns. Where the host State is unable or unwilling to ensure the civilian and humanitarian character of asylum, the mission may also be tasked to take on specific functions related to the disarmament of armed elements, or screening, identification and separation measures;

- Under the Tier 3, UN peace operations may offer DDR, “pre-DDR” or community violence reduction (CVR) programmes to fighters/combatants, including those who have renounced military activity and have sought asylum in the host State.

In situations where a mission is *not* mandated to use force to protect civilians, or not mandated to use force against the armed forces or groups in question, the mission may still be able to assist the host State in undertaking limited measures, such as **escorting the movements of fighters/combatants, or ensuring protection by presence.**

Further, DPO and UNHCR have in the past been called upon to **jointly deploy multi-disciplinary assessment teams to emerging crisis to clarify the situation on the ground, evaluate security threats, and consider and recommend practical responses.** The deployment of international police forces or civilian observers, either by the UN or regional organizations, may also be relevant in particular situations.¹⁷³

Implementing any measures in support of the civilian and humanitarian character of asylum requires a unified protection of civilians’ vision and strategy within the UN mission, as well as strong UN civil-military coordination. **This civil-military coordination should seek to enhance complementarity between organizations and improve the overall protection response, while at the same time avoiding any confusion between the roles and responsibilities of different sets of actors, and preserving the distinction between neutral and impartial humanitarian action and military objectives.** This requires an awareness of the role that other actors in the mission area play with respect to protection, including the host State, UN entities, the ICRC, national and international NGOs, and can be supported by OCHA through existing UN-CMCoord platforms or structures in-country.¹⁷⁴

¹⁷¹ DPO/DFS, *Policy: The Protection of Civilians in United Nations Peacekeeping*, Ref. 2015.07 (2015), para. 30, available at: <https://bit.ly/2JgU6XC>.

¹⁷² See, in particular, S/RES/1674 (2006), para. 14, which “encourages the Secretary-General where necessary and in the context of existing peacekeeping operations and their respective mandates, to take all feasible measures to ensure security in and around such camps and of their inhabitants”.

¹⁷³ ExCom, Standing Committee, *The Security, Civilian and Humanitarian Character of Refugee sites and Settlements*, EC/49/SC/INF.4, 14 January 1999, para. 19.

¹⁷⁴ See UN, *Civil-Military Coordination Field Handbook*, 2015, available at: <https://bit.ly/2CCJeC6>; UN and Inter-Agency Standing Committee (IASC), *Civil-Military Guidelines for Complex Emergencies*, 7 March 2008, available at: <http://www.refworld.org/pdfid/47da82a72.pdf>; and IASC, *Civil-Military Relationship in Complex Emergencies: An IASC Reference Paper*, 28 June

Good practices to include:

- UNHCR and other humanitarian actors on the ground to be aware of and understand the specific mandate of the UN peace operation in-country, and their role, capacities, and limitations with regards to the protection of civilians, including refugees;
- Maintaining a clear distinction between the role and responsibilities of the UN peace operations and those of humanitarian actors, including in the eyes of central and local authorities, and affected communities, including refugees;
- Communicating clearly, through existing UN-CMCoord platforms or structures, with regards to respective capabilities and operational constraints on the ground;
- Sharing information and analysis of general trends and protection risks facing the civilian population, including refugees, between peace operations and humanitarian actors, while preserving the need for confidentiality and data protection;
- Offering technical support and specific training to different components of the UN peace operation (on e.g. IHL, refugee law, or site management), if needed.

6.5.3 Action by the UN Security Council

Situations in which the civilian and humanitarian character of asylum has been compromised may, in certain circumstances, **constitute a threat to international peace and security requiring appropriate action by the international community.** The international community may advocate for appropriate measures in case a host State does not address serious security problems, and could do so in concert with UNHCR and other humanitarian actors.

If no satisfactory reaction is forthcoming, and the host State does not invite or consent to the presence of external security forces, a decision by the Security Council may be required.¹⁷⁵ In such

cases, the Security Council may determine the need for measures, such as the deployment of UN peace operations, or authorization of regional or international military forces, to provide security support or enforcement action.¹⁷⁶

UNHCR has a responsibility to keep the UN Secretary-General informed of any situations of concern.¹⁷⁷ The organisation may also, at its own initiative, advocate for the inclusion of specific provisions in the mandate of UN peace operations to assist the host State with ensuring the security of refugees, in line with Security Council Resolution 1674 (2006).¹⁷⁸

6.6 The International Committee of the Red Cross (ICRC)

The ICRC is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence, and to provide them with assistance. The ICRC further endeavours to prevent suffering by promoting and strengthening IHL and universal humanitarian principles.

The ICRC plays an important complementary role to that of UNHCR, in particular by establishing and maintaining a constructive and confidential dialogue with all parties to armed conflict, which is aimed at helping the relevant actors to adhere to and respect their obligations under IHL, and which may relate to the conduct of hostilities (such as respect for the civilian character of refugee sites), and to the procedures and treatment of persons deprived of their liberty (including fighters/combatants interned in a host State).

Whenever individuals are deprived of their liberty during an armed conflict or other situations of violence (including internment), the ICRC should

2004, available at: <http://www.refworld.org/pdfid/4289ea8c4.pdf>. See also www.dialoguing.org. See also ICRC, Professional Standards for Protection Work, 20 March 2018, available at: <http://bit.ly/2rnKbYe>.

¹⁷⁵ S/1998/883, paras. 34-35; S/1999/957, para. 64; S/RES/1296 (2000), para. 14; S/RES/1674 (2006), paras. 14 and 18.

¹⁷⁶ *Ibid.* See also the "Ladder of options"; ExCom No. 94 (2002), para. (g).

¹⁷⁷ S/RES/1208 (1998) para. 14; S/RES/1296 (2000), para. 14; A/AC.96/904, 7 September 1998.

¹⁷⁸ S/RES/1674 (2006).



have, and in the case of international armed conflicts must be granted, access to verify their conditions and ensure their humane treatment, as well as respect for applicable judicial guarantees or procedural safeguards, in accordance with relevant provisions of IHL.¹⁷⁹

UNHCR and, as appropriate, other humanitarian actors, should seek to establish and maintain an ongoing dialogue with the ICRC on issues related to the civilian and humanitarian character of asylum, building on the principle of complementarity, while taking account of respective mandates and expertise, and with a clear understanding of each other's working methods (including confidentiality and data protection) and inherent operational constraints.

