



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

I. SCOPE OF THE GUIDELINES

1. The present Guidelines address legal and practical issues which regularly arise when host States and/or UNHCR consider the application of Article 1F of the 1951 Convention relating to the Status of Refugees (hereafter: “the 1951 Convention”) in situations of mass influx – that is, the arrival across an international border of persons seeking protection in such numbers and at such a rate as to render individual determination of their asylum claims impracticable.

2. The Guidelines are not concerned with the question of the separation and subsequent treatment of combatants, defined for the purpose of these Guidelines as military personnel or members of armed groups who take an active part, directly or indirectly, in an international or non-international armed conflict, and who have entered a country not involved in the conflict.¹ By contrast, measures taken with respect to persons who have participated in armed conflict in the past (“former combatants”) are addressed to the extent that they are relevant in the context of exclusion.

II. BACKGROUND AND CONTEXT

3. In situations of large-scale movements of people fleeing areas affected by armed conflict and/or political developments marked by serious human rights abuses, the receiving State is often faced with a mixed influx. Combatants and others who are not eligible for refugee status may cross the border together with the refugees. Applicable international law requires host States and UNHCR to make

¹ See Executive Committee, Conclusion No. 94 (LIII), 2002, on the Civilian and Humanitarian Character of Asylum.

a proper and careful differentiation between refugees and those who are not in need of, or not entitled to, international refugee protection.²

4. This includes the application of the exclusion clauses of Article 1F of the 1951 Convention, which states that the provisions of that Convention “shall not apply to any person with respect to whom there are serious reasons for considering” that:

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

5. Under the 1951 Convention, competence to decide whether an applicant falls within Article 1F lies with the State in whose territory he or she seeks recognition as a refugee. In certain situations, UNHCR conducts refugee status determination based on its 1950 Statute and subsequent resolutions of the UN General Assembly and Economic and Social Council (ECOSOC).³ When doing so, UNHCR must also consider whether or not an exclusion clause applies to particular individuals. Paragraph 7(d) of UNHCR’s 1950 Statute contains exclusion clauses which are similar, though not identical, to those provided for under Article 1F of the 1951 Convention. Given that Article 1F represents a later and more specific formulation of the category of persons envisaged in paragraph 7(d) of the UNHCR Statute, the wording of Article 1F is considered more authoritative and takes precedence. In determining cases of exclusion, UNHCR officials should therefore be guided by the language of Article 1F.⁴

6. In mass influx situations involving mixed flows, Article 1F of the 1951 Convention should be applied with a view to preserving the integrity of the institution of asylum. Exclusion under this provision may also contribute to safeguarding the civilian and humanitarian character of refugee camps and settlements.⁵ Failure to apply the exclusion clauses in such situations may have

² See Executive Committee, Conclusion No. 85 (XLIX), 1998, on International Protection, at paragraph (y).

³ This may be the case, for example, in States which are not party to the 1951 Convention and/or 1967 Protocol, or if the host State is party to the 1951 Convention/1967 Protocol but has not yet established procedures for the determination of refugee status or is not willing to implement them.

⁴ See UNHCR, “Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees”, HCR/GIP/03/05, 4 September 2003 (hereafter “Guidelines on Exclusion”), at paragraph 7, and the accompanying “Background Note on the Application of the Exclusion Clauses” (hereafter “Background Note on Exclusion”), at paragraphs 18–20. See also below at paragraphs 13 and 41.

⁵ For an overview of initiatives to ensure the civilian and humanitarian character of asylum, see UNHCR’s proposals for a “ladder of options” and its operationalization in the High Commissioner’s Information Notes of 14 January 1999, EC/49/SC/INF.2, and of 27 June 2000, EC/50/SC/INF.4, respectively. See also Executive Committee, Conclusion No. 48 (XXXVIII), 1997, on Military or Armed Attacks on Refugee Camps and Settlements; and

serious repercussions for refugees, as it may mean that they remain under the control of persons who should be excluded and/or lead to the whole group being collectively regarded as undeserving of international refugee protection and assistance. In practice, however, the implementation of the exclusion clauses in a mass influx situation poses significant challenges.

7. Mass influx situations often occur in a tense environment. During the early stages of a large-scale emergency, all available resources are needed to respond to the immediate protection and assistance needs of those crossing the border and to address the most pressing security concerns. The initiation of exclusion procedures will normally not be possible until a certain degree of stability has been attained and the necessary measures are taken to ensure the safety of those involved. Moreover, the proper application of Article 1F of the 1951 Convention requires procedures which enable decision-makers to conduct a thorough examination of each individual case, with due observance of procedural safeguards and guarantees, which in turn calls for adequate preparation and resources.⁶ As a consequence, the application of the exclusion clauses will not normally form part of the immediate emergency response in mass influx situations.

8. Preparation and planning for exclusion procedures and related measures should, however, begin early on, and a number of steps may be taken from the initial stages of a mass influx situation to facilitate the conduct of exclusion proceedings as soon as possible. These and other operational questions are set out in Part V of the present Guidelines, which is preceded by a discussion of refugee status determination in the context of a mass influx (Part III) and legal aspects related to the application of the exclusion clauses in such situations (Part IV).

