

UNHCR Observations on the Proposal for amendments to the Norwegian Immigration Act (Deportation of refugees due to imposed punishment)

[Forslag til endring i utlendingsloven – Utvising av flyktninger på grunn av ilagt straff]

I. Introduction

1. The United Nations High Commissioner for Refugees (“UNHCR”) Representation for the Nordic and Baltic Countries (“RNB”) appreciates the invitation by the Government of Norway to provide observations on the “Consultation note – Deportation of refugees due to imposed punishment” [*Høringsnotat – Utvisning av flyktninger på grunn av ilagt straff*] - hereafter the “Proposal”.¹
2. UNHCR has a direct interest in law proposals related to asylum, as the agency entrusted by the UN General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees.² Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,³ whereas the 1951 Convention relating to the Status of Refugees⁴ and its 1967 Protocol (hereafter collectively referred to as “1951 Convention”) oblige State Parties to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR’s duty of supervising the application of the provisions of the 1951 Convention (Article 35 of the 1951 Convention and Article II of the 1967 Protocol). This has also been reflected in European Union (“EU”) law, including by way of reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the EU. The UN General Assembly has also entrusted UNHCR with a global mandate to provide protection to stateless persons world-wide and for preventing and reducing statelessness.⁵
3. UNHCR’s observations are structured as follows: Section II sets out the scope of the Proposal. Section III sets out observations to clarify the scope and application of the

¹ Full Proposal (in Norwegian) which bears a different title “Proposal for amendments to the Immigration Act – expulsion of criminal refugees” [Forslag til endring i utlendingsloven – utvisning av kriminelle flyktninger] <https://www.regjeringen.no/contentassets/4d7b1b32cee745c997a256536d3801c5/horingsnotat-utvisning-av-flyktninger-pa-grunn-av-ilagt-straff.pdf>.

² UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V) <https://www.refworld.org/docid/3ae6b3628.html> (“the Statute”).

³ Ibid, para. 8(a). According to para. 8(a) of the Statute, UNHCR is competent to supervise international conventions for the protection of refugees. The wording is open and flexible and does not restrict the scope of applicability of the UNHCR’s supervisory function to one or other specific international refugee convention. UNHCR is therefore competent qua its Statute to supervise all conventions relevant to refugee protection, UNHCR’s supervisory responsibility, October 2002 <http://www.refworld.org/docid/4fe405ef2.html>, pp. 7–8.

⁴ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189 <http://www.unhcr.org/refworld/docid/3be01b964.html>. According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the Convention”.

⁵ UN General Assembly Resolution A/RES/50/152, 9 February 1996 <http://www.unhcr.org/refworld/docid/3b00f31d24.html>, reiterated in subsequent resolutions, including A/RES/61/137 of 25 January 2007 <http://www.unhcr.org/refworld/docid/45fa902d2.html>, A/RES/62/124 of 24 January 2008 <http://www.unhcr.org/refworld/docid/47b2fa642.html>, and A/RES/63/148 of 27 January 2009 <http://www.unhcr.org/refworld/docid/4989619e2.html>.

cessation clauses under Article 1C, expulsion under Article 32 and the principle of *non-refoulement* under Article 33 of the 1951 Convention as well as exceptional situations where termination of refugee status is justified because of commission of crimes. Section IV sets out the conclusions.

II. The Scope of the Proposal

4. The Proposal seeks to introduce a new provision to the Immigration Act⁶ on the expulsion of foreigners with refugee status, who have been convicted and sentenced to crimes that carry a prison sentence of two or more years, without first making a decision on the cessation of refugee status.⁷ The proposed provision aims to move away from the current practice of the migration authorities to first decide to end refugee status through a cessation assessment - before a decision on expulsion is made. Instead, the new provision stipulates as the only condition that there is no risk of persecution for the refugee.⁸
5. The Ministry considers that it has to be possible to deport foreigners who commit serious crimes and who are not in need of international protection to ensure the Norwegian population's confidence in the asylum system.⁹ The Proposal concludes that the 1951 Convention does not pose an obstacle to regulating such a clarification in national legislation for reasons of public order and security. The Proposal also points out that there is nothing in the wording of the 1951 Convention, which indicates that a refugee who poses a threat to public order or security should be able to claim stronger protection than newly arrived asylum-seekers.¹⁰
6. UNHCR appreciates the Proposal's requirement to assess the risk of persecution in the context of expulsion of refugees whose criminal conduct poses a threat to national security, public order and a danger to the security or community, in line with Section 73 of the Immigration Act, which provides protection against removal.¹¹ UNHCR also acknowledges that the Proposal has duly listed relevant provisions and safeguards in situations of expulsion of refugees also under the 1951 Convention, the Convention for the Protection of Human Rights and Fundamental Freedoms¹² ("ECHR"), Section 93 of the Norwegian Constitution¹³ and the EU Qualification Directive.¹⁴
7. The Proposal stipulates that a prison sentence of two or more years for a crime is to be considered sufficiently serious for the purpose of expulsion. UNHCR, however, notes that