¹⁷⁹ GC III, Article 126; GC IV, Article 143; Common Article 3; the Statutes of the International Red Cross and Red Crescent Movement, Article 5); *ICRC Customary Law Study*, Rule 124. In international armed conflicts, the ICRC must be granted regular access to all persons deprived of their liberty. In non-international armed conflicts, the ICRC may offer its services to the parties to the conflict with a view to visiting all persons deprived of their liberty for reasons related to the conflict.

KEY ACTIONS:

- Always act on the basis that **the host State has the primary responsibility** for ensuring the civilian and humanitarian character of asylum;
- UNHCR and other humanitarian actors should **undertake principled advocacy, provide technical advice, support and guidance, and, when needed, initiate appropriate inter-agency mobilisation of other actors** that can advise and assist the authorities of the host State, and/or, where possible and appropriate, support or substitute government action;
- Ensure that any support to national or state security forces and regional peacekeeping forces, by UN entities, including UNHCR, **complies with the UN Human Rights Due Diligence Policy**;
- Maintain an **ongoing dialogue with the ICRC**, building upon respective mandates and expertise, while respecting inherent constraints and the need for confidentiality and data protection.

7. TERMS AND DEFINITIONS

“Armed element” (or “armed individual”) is used in this Guidance Note to refer to an individual who is entering, or is already present in, the territory of a host State carrying a weapon of any kind. The person may be armed for any reason (including for self-defence), and may or may not be identified as a fighter/combatant (as defined below).¹⁸⁰

“Armed forces” consist of all organized armed forces, groups and units which are under a command responsible to a State party to an armed conflict for the conduct of its subordinates.¹⁸¹ The armed forces may comprise non-military State agencies (paramilitary forces or armed law enforcement agency). Outside armed conflicts, it is the military organization of a State with a legal basis in domestic law, and supporting institutional infrastructure (salaries, benefits, basic services, etc.).¹⁸²

“Armed group” (or ‘organised armed group’) refers to the armed or military wing of a non-State party to an armed conflict, namely its armed forces in a functional sense, which displays a minimum level of organization; is not within the formal military structures of a State, State-alliance or intergovernmental organization; and is not under the control of the State(s) in which it operates.¹⁸³ Outside the context of armed conflict, this may also include organized gangs.¹⁸⁴

“Children” are, for the purposes of this Guidance Note, defined as all persons below the age of 18 years.

“Child associated with armed forces or armed groups” refers to any person below 18 years of age who is or has been recruited or used by an armed force or group in any capacity, including but not limited to children, boys and girls, who are recruited or used as fighters/combatants, cooks, porters, messengers, spies, or for sexual purposes. It is not limited to a child who is taking (or has taken) a direct part in hostilities.¹⁸⁵

“Civilians directly participating in hostilities” for the purposes of this Guidance Note refers to any man, woman or child who is not a fighter/combatant (as defined below), but who is spontaneously, sporadically, or on an unorganised basis carrying out specific armed or military acts as part of the conduct of hostilities between parties to an armed conflict, which are likely to adversely affect the military operations or capacity of one of the parties or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack under IHL. There needs to be a direct causal link between the act and the harm likely to result from the act, and the intention to cause this harm in support of a party to the conflict and to the detriment of another.¹⁸⁶ While under IHL such individuals lose their protection against direct attack for such time as they take direct part in hostilities, they remain civilians and regain their protection as soon as their engagement in such acts ceases. Their presence may, however, compromise the civilian and humanitarian character of sites and other refugee hosting-areas if they, for example, carry out these activities from within the site. In such situation, they may also need to be separated (see [Section 5.6.5](#) for further guidance).

¹⁸⁰ See ExCom No. 94 (2002), preamble.

¹⁸¹ Art. 43(1) of the 1977 First Additional Protocol to the 1949 Geneva Conventions and Rule 4 of the ICRC Customary IHL Study, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule4.

¹⁸² UN, *Integrated DDR Standards (“IDDRS”)*, December 2006, p. 1.20, available at: <http://www.unddr.org/iddrs-framework.aspx>.

¹⁸³ *Ibid.*

¹⁸⁴ UNHCR, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 31 March 2010 (“UNHCR Gangs Guidance Note”), paras. 4-9, available at: <http://www.refworld.org/docid/4bb21fa02.html>.

¹⁸⁵ UN Children’s Fund (UNICEF), *The Paris Principles. Principles and Guidelines on Children Associated With Armed Forces or Armed Groups (“Paris principles”)*, February 2007, para. 2.1, available at: <http://www.refworld.org/docid/465198442.html>.

¹⁸⁶ ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, (“ICRC Interpretive Guidance”), International Committee of the Red Cross, 2009, pp. 65 to 73; available at: <https://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf>; ICRC, *Study on Customary International Humanitarian Law, International Review of the Red Cross (“ICRC Customary Law Study”)*, Rule 5, available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1>.

“Civilians who contribute to the general war effort” for the purposes of this Guidance Note refers to any man, woman or child who is not a fighter/combatant (as defined below), but who contributes to the general war effort of one party to the armed conflict without directly harming another party to the conflict. This includes individuals who are recruiting (whether voluntary or by force) or training refugees for military activities, or who are in a political or administrative decision-making position, without directly participating in the hostilities. Such individuals are protected against direct attacks under IHL, but may, in certain circumstances, pose a threat to other refugees, or to the overall integrity of the institution of asylum, and may thereby need to be separated (see [Section 5.6.5](#) for further guidance).