III. REFUGEE STATUS DETERMINATION IN MASS INFLUX SITUATIONS

A. Group-based determination of refugee status

9. In the context of a mass influx, individual refugee status determination is usually not practicable, while the need to provide protection and assistance is often extremely urgent. In such situations, many States as well as UNHCR have applied group-based recognition of refugee status on a *prima facie* basis. This means that each individual member of a particular group is presumed to qualify for refugee status. This presumption is based on objective information on the circumstances causing their flight.⁷ *Prima facie* recognition is appropriate where there are grounds

Executive Committee, Conclusion No. 94 (LIII), 2002, on the Civilian and Humanitarian Character of Asylum.

⁶ The principles and standards governing the application of Article 1F of the 1951 Convention are set out in UNHCR's Guidelines on Exclusion and the accompanying Background Note, above footnote 4.

⁷ See also UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1979, reedited 1992 (hereafter "Handbook"), at paragraph 44.

for considering that the large majority of those in the group would meet the eligibility criteria set out in the applicable refugee definition.⁸

10. The presumption of refugee status does not apply to active combatants. Armed or military activities are by nature incompatible with the civilian character of asylum.⁹ As a consequence, those who continue to take an active part in armed conflict – whether international or non-international – are not eligible for refugee protection and assistance.¹⁰ Individuals who have taken part in armed or military activities but who have given these up (that is, former combatants) should also be kept outside the scope of *prima facie* recognition, but may apply for asylum and may be admitted into asylum procedures under certain conditions, as discussed below at paragraph 15.

11. States should establish a clear legal framework for recognizing refugee status on a group basis, as this helps to provide certainty and consistency. In a number of countries, *prima facie* recognition of a group of refugees is done through the issuing of a ministerial declaration or an executive decree whereby persons who belong to a certain category, usually defined by nationality and time of arrival in the host country, are determined to be refugees. Sometimes, the process leading to *prima facie* recognition of members of a particular group includes a requirement that each individual appear before a designated body and undergo an interview for the purpose of establishing whether he or she falls within the criteria which define the group deemed to be refugees.

12. Depending on the procedure in place, recognition of refugee status enters into effect with the official publication of the host Government's declaration or decree, or upon the authorities recognizing the individual concerned as belonging to the group in question. *Prima facie* recognition of refugee status does not require subsequent "confirmation", even if individual eligibility determination becomes feasible at

⁸ This may be Article 1 of the 1951 Convention; Article I(1) or (2) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (hereafter: "the 1969 OAU Convention"); or a refugee definition contained in national legislation. Where UNHCR determines refugee status (see above at paragraph 5 and below at paragraphs 13 and 41), the Office applies the refugee definition set out in its 1950 Statute, which is virtually the same as that contained in the 1951 Convention, or the extended refugee definition under its international protection mandate, which is based on the 1950 Statute and subsequent resolutions of the United Nations General Assembly and the Economic and Social Council (ECOSOC) and encompasses persons who are outside their country of origin or habitual residence and unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.

⁹ See, for example, Executive Committee, Conclusion No. 48 (XXXVIII), 1997, on Military or Armed Attacks on Refugee Camps and Settlements, at 4(a). See also Executive Committee, Conclusion No. 94 (LIII), 2002, on the Civilian and Humanitarian Character of Asylum.

¹⁰ In accordance with relevant provisions of the law of neutrality and international humanitarian law, combatants who enter the territory of a neutral State should be disarmed by the latter, separated from the refugee population and interned at a secure location, as far as possible from the theatre of the conflict. These provisions, which formally apply only in the context of international armed conflict are also applicable by analogy to States which are neutral with respect to a non-international armed conflict in another State.

a later stage. It remains valid and may be terminated only if it is established, in accordance with applicable standards and following proper procedures, that the circumstances justify its cessation,¹¹ cancellation¹² or revocation.¹³

13. Primary responsibility for determining refugee status lies with the authorities of the host State. UNHCR's role normally consists of providing assistance in the form of training, technical support, legal advice or guidance to the host authorities, in accordance with its international protection mandate and the Office's supervisory responsibility under paragraph 8 of its 1950 Statute and/or Article 35 of the 1951 Convention. Where UNHCR carries out refugee status determination on behalf of the government, procedural matters may fall to UNHCR, although the host Government remains responsible for its obligations under the 1951 Convention/1967 Protocol and/or a relevant regional instrument. Where the host State refrains from formally announcing the status of persons arriving in a mass influx or where recognition by the host State is delayed, UNHCR may recognize the group on a *prima facie* basis as refugees under its mandate, once the Office has established for itself that the objective situation in the country of origin warrants such a decision.¹⁴

14. If the conditions for *prima facie* recognition are met, best practice would be for the host State and/or UNHCR to issue a formal declaration or public statement to that effect without undue delay. The declaration or statement should clearly define the beneficiaries of the *prima facie* recognition and specify the refugee criteria which are deemed to have been met.¹⁵ Where relevant, the declaration or statement should also clarify that the *prima facie* recognition does not include active or former combatants.