⁶ Lov om utlendingers adgang til riket og deres opphold her (utlendingsloven), LOV 2008-05-15-35 <https://lovdata.no/dokument/NLE/lov/2008-05-15-35>.

⁷ Proposal, p. 1. The term used in the proposal for cessation of refugee status is "opphør av flyktingstatus".

⁸ Proposal, p. 2, pp. 11-13.

⁹ Proposal, p. 1, 12.

¹⁰ Proposal, p. 12.

¹¹ Proposal, p. 13.

¹² Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5 <https://www.refworld.org/docid/3ae6b3b04.html>.

¹³ Kongeriket Norges Grunnlov, LOV 1814-05-17 <https://lovdata.no/dokument/NL/lov/1814-05-17>.

¹⁴ European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU <https://www.refworld.org/docid/4f197df02.html>.

the Proposal does little to elaborate on the types of crimes, beyond the mere length of the prison sentence, that would trigger application of the proposed provision.

III. Observations

8. In UNHCR view, the refugee law framework does not stand in the way of criminals facing justice. UNHCR recognizes the legitimate security concerns of States and the need to uphold the rule of law in its society. These concerns were foreseen by the drafters of the 1951 Convention, and is precisely why they established that, in exceptional situations, some individuals do not need or deserve international protection, which will be further explained below in paragraphs 15-27.
9. Furthermore, in line with Article 2 of the 1951 Convention, refugees must conform to the laws and regulations of the country of asylum and to measures taken for the maintenance of public order. In other words, recognized refugees who commit crime in the country of asylum should normally be prosecuted and sentenced in line with the framework of national law and proceedings.¹⁵ Article 2 does not provide any sanctions in the case of a refugee who does not fulfil his or her duties. The individual will not forfeit their status as a refugee and will not – by virtue of this Article – forfeit any of the rights and benefits which the 1951 Convention confers on refugees. Article 2 also does not prejudice sanctions which may be applied by virtue of other Articles, for example Articles 26, 32 and 33.¹⁶
10. Refugee status should not be subject to regular review – regardless of the age of the individual or whether refugee status was granted on the basis of the individual’s protection needs as an unaccompanied child, who has now reached the age of majority.¹⁷ The only basis for reconsidering refugee status would be after significant changes in their country of origin which would bring to an end the risk to their lives. Initiating a re-examination of an individual’s need for international protection on the basis that they have committed a crime is not grounded in international refugee law. Articles 32 and 33(2) provide the correct framework in such cases, neither of which involve re-examination of refugee status nor its removal but the potential to remove the right to non-refoulement and the ability to expel the refugee from the host country.

Scope and application of the cessation clauses under Article 1C of the 1951 Convention

11. UNHCR appreciates that the Proposal aims to steer toward a more correct understanding of refugee law by removing the current practice of carrying out a cessation assessment prior to a decision on expulsion being made. UNHCR, however, remains concerned about the absence of a uniform understanding of the application of the cessation clauses contained in Article 1C of the 1951 Convention, as is evident from the overview presented of the current

¹⁵ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/1P/4/ENG/REV. 4, <https://www.refworld.org/docid/5cb474b27.html> (UNHCR Handbook), para. 154.

¹⁶ See A. Grahl-Madsen, Commentary on the Refugee Convention, Articles 2-11, 13-37, published by UNHCR (1997), Commentary to Article 2, at (3) <https://www.refworld.org/docid/4785ee9d2.html>. (Grahl-Madsen, Commentary on the Refugee Convention).