“Fighter/combatant” for the purposes of this Guidance Note refers to any man, woman or child who is either a member of State armed forces (other than medical personnel and religious personnel)¹⁸⁷, or the fighting forces of a non-State armed group, and who have entered a country of asylum.¹⁸⁸

“Deserter” refers to a person who unilaterally abandons his or her military duty or post without permission, or resists call up for military duties. Desertion can occur in relation to the police force, gendarmerie or equivalent security services, and for deserters from armed non-State groups. Desertion may be for reasons of conscience or for other reasons.¹⁸⁹

“Internment” is a deprivation of liberty ordered by the executive authorities (rather than by the judicial authorities in criminal proceedings) for imperative reasons of security in relation to an armed conflict. While the internment of prisoners of war is regulated by the Third Geneva Convention, the internment of civilians, whether in an international or non-international armed conflict, is an exceptional, non-punitive measure of control against an individual which is to conform to the required procedural safeguards. A State’s national law and international human rights obligations will be applicable as well.¹⁹⁰

“Militarization” is used in this Guidance Note to include the infiltration or presence and hostile or violent activities of fighters/combatants or armed elements within or near refugee populations and sites, as well as armed or military threats to the security of refugees, such as military attacks. It includes actions with a nexus to military action, such as recruitment, forced recruitment, training, or intimidation or extortion of refugees. The deployment by the host State of law enforcement for the maintenance of security and of the civilian and humanitarian character of asylum, or the deployment of regional or UN peacekeeping forces, does not constitute ‘militarization’ for the purposes of this note.¹⁹¹

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

¹⁸⁷ See the definition of “armed forces” above. Membership in State armed forces is generally defined by domestic law and expressed through formal integration into permanent units (distinguishable by uniforms, insignia and equipment), while membership in irregular forces belonging to a State party is determined based on functional criteria, such as those applying to organized armed groups in non-international armed conflicts. See Additional Protocol to the Geneva Conventions of 12 August 1949 (Protocol I), 8 June 1977 (“API”), Article 43(1); *ICRC Customary Law Study*, Rule 4.

¹⁸⁸ See the definition of “armed groups” above. Membership in armed groups is generally determined on functional criteria, see *ICRC Interpretive Guidance*, pp. 25 and 32.

¹⁸⁹ For the purposes of this Guidance Note, “desertion” is used in line with UNHCR’s *Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service in the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* (“GIP No.10”), HCR/GIP/13/10/Corr.1, 12 November 2014, para. 3. Note that, under international humanitarian law (IHL), the loss of fighter/combatant status may not occur at the same time. See, for example, the Third Geneva Convention relative to the Treatment of Prisoners of War 1949 (“GC III”), Article 7; *ICRC Interpretive Guidance*, p. 72. See also *UNHCR-ICRC Aide-Memoire*, page 11-12.

¹⁹⁰ *ICRC, Opinion Paper: Internment in Armed Conflict: Basic Rules and Challenges*, November 2014, page 5-6. See also [Section 4.2](#) for further guidance on the applicable legal frameworks.

¹⁹¹ The presence of the armed forces of a State or international organization which party to an armed conflict inside a site may nevertheless, depending on the circumstances, turn the site (or a part of it) into a military objective in accordance with IHL. Members of such armed forces and their military equipment would also, under IHL, constitute lawful targets under IHL for their adversaries.



“**Refugee**” is a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹⁹²

“**Refugee camps, sites and settlements**” (generically referred to as “refugee sites” in this Guidance Note) refers to any planned, purpose-built, and managed location, or spontaneous self-settled collective location (whether managed or not), including camps, collective centres, transit sites and reception centres, where refugees are residing and/or receive assistance and services from government and humanitarian agencies.¹⁹³

“**Refugee-hosting areas**” is used in this Guidance Note to cover any other location or area where refugees are residing, including in urban areas.¹⁹⁴

¹⁹² Article 1F of the 1951 Convention relating to the Status of Refugees (“1951 Refugee Convention”).

¹⁹³ See also UNHCR, *Policy on Alternatives to Camps*, UNHCR/HCP/2014/9, 22 July 2014, available at: <https://bit.ly/2tBRq0d>.

¹⁹⁴ See also *Urban Policy*.

8. SELECTED REFERENCES

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UN General Assembly Resolution 68/141, Office of the United Nations High Commissioner for Refugees, 18 December 2013, para. 21

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Norwegian Refugee Council Camp Management Toolkit, ‘Militarisation of Camps’, available at <http://www.nrc.no/?aid=9177505>

J. Pejic, “Procedural Principles and Safeguards for Internment/Administrative Detention in Armed Conflict and Other Situations of Violence”, *International Review of the Red Cross*, Vol. 87, No.858, June 2005, pp. 375-391. This position was subsequently published as Annex 1 to the ICRC’s report, *International humanitarian law and the challenges of contemporary armed conflicts*, 30th International Conference of the Red Cross and Red Crescent, Geneva, October 2007 (available at: <https://bit.ly/2AsbOob>)

UNDRR, Integrated Disarmament, Demobilization and Reintegration Standards (1 August 2006).



9. CONTACT

For further information or support, please contact the relevant UNHCR Country Office, or, in Headquarters, the relevant Regional Bureaux or the Division for International Protection (DIP).

10. HISTORY

This Guidance Note supersedes and replaces the 2006 Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum.

ANNEX 1:

OVERARCHING PRINCIPLES AND STANDARDS FOR MAINTAINING THE CIVILIAN AND HUMANITARIAN CHARACTER OF ASYLUM

- 1. The primacy of State responsibility:** The primary responsibility for the physical protection of refugees and for maintaining the civilian and humanitarian character of asylum lies with the host State. While support from other States or engagement with a broader network of stakeholders, including within the UN system, may be required, UNHCR and other humanitarian actors cannot assume responsibility for security functions of the host State, such as disarmament, or the identification or separation of fighters/combatants. They may, however, play an important advocacy, monitoring, advisory and, when appropriate, assistance role, in support of the host State.
- 2. The principle of non-refoulement and ensuring access to territory:** State action to ensure security must not prevent persons from being able to seek international protection, nor lead to refoulement. No one seeking international protection should be rejected at the border, or returned to their country of origin, on the mere suspicion that he or she is a fighter/combatant, nor should borders be closed because there may be fighters/combatants amongst the asylum-seekers.
- 3. The right to liberty and security of person, and the prohibition of arbitrary detention:** State action to ensure security must not lead to arbitrary detention. Detention and internment may only be undertaken in accordance with and as authorized by national law, and in compliance with international law, including the minimum procedural safeguards, the right to humane and dignified conditions of detention, and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, including SGBV, during deprivation of liberty.
- 4. Access to refugee status determination procedures:** Military activities are by nature incompatible with the civilian character of asylum. Persons identified as fighters or combatants cannot be admitted into refugee status determination procedures until such time that they have genuinely and permanently renounced such activities, and sought international protection.
- 5. Access to assistance and services:** Persons identified as fighters or combatants should not be allowed to enter refugee sites, or have access to humanitarian assistance or services provided by UNHCR and its partners under its international protection mandate for refugees until such time as they have genuinely and permanently renounced military activity, and been admitted into asylum procedures.
- 6. The protection of children:** Children associated with armed forces or groups should benefit from special protection and assistance measures. They should be regarded as victims, regardless of how they were recruited, and their best interests need to be a primary consideration. Priority shall, be given to children during identification, demobilization and rehabilitation, as well as when verifying renunciation and assessing asylum claims, where appropriate. Children should benefit from specialist expertise and age-appropriate procedures, taking into account their vulnerabilities and protection needs. Child protection agencies should be called upon to advise and assist the host State, and particular attention should be given to those, both girls and boys, who are survivors of SGBV. Children should in principle not be interned or otherwise deprived of their liberty. For children 15 years and above, internment may be used as a last resort only, for the shortest possible period of time, taking into account their best interests as a primary consideration. If interned, children should be separated from, and at a distance away from, adults, unless accommodated with a parent (when this is in the child's best interests).
- 7. Protection considerations for women:** The specific protection and assistance needs of women recruited by armed forces or groups need to be addressed, including those who may have been subjected to SGBV. If she decides to renounce military activity, priority should be given to the evaluation of her renunciation and asylum claim, whenever appropriate (for example due to her particular vulnerabilities or if she is accompanied by children). If women are interned, they should be interned in separate facilities from men, and, as far as possible, be under female supervision.