B. Relevance of individual refugee status determination in mass influx situations

15. Individual refugee status determination will usually be the exception in mass influx situations. Procedures whereby the merits of a person's claim are examined in light of the individual circumstances of his or her case would, however, be appropriate for asylum applications submitted by former combatants – that is, persons who have participated in hostilities in the past but who have genuinely and permanently renounced their military activities. Such persons would have been kept outside the scope of *prima facie* recognition but could seek determination of their refugee status on an individual basis. They may be admitted into asylum procedures once it has been determined within a reasonable timeframe that they have genuinely

¹¹ On the criteria for the cessation of refugee status, see UNHCR, "Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees, HCR/GIP/03/03, 10 February 2003; UNHCR, "The Cessation Clauses: Guidelines on their Application", 26 April 1999; UNHCR, "Note on the Cessation Clauses", 30 May 1997; UNHCR, "Discussion Note on the Application of the 'Ceased Circumstances' Cessation Clauses in the 1951 Convention", 20 December 1991.

¹² The standards applicable to cancellation of refugee status are set out in UNHCR, Note on the Cancellation of Refugee Status, 22 November 2004 (hereafter "Note on Cancellation"). See also below at paragraph 16 (i).

¹³ See below at paragraph 16 (ii).

¹⁴ See also above at paragraph 5.

¹⁵ See also above at footnote 8.

and permanently renounced military activities. The asylum applications of former combatants who have been admitted into the asylum procedure should be examined in individual refugee status determination procedures, which should provide for a thorough examination of the inclusion criteria as well as elements related to the possible application of Article 1F of the 1951 Convention.¹⁶

IV. EXCLUSION IN MASS INFLUX SITUATIONS – LEGAL ASPECTS

A. Application of exclusion in mass influx situations

16. In the context of a mass influx, exclusion on the basis of Article 1F of the 1951 Convention may be undertaken in the following ways:

- a) **Cancellation** of refugee status, if information comes to light which indicates that an individual who was granted refugee status would have been within the scope of Article 1F at the time of the initial recognition, provided all other requirements for the invalidation of that determination are met. This applies regardless of whether recognition was made on a *prima facie* basis or following an individual examination of the merits of the person's claim.¹⁷
- b) **Revocation** of refugee status, if an individual who was properly recognized as a refugee (including where this was done on a *prima facie* basis) engages in conduct within the scope of Article 1F(a) and 1F(c) of the 1951 Convention after recognition.¹⁸
- c) **Exclusion** from international refugee protection at the initial eligibility stage, where Article 1F is found to be applicable to a person who is not included in the group recognition but subject to individual refugee status determination.¹⁹

B. Standards for exclusion in mass influx situations

17. The standards for the application of Article 1F of the 1951 Convention, as set out in UNHCR's Guidelines on the Application of the Exclusion Clauses and the accompanying Background Note,²⁰ fully apply, both to the kinds of conduct which may bring an individual within the scope of an exclusion clause and with regard to

¹⁶ See Executive Committee, Conclusion No. 94 (LIII), 2002, on the Civilian and Humanitarian Character of Asylum, at paragraph (c)(vii).

¹⁷ Applicable legislation may, however, impose certain limitations on the re-opening of a recognition decision which has become final, that is, which is no longer subject to appeal or review. For example, the re-opening of such decisions may be permitted only on certain grounds, or may be subject to time limits. On the legal standards and principles applicable to the cancellation of refugee status granted by a State under the 1951 Convention, see UNHCR, Note on Cancellation, above footnote 12, at paragraphs 10–11.

¹⁸ See UNHCR, Background Note on Exclusion, above footnote 4, at paragraphs 11 and 17.

¹⁹ In mass influx situations, this applies essentially to former combatants whose claims are admitted into asylum procedures following a determination of their status as civilians, as described above at paragraph 15.

²⁰ See above at footnote 4.

questions of procedure. In the context of a mass influx, certain procedural aspects require particular attention.

a) Individualized assessment – individual responsibility

18. In all cases, the determination of whether or not a person is undeserving of international refugee protection requires an individualized assessment – the exclusion clauses may never be applied on a group basis.²¹ Moreover, for exclusion to be justified, it is necessary that individual responsibility in relation to a crime within the scope of Article 1F has been established, including where exclusion proceedings concern former combatants or members of certain groups or organizations.²²

19. With regard to former combatants, in particular, it should be noted that having taken part in armed conflict does not of itself constitute a ground for exclusion, nor does it as such establish a presumption of individual responsibility for acts within the scope of an exclusion clause, although an assessment of the applicant's conduct during armed conflict will be required.²³ Likewise, mere membership in a group or organization involved in violent crimes is not necessarily a sufficient basis for a presumption of individual responsibility for excludable acts.²⁴

20. It should also be noted that the identification of certain persons as potentially excludable on the basis of a preliminary exercise as described below at paragraphs 54–55; the separation of such persons from the group of refugees; or, where applicable, their detention,²⁵ do not as such establish a presumption of individual responsibility for acts within the scope of Article 1F of the 1951 Convention.

21. Under certain conditions, however, a rebuttable presumption of individual responsibility for acts within the scope of an exclusion clause may arise for members of particularly violent groups or organizations. Such a presumption requires clear and credible country-of-origin information which links the members of such groups with excludable acts during the relevant period of time.²⁶

b) Consideration of inclusion as well as exclusion aspects

22. As a general principle, examining the applicability of Article 1F of the 1951 Convention requires a holistic approach, in which inclusion as well as exclusion aspects need to be considered.²⁷ This also applies in the context of mass influx situations. Where the application of an exclusion clause is being considered in the context of cancellation of refugee status which was granted on a *prima facie* basis, a separate determination on inclusion would not normally be required, although

²¹ See UNHCR, Background Note on Exclusion, above footnote 4, at paragraph 96.