¹⁷ See the “typical case” referred to in the Proposal on p. 12.

practices in the Proposal. UNHCR would therefore like to clarify the scope and application of the cessation clauses.

12. In UNHCR's view, the cessation clauses in Article 1C (1-6) set out the only situations in which refugee status properly and legitimately granted comes to an end.¹⁸ Once an individual is determined to be a refugee, their status is maintained unless they fall within the terms of these cessation clauses.¹⁹ Article 1C only "applies when the refugee, having secured or being able to secure national protection, either of the country of origin or of another country, no longer needs international protection [...and] the approach to such cases should be to ensure that no refugee is unjustly deprived of the right to international protection."²⁰ Since the application of the cessation clauses in effect operates as a formal loss of refugee status, a restrictive and well-balanced approach should be adopted in their interpretation. This strict approach is also important since refugees should not be subjected to constant review of their refugee status.²¹
13. The cessation clauses can be divided broadly into two categories: those relating to a change in the personal situation of the refugee brought about by his/her own acts (contained in sub-paragraphs 1-4 of Article 1C), and those relating to a change in the objective circumstances which formed the basis for the recognition of refugee status (contained in sub-paragraphs 5-6).²²
14. Commission of a crime is not an act that falls within the scope of Article 1C and should therefore not invoke an assessment of whether the refugee should continue to benefit from international protection. Article 1C and its equivalent in national legislation should not serve as a pre-requisite for expulsion and to terminate refugee status when refugees have committed crimes. There is no causal link between the commission of crimes by refugees and the cessation clauses, nor is it regarded under the 1951 Convention as a reason for cessation of refugee status.²³ The basis and application of the cessation clauses must be clearly distinguished from other situations which warrant termination of refugee status in the event a refugee commits a serious crime and the application of Articles 32 and 33(2) of the 1951 Convention which may exceptionally justify expulsion or return to the country of origin (see further below).
15. Within the background information presented in the Proposal, the point on whether the cessation analysis is a "mirror image" of the inclusion assessment under Article 1A(2) of

¹⁸ UNHCR Handbook, paras. 115-116; UNHCR, The Cessation Clauses: Guidelines on Their Application, 26 April 1999 <https://www.refworld.org/docid/3c06138c4.html> (UNHCR, Application of the Cessation Clauses, 1999); UNHCR, Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees, 10 February 2003, HCR/GIP/03/03, www.refworld.org/docid/3e50de6b4.html.

¹⁹ UNHCR Handbook, para. 112.

²⁰ UNHCR, Note on Cessation Clauses, 30 May 1997, EC/47/SC/CRP.30 <https://www.refworld.org/docid/47fdfaf1d.html> paras. 4, 14.

²¹ UNHCR, Application of the Cessation Clauses, 1999, para. 2.

²² Ibid, para. 5.

²³ Ibid, endnote 1. This was further confirmed by the Norwegian Borgarting Court of Appeal in LB-2021-78433, Judgement of 11 March 2022, where the Court confirmed that the criteria for cessation of refugee status are independent of the individual's criminal behaviour. The same conclusion was reached in LB-2018-148797, Judgement of 26 February 2020 and by the Civil Ombudsman in a statement on 11 July 2019 concerning an Afghan boy who was deported on the basis of an imposed sentence <https://www.sivilombudet.no/uttalelser/utlendingstnemndas-rettsanvendelse-i-sak-om-opphor-av-flyktningstatus-opprettet-etter-ilagt-straaff/>.

the 1951 Convention is also raised.²⁴ UNHCR maintains its position that a cessation analysis is not the “mirror image” of assessing whether a person has a well-founded fear of persecution and is unwilling or unable to avail themselves of the protection of their country of nationality (inclusion assessment). That the cessation analysis grounded in Article 1C (5) and (6) requires more than simply the absence of persecution is also clear from the text of the Article, which refers to circumstances in connection with the grant of refugee status – the change must of a fundamental, durable and stable character.²⁵