ANNEX 2:

KEY ACTIONS (SUMMARY TABLE)

PREPAREDNESS PLANNING (page 18)	KEY ACTIONS	ACTORS	SELECTED REFERENCES
Effective security management (page 23)	<p>I. Gather, analyse and share information about the (expected) influx and whether there may be fighters/combatants or armed elements among the arrivals</p> <p>II. Assess the capacities and perspectives of the host State, and other actors. If required and appropriate, mobilize international support</p> <p>III. In medium and high risk operations, plan for possible identification, separation and internment measures as part of APA:</p> <ul style="list-style-type: none"> • Identification of relevant host State authorities and national legal frameworks; • Development of standard operating procedures; • Assessing potential resource requirements. <p>IV. Plan for adequate security in all refugee hosting areas</p>	<p>Host State with the support of UNHCR and other relevant stakeholders.</p> <p>Regular dialogue with the ICRC.</p>	<ul style="list-style-type: none"> • Chapter 5.2 of this Guidance Note • UNHCR Policy on Emergency Preparedness and Response • UNHCR’s Preparedness Package for Refugee Emergencies (PPRE) • Country-level Preparedness Action Plans (PAP) and contingency plans
Disarmament of armed elements (page 25)	<p>I. Advocate for adequate security measures for refugees in all refugee-hosting areas, based on the identified good practices</p> <p>II. Accommodate (or relocate) refugee sites in secure locations</p> <p>III. Establish adequate security arrangements to deter militarization, and promote and enforce law and order</p> <p>IV. Closely monitor and respond to the recruitment of refugees, in particular refugee children</p> <p>V. Establish and enforce functioning camp rules, by-laws, and access to justice</p> <p>VI. Involve refugees in promoting their own security</p> <p>VII. Promote peaceful co-existence with the host community</p>	<p>Host State, with the support of other States, UNHCR and other UN entities, in particular development actors. Participation of refugee and host communities. UNCT/HCT to be alerted of any situations of concern.</p>	<ul style="list-style-type: none"> • Chapter 5.3 of this Guidance Note • UNHCR Manual on Security of Persons of Concern • UNHCR Operational Protection in Camps and Settlements: A reference guide • DPO/DFS Policy on Protection of Civilians in UN Peacekeeping • UN Due Diligence Policy
Identification (pages 31 and 46)	<p>I. Systematic weapons screening and disarmament at border entry points</p> <p>II. Continuous monitoring of weapons in refugee sites (and weapons searches by the police, if needed)</p> <p>III. Explicitly prohibit weapons of any kind inside all refugee sites</p> <p>IV. Engage in community dialogue and awareness raising campaigns to sensitize refugee on the risks of weapons and fighters in sites, and relevant national law(s)</p> <p>V. If the host State is unable or unwilling to disarm, mobilize international support (and enforcement action, when appropriate)</p>	<p>Border control, security or other relevant host State authority.</p> <p>Support and advice from UNHCR, UN peace keeping or regional forces or police, when relevant. UNCT/HCT to be alerted of any situations of concern.</p>	<ul style="list-style-type: none"> • Chapter 5.4 of this Guidance Note • DPO/DFS Policy on Protection of Civilians in UN Peacekeeping
Identification (pages 31 and 46)	<p>I. Identification of relevant host State authority to determine fighter/ combatant status, criteria and procedures, in line with national law</p> <p>II. Encourage voluntary self-identification</p> <p>III. Advocate for age-/gender-appropriate procedures for women and children</p> <p>IV. Criminal prosecution for armed and military activities, in line with national and international law</p> <p>V. Refugees taking up military activities after recognition to be separated and removed from humanitarian assistance, with possible revocation or cancellation procedures (see Chapter on RSD)</p>	<p>Assigned authority with the host State. Support and advice from UNHCR, UN peace keeping or regional forces or police, when relevant. UNCT/ HCT to be alerted of any situations of concern.</p>	<ul style="list-style-type: none"> • Chapter 5.5 of this Guidance Note • UNHCR Registration Handbook