²² See UNHCR, Guidelines on Exclusion, above footnote 4, at paragraphs 18–23; UNHCR, Background Note on Exclusion, above footnote 4, at paragraphs 50–75.

²³ See UNHCR, Background Note on Exclusion, above footnote 4, at paragraph 63.

²⁴ *Ibid.*, at paragraph 59.

²⁵ See below at paragraphs 56–58.

²⁶ See UNHCR, Guidelines on Exclusion, above footnote 4, at paragraph 19; Background Note on Exclusion, above footnote 4, at paragraphs 58 and 60–62.

²⁷ See UNHCR, Background Note on Exclusion, above footnote 4, at paragraphs 99–100.

inclusion aspects would need to be considered in determining the consequences of exclusion for the individual concerned. Where revocation is being considered, the focus of the proceedings will be on whether the person's conduct will bring him or her within the scope of Article 1F(a) or 1F(c) of the 1951 Convention. With regard to former combatants, inclusion and exclusion elements will need to be considered as part of the individual refugee status determination procedure.

c) Procedural fairness

23. Procedural fairness requires that the procedures put into place permit a thorough examination of each individual case and afford appropriate procedural safeguards and guarantees to those affected, including, in particular, an interview/hearing during which the person concerned is enabled to enter into the substance of the case, written reasons for exclusion and the possibility of a review of first-instance decisions by a different decision-maker or adjudicating panel.²⁸

24. Procedural fairness also requires that persons undergoing refugee status determination, or a review of their refugee status, receive information on the nature and purpose of the proceedings.²⁹ The host authorities and/or UNHCR should inform those concerned that the purpose of the process is to examine whether they meet the criteria for international protection as refugees as well as their duty to cooperate with the decision-making authority in establishing the facts which are material to their case.

25. It is not necessary that detailed explanations about Article 1F of the 1951 Convention be provided at the outset of the process. However, before a decision is made to apply an exclusion clause in an individual case, the host authorities and/or UNHCR should give the individual concerned the opportunity to consider and comment on the evidence on the basis of which exclusion may be decided.³⁰ Notification of intent to cancel or revoke should be given in time to permit preparation of the interview/hearing.³¹

d) Burden and standard of proof – the question of non-cooperation

26. The burden of proof with regard to exclusion rests with the host State or UNHCR, although in those circumstances where a presumption of individual responsibility is justified, the burden of proof is reversed and the individual

²⁸ See UNHCR, Guidelines on Exclusion, above footnote 4, at paragraph 31; UNHCR, Background Note on Exclusion, above footnote 4, at paragraph 98.

²⁹ See UNHCR, Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12, 31 May 2001, at paragraph 50(g); see also UNHCR, Note on Cancellation, above footnote 12, at paragraph 43.

³⁰ See UNHCR, Guidelines on Exclusion, above footnote 4, at paragraph 31; UNHCR, Background Note on Exclusion, above footnote 4, at paragraph 98.

³¹ See UNHCR, Note on Cancellation, above footnote 12, at paragraph 43 (v). This interview/hearing, during which the individual concerned should be permitted to make relevant submissions, should be distinguished from interviews during an earlier stage of the process, which the host State and/or UNHCR may need to conduct with a view to establishing the facts of the case. See also below at paragraph 55.

concerned would need to rebut the presumption.³² The standard of proof required for exclusion is “serious reasons for considering” that the person concerned has committed an act within the scope of Article 1F of the 1951 Convention.

27. In mass influx situations, exclusion will often be examined in the context of cancellation proceedings.³³ The onus to show that refugee status should be cancelled normally rests on the authority which reviews the initial decision.³⁴ Thus, for cancellation to be justified on exclusion grounds, the host authorities and/or UNHCR would need to ascertain the existence of serious reasons for considering that the individual concerned has committed acts within the scope of Article 1F of the 1951 Convention prior to his or her recognition as a refugee (*prima facie* or following an individual examination of the merits of his or her claim). In other words, it is for the decision-maker to establish the facts to support a decision to cancel refugee status on exclusion grounds.

28. Difficulties may arise if a person whose refugee status is being reviewed fails to cooperate with the decision-maker, for example by refusing to provide information on exclusion-related aspects of his or her claim, or where his or her statements on these issues cannot be considered credible.³⁵ Lack of cooperation by a refugee in such circumstances needs to be assessed in light of the available information.

29. Non-cooperation or lack of credibility of a person’s statements cannot as such form the basis for a finding that he or she incurred individual responsibility for excludable acts.³⁶ A decision to apply Article 1F of the 1951 Convention under such circumstances, and thus to cancel refugee status on exclusion grounds, would be justified only if there is sufficient evidence other than statements by the individual concerned which would support the “serious reasons” standard for exclusion,³⁷ or if a presumption of individual responsibility for excludable conduct exists and the applicant fails to rebut it despite having been given an opportunity to do so.³⁸

30. If the available evidence does not meet the threshold for exclusion, cancellation of refugee status may nonetheless be justified in those cases where non-cooperation and/or lack of credibility would have justified a rejection (non-inclusion) had it arisen during an examination of the person’s claim at the time of the

³² See UNHCR, Background Note on Exclusion, above footnote 4, at paragraphs 105–106.