Situations in which refugee protection can be cancelled or revoked

16. Refugees who have committed a crime may, however, in certain circumstances lose their refugee status already granted through *cancellation* or *revocation* in line with certain procedural safeguards. Legitimate *cancellation* of refugee status arises when it is established that the decision to grant refugee status was incorrect because the individual did not meet the inclusion criteria of the refugee definition, or when the individual should have been excluded at the time of determination of their status. This may be the case where the individual has committed fraud or misrepresented facts that had a causal link to their recognition as a refugee, or under certain circumstances, if the erroneous decision was due to a mistake by the adjudicating authority.²⁶
17. *Revocation* of refugee status applies when the individual commits crimes under the exclusion clauses Articles 1F(a), crimes against peace, war crimes, crimes against humanity, or Article 1F(c), acts contrary to the purposes and principles of the United Nations, including if committed in the country of asylum. In contrast, the exclusion ground in Article 1F(b), which covers “serious non-political crimes” is applicable only to crimes committed “outside the country of refuge prior to admission to that country as a refugee”, and could thus not result in revocation of refugee status on the basis of a crime committed in the country of asylum. The logic of the Convention is that criminal conduct after admission into the country of refuge would be handled through rigorous domestic criminal law enforcement and/or, where necessary and appropriate, the application of Article 32 or Article 33(2).²⁷

The scope and application of Articles 32 and 33(2) of the 1951 Convention

18. UNHCR also wishes to reiterate the scope and application of the safeguards under Articles 32 and 33 of the 1951 Convention to eliminate any misconception that they are only applicable to recognized refugees or that the type of asylum or protection status held by an individual renders a stronger or weaker form of protection in this regard. These articles should, however, not be conceived as a ground for terminating refugee status.

²⁴ Proposal, pp. 10-11.

²⁵ UNHCR, Amicus curiae of the United Nations High Commissioner for Refugees in case number 20-121835SIV-HRET regarding F.K. and others against the State/the Norwegian Appeals Board before the Supreme Court of Norway (Norges Høyesterett), 16 December 2020 <https://www.refworld.org/docid/602b9c934.html>.

²⁶ UNHCR, Note on the Cancellation of Refugee Status, 22 November 2004, <https://www.refworld.org/docid/41a5dfd94.html>, pp.15-29.

²⁷ UNHCR, Additional UNHCR Observations on Article 33(2) of the 1951 Convention in the Context of the Draft Qualification Directive, December 2002, <https://www.refworld.org/docid/437c6e874.html>, para. 6.

19. Article 33(1) of the 1951 Convention, which contains the principle of *non-refoulement*, is not meant to be understood as exclusively applying to persons formally recognized as refugees because it uses the word “refugee”.²⁸ The declaratory nature of refugee status should be recalled.²⁹ A person does not become a refugee because of formal recognition in an asylum or status determination process, but is recognized because they are a refugee, having already fulfilled the criteria contained in the refugee definition. It therefore follows, that the principle of *refoulement* applies beyond those formally recognized as refugees and encompasses protection for asylum-seekers (at any stage of the asylum process), persons who wish or intend to apply for asylum and persons who have expressed some form of fear of return to their country but who are yet to formally register as an asylum-seeker.
20. Only in the extreme cases where the individual meets the conditions contained in Article 33(2) can exceptions to the principle of *non-refoulement* be considered. A person expelled in line with the exception under Article 33(2) would still maintain refugee status. These considerations must be viewed in the context of the overriding humanitarian objective of the 1951 Convention and applicable human rights guarantees. The provision aims at protecting the safety of the country of refuge or the community. Its application hinges on the assessment that the refugee in question is a danger to the security of the country or having been convicted by a final judgement of a particularly serious crime, poses a danger to the community.
21. For the “*danger to the security of the country*” exception to the principle of *non-refoulement* to apply, there must be an individualized finding that the refugee poses a current or future danger to the host country. The danger must be serious, rather than of a lesser order, and it must be a threat to the national security of the host country. On this point, the drafters of the 1951 Convention clarified in their commentary to Article 33, that the security of the country exception may be invoked against acts of a serious nature, endangering directly or indirectly the constitution, government, the territorial integrity, the independence or the external peace of the country.³⁰
22. For the “*danger to the community*” exception to apply, not only must the refugee in question have been convicted of a crime of a very grave nature, but it must also be established that the refugee, in light of the crime and conviction, constitutes a very serious present or future danger to the community of the host country. The fact that a person has been convicted of a particularly serious crime does not of itself mean that he or she also meets the “danger to the community” requirement. Whether or not this is the case will depend on the nature and circumstances of the particular crime and other relevant factors (for example, the likelihood of recidivism). While the decision whether the crime is a particularly serious one would depend on the merits of the case, the offence must normally be a capital crime (murder, arson, rape, armed robbery, etc.).³¹
23. UNHCR recognizes that the term “*serious crime*” may have different connotations in different legal systems. In UNHCR’s view, the gravity of the crimes should be judged

²⁸ UNHCR, Note on the Principle of Non-Refoulement, November 1997, <https://www.refworld.org/docid/438c6d972.html>, section A.