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Separation and measures of control (page 38)</p>	<p style="writing-mode: vertical-rl; transform: rotate(180deg);">KEY ACTIONS</p> <p>I. Advocate for the separation of fighters/combatants from the refugee population, and/or necessary control measures</p> <p>II. Advocate for such measures to be carried out in accordance with and authorized by national and international law (procedural standards, access, conditions of internment etc.)</p> <p>III. Highlight the specific protection needs of women, girls and boys, as well as families of fighters</p> <p>IV. Advocate for DDR or similar programmes (“pre-DDR” or CVR) for fighters/exfighters</p> <p>V. Mobilize international support for complex situations, such as large numbers/groups of active fighters for which the State is unable or unwilling to ensure an appropriate response, through the UN CT/HCT</p>	<p style="writing-mode: vertical-rl; transform: rotate(180deg);">ACTORS</p> <p>Assigned authority with the host State. Support and advice from UNHCR, ICRC, UN peace keeping or regional forces or police, when relevant. UNCT/HCT to be alerted of any situations of concern.</p>	<p style="writing-mode: vertical-rl; transform: rotate(180deg);">SELECTED REFERENCES</p> <ul style="list-style-type: none"> • Chapter 5.6 of this Guidance Note • UNHCR GIP No. 10 and 11 • ICRC Opinion Paper: Internment in Armed Conflict • UN Standard Minimum Rules for the Treatment of Prisoners • UNICEF, The Paris Principles and Guidelines on CAAFAG
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Verification of renunciation (and RSD) (page 42)</p>	<p style="writing-mode: vertical-rl; transform: rotate(180deg);">KEY ACTIONS</p> <p>I. Identification of relevant host State authority to assess genuine and permanent renunciation of military activities</p> <p>II. Advocate for priority to be given to children formerly associated with armed forces or groups</p> <p>III. Once renunciation has been verified, former fighters may have access to individual RSD, and access sites and services as asylum-seekers</p> <p>IV. Individuals who renounce, but do not apply for international protection are subject to the regular immigration and residency laws as a foreigner in the host State</p> <p>V. Advocate for multi-sectoral reintegration programmes for former fighters, in particular children formerly associated with armed forces and groups (including family tracing and reunification)</p>	<p style="writing-mode: vertical-rl; transform: rotate(180deg);">ACTORS</p> <p>Host State, with the support of other States, UNHCR and other UN entities (UNICEF, UNDP, DPO). Participation of refugee and host communities. Regular dialogue with the ICRC. UNCT/HCT to be alerted of situations of concern.</p>	<p style="writing-mode: vertical-rl; transform: rotate(180deg);">SELECTED REFERENCES</p> <ul style="list-style-type: none"> • This Guidance Note Chapter 5.7 and 5.8 • UNHCR Procedural Standards for RSD • UNHCR GIP No. 5, 8 and 10 • UNHCR Guidelines and Background Note on Exclusion • UNICEF, The Paris Principles and Guidelines on CAAFAG • UN Integrated DDR Standards (IDDRS)

ANNEX 3:

FACTSHEETS FOR EACH IMPLEMENTATION MEASURE

KEY MEASURE 1: PREPAREDNESS PLANNING

In operational terms, it is difficult to restore security for refugee and hosting communities once the civilian and humanitarian character of asylum has been compromised, and when concrete protection risks – *such as infiltration, the presence of weapons, or forced recruitment* – have already materialized. Preparedness measures are therefore essential.

In operations which are at high or medium risk of a new or escalated emergency, measures should be implemented to prepare for and, where possible, prevent compromising the civilian and humanitarian character is compromised. This includes:

- **Early analysis of the ongoing conflict**, the relevant armed groups or actors, and any cross-border movements of fighters or combatants, with a view to assess potential protection threats and risks in the event of a refugee influx.
- As part of the **Preparedness Action Plan (PAP)**, consider, if possible to: i) Set up procedures for disarmament, identification and separation, and other activities that are considered necessary in that particular operational context; ii) Assess the availability and need for national legislation for such measures; iii) Identify the relevant government authorities responsible; and iv) Evaluate the need for additional resources, technical capacity building, and/or support from UNHCR or other relevant actors.
- Preparedness efforts should include **planning and budgeting for adequate security** of all refugee-hosting areas.

KEY MEASURE 2: EFFECTIVE SECURITY MANAGEMENT

The maintenance of the rule of law in refugee-hosting areas is essential to preserving the civilian and humanitarian character of asylum, and ensure adequate physical protection for refugees. Concrete actions may include:

- Adequate **security arrangements** for all refugee sites and other refugee-hosting areas, for example through deployment of police.
- **Involve refugees** in promoting their own security, for example through community – based watch schemes, dispute resolution mechanisms, and coordination mechanisms with the local police.
- Promote **peaceful co-existence with the host community**, for example through establishing collaboration between the refugee and the local community governance mechanisms, and by promoting equal access to services and livelihoods.
- Monitor and respond to the **recruitment of refugees**, in particular children, with the support of specialized agencies, such as UNICEF, national law enforcement and child protection services.
- In **urban areas**, seek the support of local law enforcement to ensure the security of refugees within their areas, and ensure regular dialogue with urban refugee populations.
- For **refugee sites**, make sure these are hosted in secure locations at a reasonable distance (min. 50 km) from the border and other areas of violence. Explicitly prohibit fighters/combattants and other armed elements from residing in, transiting through, or visiting sites, and the holding, trading or bringing in of weapons or ammunition.

KEY MEASURE 3: DISARMING ARMED ELEMENTS

Armed elements are to be disarmed by the relevant State authorities as soon as possible, and preferably at the first point of entry to the territory of the host State, in accordance with the *UN International Small Arms Control Standards*. The host State may be assisted, advised or supported by international or regional military, police, or peacekeeping forces, if such are present in country. In practice, the State authorities need to:

- **Systematically check for the presence of weapons** on all individuals seeking to enter the host State, and safely disarm armed individuals when admitted to the territory, or as soon as possible thereafter, in accordance with national law.
- **Continuously monitor the presence of weapons of any kind in and around refugee sites**, and, to the extent feasible, other refugee-hosting areas, and screen for and confiscate unlawful weapons, when needed. This may include improvised weapons which are carried to inflict harm.

Only individuals identified as fighters/combatants or others who pose a threat to the civilian and humanitarian character of asylum may need to be separated. Other disarmed individuals may be admitted into refugee sites, and enter into asylum procedures, unless they are found by the State to pose a particular security threat to the refugee or host population.

Where it is difficult to immediately distinguish fighters/combatants amongst other arrivals, the host State may need to temporarily separate all armed elements until the proper identification can take place. This needs to be done in accordance with national law and relevant safeguards (see [Section 5.6](#)).

KEY MEASURE 4: IDENTIFICATION OF FIGHTERS AND COMBATANTS

Fighters and combatants should be identified as early as possible, through screening, law enforcement and registration procedures, by the relevant authority of the host State. In practice, this means:

- **Identifying an authority** to examine information which could suggest that an individual may be a fighter or combatant and if he/she needs to be separated from the refugee population.
- If it is found that an individual was, in fact, a fighter or combatant at the time of recognition as a refugee, **cancellation procedures** may need to be instituted.
- Should a refugee subsequently, after being recognized as a refugee, **take up (or resume) military or armed activities**, he or she may need to be separated from the refugee population, and should be suspended from receiving humanitarian assistance from UNHCR and its partners under its international protection mandate for refugees. Depending on the circumstances, cancellation or revocation procedures may need to be instituted.
- The host State may seek to **pursue criminal prosecution**, in accordance with national and international law, for any illegal military or armed activities conducted by an individual following his or her arrival.