³³ With regard to questions related to non-cooperation and/or credibility problems, similar considerations would apply to procedures which may lead to the revocation of refugee status on the basis of Article 1F(a) or 1F(c) of the 1951 Convention.

³⁴ See UNHCR, Note on Cancellation, above footnote 12, at paragraph 34.

³⁵ Overall credibility is established where the applicant has provided a claim that is coherent and plausible, not contradicting generally known facts and therefore, on balance, capable of being believed. See UNHCR, “Note on Burden and Standard of Proof”, 16 December 1998, at para. 11.

³⁶ UNHCR, Background Note on Exclusion, above footnote 4, at paragraph 111.

³⁷ For example, country-of-origin information from reliable sources, which is sufficiently detailed and specific; credible and reliable statements of other persons; documents or any other information which is both reliable and relevant (e.g. indictments, convictions, extradition requests, etc.).

³⁸ See also above at paragraphs 18–21.

initial recognition. In this context, it should be recalled that in refugee status determination procedures, the asylum-seeker must cooperate by providing a truthful account of the facts, so that based on these facts, a proper decision may be reached,³⁹ while the decision-maker has a duty to ascertain the pertinent facts and gather necessary evidence.⁴⁰ It should also be noted that untrue statements by an applicant are not by themselves a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case.⁴¹

31. For cancellation on the grounds that the person's claim would have been rejected on the basis of an overall negative credibility finding and/or because his or her lack of cooperation makes it impossible to establish the facts necessary to determine the claim to be justified, the decision-maker would need to ensure that the individual concerned has received adequate information on the proceedings⁴² and on his or her duty to cooperate, as well as evaluate whether credibility and/or non-cooperation issues have arisen due to reasons of fear, trauma, misunderstanding etc. The decision-maker should also ensure that the person concerned has been given the opportunity to clear up any inconsistencies which affect the credibility of his or her statements, and that there are no other means at his or her disposal for obtaining the information required to adjudicate the claim.

32. Moreover, in the course of cancellation proceedings initiated on exclusion-related grounds, information may come to light which shows that the individual concerned was not eligible for *prima facie* recognition for reasons other than Article 1F. Cancellation may be justified, for example, if the individual concerned obtained refugee status through fraudulent means, that is, misrepresentations or concealment with regard to the criteria for inclusion within the group considered to meet the applicable refugee definition.⁴³ Given that the purpose of cancellation proceedings is to determine whether the initial decision was made correctly, the relevant eligibility criteria are those which were used at the time. It would not be appropriate to apply a different refugee definition, or to add additional criteria at the review stage.

33. Regardless of the grounds for cancellation, the individual concerned should have the decision to cancel his or her refugee status reviewed on appeal.⁴⁴

³⁹ See UNHCR, "Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees", April 2001.

⁴⁰ See UNHCR Handbook, above footnote 7, at paragraph 196.

⁴¹ Ibid., at paragraph 199.

⁴² Misunderstandings with regard to the nature and purpose of such proceedings may result in non-cooperation or, conversely, lead the individuals concerned to make misrepresentations about their background or activities, including by falsely implicating themselves in excludable conduct, in the mistaken belief that this would enhance their position.

⁴³ For example, nationality; period of departure from the country of origin; being a civilian. For more detailed guidance on the grounds which may give rise to cancellation of refugee status, see UNHCR, Note on Cancellation, above footnote 12, at paragraphs 15–29.

⁴⁴ Ibid., at paragraph 43 (vi). The possibility of an appeal or review of a rejection decision should also be provided in all cases where an asylum application is rejected in first instance. See UNHCR, Asylum Processes (Fair and Efficient Asylum Procedures), above footnote 29, at paragraphs 41–43.

C. Consequences of exclusion

34. When a determination that Article 1F applies becomes final, this means that the individual concerned is not eligible for refugee status and cannot benefit from international protection under the 1951 Convention.⁴⁵ Nor is an excluded person entitled to international refugee protection and assistance under UNHCR's international protection mandate. Despite being unable to access international refugee protection, however, an excluded individual is still entitled to be treated in a manner compatible with international law and, in particular, relevant human rights obligations.⁴⁶ This also applies in the context of a mass influx.

35. Those individuals who, prior to the determination that they come within the scope of Article 1F, were given accommodation in refugee camps or settlements managed by UNHCR are no longer entitled to remain there. However, such persons may be unwilling to leave. While the host authorities should, in principle, remove excluded persons from the camps or settlement, their separation from the refugees may result in danger to the security of the refugees and/or those assisting them.⁴⁷

36. The application of Article 1F to an individual does not impinge on the refugee status of his or her family members, nor does it affect UNHCR's international protection obligations towards these people. An excluded person cannot, however, rely on the principle of family unity to secure protection or assistance as a refugee.⁴⁸ This means that the application of an exclusion clause to one family member – often the male head of the family – may lead to a situation in which the other family members are faced with difficult decisions. They will need to consider whether to remain in the refugee camp or settlement without their excluded relative, or to reside with him or her elsewhere, even if this results in reduced or no assistance and limited protection options.