²⁹ UNHCR Handbook, para. 28.

³⁰ UNHCR, Note on Diplomatic Assurances and International Refugee Protection, August 2006 <https://www.refworld.org/docid/44dc81164.html>, (UNHCR, Note on Diplomatic Assurances) para. 12. See also Grahl-Madsen, Commentary on the Refugee Convention, Commentary to Article 33, at (8).

³¹ UNHCR, Note on Diplomatic Assurances, para. 12.

against international standards, not solely by its categorization in the host State or the nature of the penalty.³² UNHCR is concerned that the Proposal has not sufficiently elaborated on what constitutes a particularly serious crime that would fall under the suggested new provision. Under the Norwegian Penal Code, crimes, such as, simple theft, provision of a false statement to a court or public authority and bookkeeping or accounting violations can lead to a prison sentence of up to two years.³³ These are not crimes that would meet the required threshold of seriousness thereby constituting a danger to the community. UNHCR sees a risk that the Proposal may lead to the expulsion of a refugee who has committed crimes of a nature not envisaged by the drafters of the 1951 Convention.

24. In either case, the removal of a refugee is lawful only if it is necessary and proportionate. This means that there must be a rational connection between the removal of the refugee and the elimination of the danger resulting from his or her presence for the security or community of the host country; *refoulement* must be the last possible resort for eliminating the danger to the security or community of the host country, and the danger for the host country must outweigh the risk of harm to the person as a result of *refoulement*. If less serious measures would be sufficient to remove the threat posed by the refugee to the security or the community of the host country, *refoulement* cannot be justified under Article 33(2) of the 1951 Convention.³⁴
25. The exceptions to the principle of *non-refoulement* in Article 33(2) are distinct from, yet linked to Article 32(1), which clearly must be understood in the sense that “expulsion” is the only way by which a refugee “lawfully in the territory” may be removed from the territory of the host country. In other words, if a refugee is “lawfully in the territory” he or she is entitled to the benefits of Article 32 and may only be removed for reasons of national security or public order and subject to the procedural provisions of Article 32(2) and (3). Article 32 does not, however, permit the expulsion of a refugee to a country where he or she would be at risk of persecution. Only refugees who are not or no longer “lawfully in the territory” of the host country, may be subjected to *refoulement* under Article 33(2).
26. The term “national security” in Article 32 encompasses anything that threatens the country’s sovereignty, independence, territorial integrity, constitution, government, external peace, war potential, armed forces or military installations. Examples of crimes constituting a threat to national security may be drawn from the Norwegian Penal Code³⁵, sections 16 (Genocide, crimes against humanity and war crimes), section 17 (Protection of Norway’s autonomy and other fundamental national interests), and section 18 (Terrorist acts and terrorism-related acts). Such crimes are indicative of situations where the concept of “national security” may be justly invoked.³⁶
27. The term “public order” in Article 32 should be viewed as an international concept – a technical term within its own meaning which does not necessarily coincide with the concept

³² See, for instance, UNHCR, Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, 4 September 2003, HCR/GIP/03/05 <https://www.refworld.org/docid/3f5857684.html>, para. 14; UNHCR, Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, 4 September 2003 <https://www.refworld.org/docid/3f5857d24.html>, para. 38.

³³ Lov om straff (straffeloven) LOV 2005-05-20-28 <https://lovdata.no/dokument/NL/lov/2005-05-20-28>, Section 221 (false statement), Section 321 (theft), Section 392 (accounting violation).

³⁴ Ibid, paras. 13-14.

³⁵ Lov om straff (straffeloven) LOV 2005-05-20-28 <https://lovdata.no/dokument/NL/lov/2005-05-20-28>.