Where the identification process cannot be undertaken immediately, a preliminary screening may be used to identify suspected fighters/combatants, and temporarily separate these until the proper identification procedures can take place. This needs to be done in accordance with national law and relevant safeguards (see [Section 5.6](#)).

KEY MEASURE 5: SEPARATION AND MEASURES OF CONTROL

To maintain the civilian and humanitarian character of asylum, it is essential that persons identified by the host State authorities as fighters or combatants are separated from the refugee population as early as possible, *i.e.* accommodated at a distance away from any refugee site.

- The host State needs to **ensure that fighters/ combatants cannot resume armed activities**, and to safeguard the security of refugee and host populations, by imposing measures of control. This may include regular reporting to the authorities, movement perimeters, or, when necessary for imperative reasons of security, internment.
- The measures need to be **in accordance with and authorized by national law, necessary and reasonable in all the circumstances, and proportionate to a legitimate purpose**. As a form of deprivation of liberty, internment needs to conform to the State's international human rights obligations and IHL.
- **Children are to be considered as victims, regardless of how they were recruited, and should in principle not be interned**. For children 15 years and above, internment may be used as a *last resort* only, for the shortest possible period of time, taking into account their best interests.
- **Disarmament, demobilization and reintegration (DDR)** or similar programmes, such as pre-DDR or Community Violence Reduction (CVR) programmes, should be called upon for former fighters and combatants, whenever possible.

KEY MEASURE 6: VERIFICATION OF RENUNCIATION AND RSD

Fighters or combatants cannot be considered as asylum-seekers, or have their claims to international protection assessed until such a time that the relevant State authorities have established that they have **genuinely and permanently** renounced military activities. This requires that:

- An **appropriate authority is identified** (or established) to, over a reasonable period of time, assess whether a renunciation is considered to be genuine and permanent.
- Once renunciation has been verified, former fighters or combatants should have access to **individual refugee status determination procedures** if they wish to seek international protection, giving due consideration to the possible application of the exclusion clauses in Article 1F of the 1951 Convention.
- Priority should, whenever appropriate, be given to assessing the renunciation and asylum claims of **children and women** (if, for example, vulnerable or accompanied by children), with the aim of ensuring timely access to humanitarian assistance and services.

While IHL provides that combatants who have fallen into the power of an adverse party to a conflict are prisoners of war and may be interned until the end of active hostilities, fighters who do not renounce may also be held in internment, provided that lawful grounds for internment and procedural safeguards exists.

Fighters who renounce, but *do not* seek international protection, as well as prisoners of war who are not interned or released on parole, are in principle subject to the regular immigration and residency laws as a foreigner in the host State. Individuals who do not renounce, or renounce but do not seek international protection, remain outside the scope of UNHCR's mandate.

ANNEX 4:

COMPILATION OF GOOD PRACTICES

Preventive and protective measures:

- Visible and effective presence and monitoring by law enforcement to deter infiltration of arms and fighters;
- Involving refugees in ensuring their own security through (unarmed) community-based watch schemes, and other appropriate security measures;
- Systems for the administration of justice to resolve family or communal disputes, where appropriate;
- Democratically chosen refugee leadership, with a role to promote the civilian and humanitarian character of asylum;
- Regular dialogue with the host community and local leadership, confidence building measures and conflict resolution mechanisms;
- Enhanced training and response capacity for law enforcement and other host State authorities;
- Prohibiting fighters/combatants from residing in, transiting or visiting sites, even for shorter periods;
- Prohibiting the presence of weapons of any kind in sites, enforced through police searches, when needed;
- Site regulations and by-laws, including regulations preventing refugees from engaging in military activities;
- Transparent site administration/ management, with regular dialogue and information sharing;
- Prompt, unhindered and safe access for UNHCR and, as appropriate, other humanitarian organizations.

Minimizing the risk of child recruitment:

- Prioritizing family reunification for separated and unaccompanied children (if in their best interests), and providing suitable care arrangements;
- Ensuring that schools remain safe spaces for children, facilitating after-school, sports and recreational activities for children and youth, and continuously monitoring drop-out rates as a proxy indicator of potential recruitment (while assessing context-specific pattern and drivers);
- Empowering children and youth through the use of community coaches, mentors and peers, and providing meaningful opportunities for children and youth to contribute actively to their own communities;
- Initiating awareness raising campaigns targeting children and youth, through schools, livelihoods activities, recreational and religious centers, etc.;
- Establishing child-friendly, confidential and easily accessible procedures to report protection concerns;
- Strengthening economic opportunities and using cash to address economic vulnerabilities;
- Ensuring timely birth registration and documentation for all children;
- Timely and updated registration and documentation, in particular of children at risk;
- Regular dialogue and cooperation with national child protection services and specialized family or child protection units within the local police to develop (context-specific) prevention strategies and activities;
- Seek the support and collaboration of specialized agencies, such as UNICEF and other reputable international or national actors, including NGOs.

Mitigating protection risks associated with fighters/combatants already present:

- Where feasible and safe, establish dialogue with fighters/combatants (including leadership), to explain why their presence is problematic and has potential security risks for the refugee population;
- Seek to avoid that fighters/combatants assume leadership positions in the refugee coordination structures, or in any assistance distribution;
- Undertake dissemination campaigns offering rehabilitation, livelihoods or education activities, to promote voluntary self-identification;
- Initiate awareness raising campaigns to ensure that refugees are aware of the risks associated with military activities, and are informed of their obligation to comply with national law;
- Offer enhanced educational after-school, sports and recreational activities for children and youth to reduce the risk of recruitment;
- Advocate for monitoring of identified fighters/combatants and their activities by police or security authorities to avoid recruitment;
- Advocate for criminal offences committed by fighters/combatants – including recruitment, training or weapons trade – to be handled by law enforcement, in accordance with national law;
- In refugee sites, a secure and guarded weapons depot at the entrance may in some cases be considered appropriate (as a last resort).

Specifically for urban refugee contexts:

- Ensure regular dialogue with the urban refugee population through community outreach, regular participatory assessments, and other two-way channels of communication (such as refugee “hotlines”, protection/reception hours, and the use of mobile messaging applications);
- Establish effective and confidential complaints mechanisms for refugees regarding the presence of fighters/combatants and weapons, and other protection concerns;

- Advocate for the civilian and humanitarian character of asylum with local and regional authorities, including local police, as well as municipalities;
- Establish contact with law enforcement agencies in urban areas and seek their support for ensuring the security of refugees within their geographical areas, in particular raising any concerns related to forced recruitment or child recruitment;
- Offer educational, after-school, sports and recreational activities for children and youth, as well as school retention schemes, to reduce the risk of child recruitment;
- Initiate age-appropriate sensitization campaigns on recruitment in schools hosting refugees, addressing context-specific patterns and drivers;
- Strengthening economic opportunities and using cash to address economic vulnerabilities;
- Promote peaceful coexistence and access to child friendly spaces and safe spaces through the support of neighborhood centers and local NGOs, as well as other (context-specific) prevention strategies and interventions.