37. If resettlement to another country is available to those family members who are refugees, this will normally mean departing without the excluded relative. If the authorities of the host State order the expulsion of the excluded person from its territory, his or her family members will need to decide whether to accompany their relative to another country, which may be the country of origin. In such situations, UNHCR would not normally be in a position to intervene on family unity grounds, on behalf of the family members who are refugees, with a view to obtaining permission for the excluded person to remain in the territory of the host State. It is essential, however, that those concerned receive proper counselling on the options available to them, so that they may make an informed decision.

⁴⁵ Applicants for refugee status should be permitted to remain in the host country for the entire duration of the procedure, including while an appeal to a higher administrative authority or court is pending. See Executive Committee, Conclusion No. 8 (XXVIII), 1977, on Determination of Refugee Status, at paragraph (e)(viii). Where cancellation or revocation is being considered, refugee status remains in place until the time when a decision to cancel or revoke is no longer subject to appeal or review.

⁴⁶ See UNHCR, Guidelines on Exclusion, above footnote 4, at paragraphs 8–9, and UNHCR, Background Note on Exclusion, above footnote 4, at paragraphs 21–22 and Annex A.

⁴⁷ See also below at paragraphs 73–78.

⁴⁸ See UNHCR, Guidelines on Exclusion, above footnote 4, at paragraph 29, and UNHCR, Background Note on Exclusion, above footnote 4, at paragraphs 94–95.

D. Exclusion and criminal prosecution

38. If the host State has jurisdiction over the acts which gave rise to exclusion, it may initiate criminal proceedings in its national justice system. With regard to certain excludable crimes, international law requires that those responsible be either prosecuted or extradited. In practice, however, the host State's justice system may lack the capacity to initiate criminal proceedings, while extradition may not be an option if there is no legal framework permitting extradition relations between the countries concerned, if no extradition request is submitted or if there are other legal impediments, including under applicable international law. Transfer to an international criminal jurisdiction is likely to be possible only in a small number of cases. Cooperation agreements between the host authorities and other States willing to support them in conducting criminal proceedings, or, where relevant, with international tribunals or courts may help ensure that persons responsible for serious crimes are brought to justice.

39. An indictment by an international criminal tribunal would normally be considered sufficient to meet the "serious reasons" threshold required under Article 1F of the 1951 Convention.⁴⁹ If the person concerned is subsequently acquitted by the international tribunal, this does not automatically mean that he or she would not come within the scope of an exclusion clause. In such cases, the host State and/or UNHCR should conduct full refugee status determination and examine, in light of the relevant criteria under international refugee law, whether or not there are serious reasons for considering that the individual concerned has committed a crime within the scope of Article 1F. Where the individual concerned has already been excluded, this would require a re-opening of the asylum procedure. If an appeal is pending before the international jurisdiction which issued the acquittal, the determination on the person's refugee status should be made after the decision on the appeal. Factors to be considered in determining eligibility for international refugee protection in such cases include the reasons for acquittal as well as evidentiary requirements applied by the tribunal or court.

V. EXCLUSION IN MASS INFLUX SITUATIONS – OPERATIONAL ISSUES

A. Operational framework

a) Responsibility for determining whether an exclusion clause applies

40. As noted above at paragraph 13, primary responsibility for the determination of refugee status – including consideration of the exclusion clauses, and, where appropriate, cancellation or revocation of such status – lies with the authorities of the host State. UNHCR usually provides assistance and advice. If necessary, UNHCR should also assist the host authorities in their efforts to obtain support from the international community.

⁴⁹ See UNHCR, Background Note on Exclusion, above footnote 4, at paragraph 107. In such cases, exclusion may exceptionally be considered without particular reference to inclusion issues (*ibid.*, at paragraph 100).

41. UNHCR must examine the applicability of exclusion based on the criteria of Article 1F in the following situations: (i) where the Office determines eligibility for refugee status of former combatants; (ii) in the context of cancellation or revocation proceedings, if exclusion considerations arise for persons whom UNHCR has previously recognized as refugees under its international protection mandate, either on a *prima facie* basis or following an individualized assessment of the merits of their claims.⁵⁰

b) Cooperation between the host State and UNHCR

42. Carrying out exclusion procedures and related measures calls for close cooperation between the host authorities and UNHCR, not least in view of potential security problems which may necessitate the separation and/or detention of the individuals concerned. The host State should recognize its responsibilities, while it is for UNHCR to provide guidance to the authorities and assist them in determining the procedures and measures to be carried out.

43. Whenever UNHCR carries out exclusion proceedings and/or related measures jointly with, or on behalf of the host authorities, it is important that this be done on the basis of a clear understanding of the nature and purpose thereof as well as the respective roles and responsibilities. In such situations, the host State and UNHCR should draw up a formal agreement clarifying these issues.

44. In particular, such an agreement should spell out the following:

- the steps of the process;
- the authorities involved at the various stages and their roles and responsibilities, including as regards the safety of refugees and of UNHCR staff and implementing partners at all times;
- the criteria to be applied in a preliminary exercise for the purpose of identifying those who may come within the scope of Article 1F, where applicable;
- the procedure for reaching a decision; who is responsible for making the decision; and the procedures to be followed if the host authorities do not agree with UNHCR's assessment;
- terms for the sharing of information between UNHCR and the host authorities, including provisions on confidentiality.

c) Information-sharing and confidentiality

45. Prior to the implementation of procedures agreed between UNHCR and the host State, the individual refugee or asylum-seeker concerned must be informed, by the party implementing the procedure(s), about any sharing of personal information that is permitted, or required, under the cooperation agreement.