³⁶ Grahl-Madsen, Commentary on the Refugee Convention, Commentary to Article 32.

of public order in any particular municipal system of law. Even certain serious crimes do not automatically give the host country the right to expel a refugee by virtue of Article 32. Committing a serious crime and a criminal conviction do not in themselves justify the expulsion of the refugee for reasons of public order. There must be a separate finding as to whether the continued presence of the refugee is upsetting the maintenance of public order. A reading of various international instruments leading up to the 1951 Convention shows that the intended interpretation of the term “public order” is that only when normal means of dealing with criminals do not suffice, or if the acts are particularly hideous, the host country may invoke public order to expel the person. Public order needs to be at stake where the refugee constitutes a threat to an uncertain number of persons (for example, habitual criminals and wanton murderers), or to the society at large (for example, riots, unrest, and drug trafficking).³⁷

28. The procedural safeguards applicable to expulsion regulated in Article 32 must also be read into the application of the exceptions to *refoulement* in Article 33(2). The determination of whether or not one of the exceptions provided in Article 33(2) is applicable must be made in a procedure which offers adequate safeguards. At a minimum, these should be the same as the procedural safeguards required for expulsion under Article 32. Anything short of that, is considered a breach of both provisions.³⁸
29. In all of the above situations, including where Article 32 and/or 33(2) is applicable, the individual still benefits from protection against return to a country where they are at risk of ill-treatment by virtue of other international instruments, most notably Article 3 of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”).³⁹ Article 3 of the CAT contains an absolute prohibition against the return of an individual to a country where there is a risk that they will be subjected to torture. Article 37 of the Convention on the Rights of the Child is of particular importance in ensuring children are not subjected to the same.⁴⁰ Other international and regional instruments contain similar provisions.⁴¹

IV. Conclusions

30. In the context of international refugee protection, it is only in very exceptional situations that refugees who have committed crimes are to be considered as undeserving of protection against *refoulement* or to be expelled. The nature and seriousness of the crime as well as when and where it was committed is of importance from a refugee law point of view.
31. UNHCR welcomes Norway’s decision to move away from first making a decision on the cessation of refugee status before a decision is made on expulsion of refugees who have committed crimes. UNHCR considers, however, that it also would not be appropriate to

³⁷ Ibid.

³⁸ UNHCR, Note on Diplomatic Assurances, p. 6, para. 14.

³⁹ UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85
<https://www.refworld.org/docid/3ae6b3a94.html>.

⁴⁰ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3 <https://www.refworld.org/docid/3ae6b38f0.html>.

⁴¹ Article 7 of the 1966 International Covenant on Civil and Political Rights (ICCPR), Article 5(2) of the 1969 American Convention on Human Rights (ACHR), Article 5 of the African (Banjul) Charter on Human and People’s Rights, Article 2 of the 1985 InterAmerican Convention to Prevent and Punish Torture.

reconsider whether a refugee has a risk of persecution and, thereby, reassess their need for international protection, on the basis that they have committed a crime. UNHCR has long advocated that refugees and beneficiaries of subsidiary protection are entitled to a secure and stable protection status, which should not be subject to regular review. That is not to say that once protection has been accorded it can never cease. The refugee protection system – as set out in the 1951 Convention – was designed with that in mind. However, the only context in which it would be appropriate to initiate application of the cessation clauses of the 1951 Convention is based on evidence of significant changes in a refugee’s personal circumstances or situation in their country of origin which bring an end to their risk of persecution.

32. UNHCR recommends that cases of refugees who are considered a threat to national security or public order, or who constitute a danger to the security or the community of Norway are dealt with pursuant to the clearly and exhaustively defined criteria set out in Article 32 and, where relevant, the exceptions to the principle of non-refoulement in Article 33(2) of the 1951 Convention. It is important to recall that these provisions are not meant as grounds for terminating refugee status. Adequate procedural guarantees and due process of law must be respected in these circumstances.
33. UNHCR urges Norway to undertake an analysis of the nature and seriousness of the crimes that could lead to deportation or expulsion, outside of the confines of the length of the prison sentence and looking beyond an assessment of no risk of persecution. The proposed parameters fall short of the required analysis of the degree of seriousness of a crime that would constitute a danger to the security of the country or a danger to the community. Any decision to deport or expel refugees who committed crimes and have been sentenced, should be made in full compliance with Norway’s international obligations. A very restrictive and exceptional scope for such decisions is set out in international refugee law and human rights instruments.

UNHCR Representation for the Nordic and Baltic Countries

28 November 2022