In refugee sites (including camps and collective, transit, reception, and similar centers):

- Explicitly prohibit fighters/combatants from residing in, transiting through or visiting refugee sites, even for shorter periods of time, and put in place adequate screening for this to be effectively implemented in practice;
- Explicitly prohibit the holding, trading or bringing of weapons or ammunition into refugee sites, enforced through weapons searches, if needed;
- Elaborate and promote site regulations and by-laws, in consultation with refugees. This should include regulations specifically prohibiting refugees from engaging in armed or military activities incompatible with their refugee status;
- Establish transparent site administration and management, with regular dialogue and information sharing with refugees and their leadership(s);

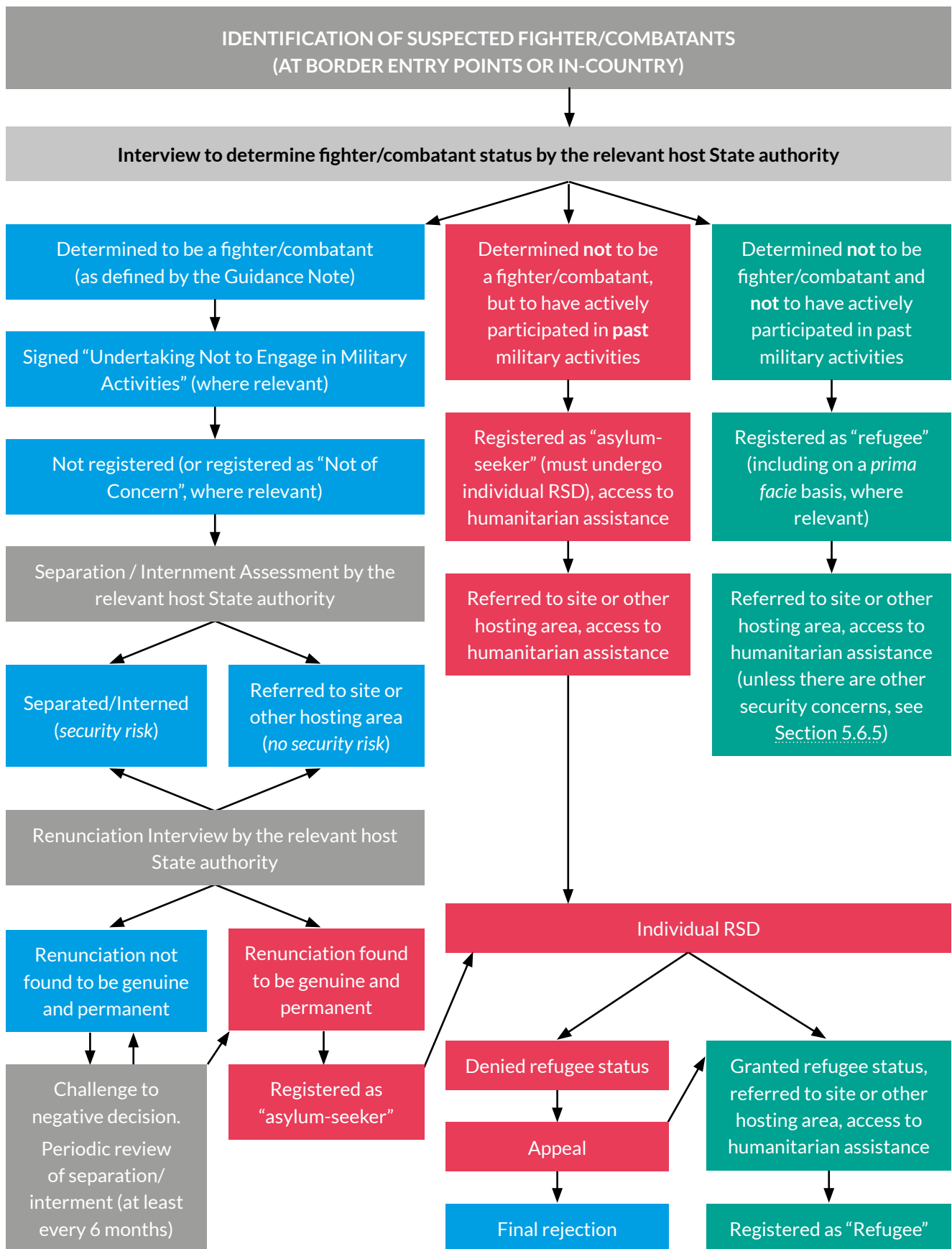
- Ensure that refugee sites are located at a safe distance (at least 50 km/ 31.6 miles) from the border and other areas affected by conflict, insecurity or violence;
- If the current location of a site is negatively affecting its civilian or humanitarian character, the possibility of relocating the site (or those most directly affected) should be considered. Such relocation should be planned in consultation with the refugee community.

Mobilization of relevant actors:

- Liaise with relevant government counterparts regarding the security needs of refugees in *all refugee-hosting areas*, including urban centers;
- Engage and work closely with relevant development agencies, such as UNDP, to help build national capacity in the security sector;
- If the host State lacks the capacity to deal with the security of refugee-hosting areas, other States and the wider international community should be mobilized to support the host State;
- Where UN peace operations are present and mandated, advocate for their support in ensuring security in and around refugee sites and other hosting areas, and joint assessments, referencing the common UN work for the protection of civilians in armed conflict and the specific mandate of the relevant peace operation (where applicable);
- Alert the UN CT/HCT of any situation of concern (including the presence of active fighters/ combatants and the need for DDR programming);
- Use existing platforms or structures for civil-military coordination (UN-CMCoord) to raise issues of the civilian and humanitarian character of asylum, with the support of OCHA;
- Maintain ongoing dialogue with the ICRC, building upon respective mandates and expertise, and the need for confidentiality;
- Ensure that support to national/state security forces or regional peacekeeping complies with the UN Human Rights Due Diligence Policy.