46. The agreement should clearly specify what personal information may be shared between the UNHCR and the host State and for what purpose, and should limit the sharing of such information to that which is legitimate and necessary for the two parties to fulfil their respective responsibilities. Formal assurances should be

⁵⁰ See above at paragraph 5.

given to respect international norms and standards for the protection of personal data, including the fundamental principles of confidentiality.⁵¹

d) Training of interviewers and/or decision-makers

47. Those involved in determining refugee status – whether through interviewing, decision-making or review of decisions – should be familiar with the criteria for inclusion which are relevant in the given context, and with the principles and standards applicable to exclusion, as set out in UNHCR’s Guidelines and Background Note on the Application of the Exclusion Clauses.⁵² They should also receive in-depth training on specific aspects of exclusion which are particularly relevant to the specific mass influx situation, including on

- the nature and purpose of the procedures;
- the stages of the process;
- roles and responsibilities as agreed between host State and UNHCR;
- relevant country-of-origin information;
- interviewing techniques;
- the use of interpreters;
- credibility assessment;
- procedural safeguards.

B. Applying the exclusion clauses in a mass influx situation

a) Information-gathering

48. Where a large-scale inflow is caused by an armed conflict characterized by serious violations of international humanitarian law, situations involving massive and gross violations of human rights or the overthrow of a repressive government, excludable persons may arrive together with the refugees. In situations of this kind, efforts to gather reliable information on the causes and events surrounding the mass influx, as well as its nature and composition should begin as early as possible. At the planning stage, detailed information is necessary to

- establish whether those arriving include potentially excludable persons (e.g. former combatants; members of certain groups or organizations; certain political leaders), and whether there are children among them;
- determine what measures and procedures are appropriate; and
- estimate the numbers involved and the resources required.

⁵¹ See Executive Committee, Conclusion No. 91 (LII), 2001, on Registration of Refugees and Asylum-seekers.

⁵² See above at footnote 4. As noted below at paragraph 61, asylum applications of children should be dealt with by specially trained staff.

49. Past experience has demonstrated the importance, for the proper application of the exclusion clauses, of the availability of clear and credible information concerning the possible involvement of individuals in excludable acts.⁵³ The competent authorities of the host State and/or UNHCR should obtain as much relevant information as possible. Sources may include other UN agencies and organs; international criminal tribunals (where relevant); governments; human rights and/or humanitarian organizations (national as well as international); reliable public information sources; research institutions; and members of local social/religious organizations.

50. To the extent feasible, officials of the host State and/or UNHCR protection staff on the ground should also collect any relevant information which may be obtained from those arriving as part of the mass influx. Efforts to gather pertinent information should be made throughout the different phases of a mass influx. For example, information provided during the registration process could help identify those who may not be deserving of international refugee protection. The involvement of UNHCR protection staff is crucial in identifying what kind of information is needed in any given mass influx situation.

b) Identifying potentially excludable persons

51. From the earliest stages of a mass influx situation as described above at paragraph 48, the host authorities and/or UNHCR should adopt a proactive attitude with regard to identifying those among the group who may come within the scope of an exclusion clause.

52. In many instances, it will be possible to identify certain categories of persons whose background and activities may bring them within the scope of Article 1F of the 1951 Convention. One such category would be former combatants. As noted above at paragraph 15, former combatants who are admitted into asylum procedures would need to undergo individual refugee status determination. Other potentially excludable categories would include persons among those recognized as refugees who have links, as leaders or members, with particular groups or movements.

53. Exclusion considerations may also arise for persons who do not belong to any identifiable category, but with regard to whom there is information which suggests that they may have committed an excludable crime. This would require consideration of cancellation or revocation on a case-by-case basis for the particular individual, depending on the circumstances.⁵⁴

c) Cancellation or revocation procedures – preliminary measures

54. If there are indications of the presence of potentially excludable persons among those recognized as refugees on a group basis, but the available information does not permit reliable identification of the individuals concerned, the examination of the applicability of Article 1F in mass influx situations may be preceded by a

⁵³ This is particularly relevant where persons who have been recognized as refugees fail to cooperate with the decision-making authority in exclusion-related cancellation proceedings. See above at paragraphs 26–32.

⁵⁴ See above at paragraph 16 (i) and (ii).

preliminary exercise aimed at identifying – including, where possible, from registration records – those for whom exclusion considerations may arise.⁵⁵

55. The purpose of preliminary inquiries of this kind is to establish whether there are grounds for opening cancellation or revocation proceedings with regard to certain individuals among the group. Such measures may take different forms, ranging from an internal review of available information about the group by the host authorities and/or UNHCR to a pre-screening during which some or all of the members of the group are interviewed. Interviews with refugees during this preliminary stage of the proceedings should be distinguished from the interview/hearing required under applicable principles of procedural fairness as part of the process which may lead to the cancellation or revocation of refugee status.⁵⁶

d) Separation and detention of potentially excludable persons

56. Under certain circumstances, the host authorities may need to accommodate those identified as potentially coming within the scope of Article 1F separately from the group of refugees. Sometimes, it may also be necessary to detain such persons for the duration of procedures to review their status.⁵⁷

57. Where the separation of individuals undergoing cancellation or revocation procedures entails restrictions of their right to freedom of movement,⁵⁸ relevant standards under international and regional human rights law apply. In short, this means that any such restrictions must have a basis in law and be necessary to protect national security, public order (*ordre public*), public health or morals and the rights and freedoms of others.⁵⁹

⁵⁵ This is different from screening for the purpose of identifying combatants, which may take place either on arrival of a mass influx or at a later stage, in refugee camps or settlements (see above at footnote 10).