ANNEX 5:

SAMPLE FLOW CHART – IDENTIFICATION AND SEPARATION



ANNEX 6:

QUICK REFERENCE SHEET-INTERMENT BY THE HOST STATE IN NON-INTERNATIONAL ARMED CONFLICTS

While the grounds and process for internment in international armed conflicts are specified in IHL (Third and Fourth Geneva Convention), they are less clear in non-international conflicts, where much will depend on domestic law and international human rights obligations. Guidance on the minimum standards can, however, be drawn from IHL, international human rights law (in particular related to the prohibition against arbitrary detention), and soft law.

The below are minimum standards which UNHCR and its partners are recommended to advocate for when a host State is seeking to use internment in the context of a non-international armed conflict:

Material grounds for internment:

- Internment is an exceptional measure and can only be justified by imperative reasons of security;
- Internment should not be used to circumvent criminal proceedings where these are feasible;
- Internment needs to be assessed on an individual case-by-case basis (if not, it could potentially amount to collective punishment and/or infringe on the principle of non-discrimination);
- Internment should be authorized by and in accordance with national law, *i.e.* national law must have been enacted and be in accordance with the State's international human rights obligations (such as ICCPR);
- Internment needs to cease as soon as the security threat has ceased to exist;
- Children should in principle not be interned. Their best interests as is a primary consideration, including with regard to the duration and conditions of detention. The internment should be for the shortest possible period of time. Children who are less than 15 should not be interned.

Procedural principles and safeguards:

- The internee must be appropriately and accurately registered;
- The internee must be held in a recognized place of detention;
- The internee should be informed of the reasons and grounds for internment;
- Procedures to be in place to allow for individual recourse (appeal) in case of alleged wrongful identification;
- The legality of internment should be initially, and then periodically, reviewed on a regular basis (at least every 6 months), by an independent and impartial body (this is without prejudice to the right to *habeas corpus* or similar proceedings under domestic law);
- Children shall be given priority for review, with procedures that are accessible, age-appropriate, effective and responsive to the specific legal and social needs of children.

Treatment and facilities:

- As internment is non-punitive in nature, the conditions should not be prison-like, nor should internees be held alongside convicted criminals or prisoners of war;
- Humane treatment, and the prohibition against torture and ill-treatment, is a minimum standard;
- The internee should have access to medical care and adequate basic services;
- The internee should be able to maintain family contacts (through family visits etc.);
- Women must be interned in separate facilities from men, and, as far as possible, be under female

supervision, with adequate measures to prevent SGBV (appropriate lighting, separate latrines, etc.);

- New-borns and infants may stay with their mothers, while special arrangements should be sought, to the extent possible, for the care of other children (in line with their best interests);
- If interned, children must be separated from, and at a distance from, adults, unless accommodated with a parent or other caregiver (when this is found to be in the child's best interests);
- The possible protection concerns of specific individuals or groups, if housed together, are to be considered.

Access to humanitarian actors:

- All persons deprived of their liberty should benefit from ICRC visits;
- UNHCR should have access to all persons who are believed to be of its concern.

ANNEX 7:

KEY MESSAGES FOR UNHCR REPRESENTATIVES

- The civilian and humanitarian character of asylum is an established and respected **international refugee standard and a principle of international protection**, derived from existing rules in international refugee law, human rights law, international humanitarian law, national law, UNHCR's Statutes and the UN Charter.
- The primary responsibility for maintaining the civilian and humanitarian character of asylum lies with the host State. **UNHCR needs to engage with national authorities through principled advocacy**, from the early stages of emergency preparedness to raising potential concerns throughout the response stage.
- In situations where the State, as the primary duty bearer, is unable or unwilling to effectively fulfil its responsibilities, *UNHCR needs to engage with and mobilize other relevant actors*, along the lines of the multi-stakeholder approach set out in the *Global Compact on Refugees*. This includes encouraging other States to support the host State, engaging with development actors (such as UNDP), UN and regional peace operations, other UN entities (such as UNICEF and DPO), and the ICRC, where present.
- UNHCR's approach is to work with host States and other relevant actors to ensure that the civilian and humanitarian character of asylum is preserved to the fullest extent possible in all refugee situations. This policy objective is based on three inter-related aspects of its protection mandate, namely:
 - i. To **protect refugees from violence or insecurity** related to the presence, proximity or actions of armed elements and fighters/combatants;
 - ii. To **enable humanitarian access** for the purposes of providing international protection and delivering humanitarian assistance and services; and
 - iii. To **safeguard the integrity of the institution of asylum** by ensuring that fighters/combatants *do not* benefit from asylum, and that the arrival and presence of such fighters/combatants in the host State is managed appropriately, in accordance with relevant provisions of international and national law, with a view to prevent any adverse consequences to the asylum and protection space in that State.
- To pursue this aim, **UNHCR has set out six key measures** which should be considered undertaken in all refugee operations, depending on the risks identified in that specific operational context:
 - 1) Preparedness planning;
 - 2) Effective security management;
 - 3) Disarmament of armed elements;
 - 4) Identification of active fighters/combatants;
 - 5) Separation and measures of control (including, in certain circumstances, internment); and
 - 6) Verification of renunciation of military activities, so as to allow for refugee status determination of former fighters/combatants who are seeking international protection.
- Any measures taken to maintain the civilian and humanitarian character of asylum need to abide by the overarching principles and standards of international law, including the **principle of non-refoulement and access to territory, the prohibition of arbitrary detention, and the protection of women and children**.
- Persons identified as active fighters/combatants, or who are taking direct part in hostilities, **cannot be admitted into refugee status determination procedures**, nor have access to refugee sites or to humanitarian assistance from UNHCR and its partners under its international protection mandate for refugees – that is until such time that they have genuinely and permanently renounced military activities (“former fighters/combatants”).

- UNHCR may provide **financial and other support to the host State** in their efforts to ensure security for refugee sites and other hosting areas. Any such support needs to comply with the *UN Human Rights Due Diligence Policy*. Particular care should be taken to avoid support to internment or screening facilities due to the risk of such facilities leading to the arbitrary deprivation of liberty, or other human rights violations.
- While maintaining UNHCR's leadership and coordination role for refugee operations, **the UN Country Team/ Humanitarian Country Team should be kept regularly informed of any situations of concern**, and support the mobilization of other UN entities at the national or global level, when needed. This, in particular, relates to the presence of active fighters/combatants in the host State, and the need for DDR programming.