⁵⁶ See above at paragraphs 23–25.

⁵⁷ This should not be confused with the separation of combatants from refugees, or their internment, by a State which is neutral with regard to an ongoing armed conflict, as required under the law of neutrality and international humanitarian law (see above at footnote 10).

⁵⁸ This right is enshrined, for example, in Article 13(1) of the Universal Declaration of Human Rights; Article 12(1) of the International Covenant on Civil and Political Rights (ICCPR); Article 12(1) of the African Charter of Human and Peoples' Rights, Article 22(1) of the American Convention on Human Rights (ACHR), Article 2(1) of Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Moreover, Article 26 of the 1951 Convention expressly provides for the right to freedom of movement of refugees lawfully in the host country, subject to any regulations applicable to aliens generally in the same circumstances.

⁵⁹ For further details on the legal requirements which must be met for restrictions on freedom of movement to be justified, see, for example, Human Rights Committee, "General Comment No. 27, Freedom of movement, Article (12)", UN document CCPR/C/21/Rev.1/Add.9 (1999), at paragraphs 11–15.

58. The detention of persons undergoing an exclusion examination is permitted only under certain limited conditions. In particular, detention must not be arbitrary and may be imposed only for as long as is necessary.⁶⁰ Minimum standards of due process relating to detention are fully applicable. Furthermore, certain fundamental guarantees – in particular, elements of the right to non-discrimination and the obligation of States to treat all those deprived of their liberty in accordance with respect for their dignity – are non-derogable and must be respected at all times and under all circumstances, including during situations of public emergency.⁶¹

e) Operational considerations related to specific categories

Family members of potentially excludable persons

59. In those cases where the separation of potentially excludable persons from the group of refugees and their subsequent confinement is warranted, their family members should not be subjected to such measures unless this is necessary and justified because they themselves come within the scope of the above-mentioned provisions permitting restrictions on a person's freedom of movement or liberty. Exceptions may be considered where it is the express wish of family members to stay with their detained or interned relative. Whenever feasible, adequate arrangements should be set up to enable refugees to visit their family members who are kept in detention or internment.

60. Persons who are detained during individual refugee status determination proceedings should be reunited with their families as soon as they are found to be refugees. This applies where exclusion is considered, but found not to be applicable, in eligibility proceedings for former combatants, but also if cancellation or revocation proceedings result in the confirmation of the refugee status of a person who was kept in detention during such proceedings.⁶²

Children

61. If there are indications of the presence of children – that is, persons under the age of 18 – among those who may come within the scope of an exclusion clause, special procedures which address their special protection needs should be set up in cooperation with UNICEF and other relevant agencies. To the extent possible, their

⁶⁰ The right not to be arbitrarily deprived of one's liberty is guaranteed, for example, in Article 9 of the Universal Declaration of Human Rights; Article 9(1) of the ICCPR; Article 6 of the African Charter of Human and Peoples' Rights; Article 7(1)–(3) of the ACHR; Article 5(1) of the ECHR. For a discussion of the legal requirements which must be met for detention to be lawful, see, for example, Human Rights Committee, "General Comment No. 8 (Article 9)", UN document HRI/GEN/1/Rev.6 (2003), at paragraph 4. Important guidance on the detention of asylum-seekers is provided in UNHCR's Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers, February 1999, and Executive Committee, Conclusion No. 44 (XXXVII), 1986, on Detention of Asylum-Seekers.

⁶¹ See Human Rights Committee, "General Comment No. 29, States of Emergency (Article 4)", UN document CCPR/C/21/Rev.1/Add.11 (2001), at paragraph 13. On the treatment of persons deprived of their liberty; see also Human Rights Committee, "General Comment No. 21, Article 10", Forty-fourth session 1992, UN document HRI/GEN/1/Rev.1 at 33 (1994).

⁶² On the consequences of exclusion for family members, see above at paragraphs 36–37.

cases should be dealt with by specially trained persons. The need for sufficient numbers of qualified staff must be taken into account when planning for, and setting up, exclusion procedures involving children in mass influx situations.⁶³

62. Where exclusion procedures and related measures affect children, the host State and UNHCR need to take into account their particular vulnerability and resulting special protection needs. In mass influx situations, exclusion considerations may arise with regard to children associated with forces or groups involved in armed conflict. However, in many instances, such children have been abducted, forcibly recruited as fighters and/or subjected to sexual enslavement. Often, they continue to be at risk of abuse and exploitation in the host State, especially if they are still exposed to the influence of their current or former commanders.

63. At all times, regard should be had to the obligation to act in the “best interests” of the child, in accordance with the 1989 Convention on the Rights of the Child. In the context of mass influx situations, this means that asylum applications of children associated with forces or groups involved in armed conflict, including a determination of the applicability of an exclusion clause, should be dealt with in a more expeditious manner than those of other former combatants. In view of the traumatic experiences of such children and the particular risks involved, best practice would involve examining their asylum claims after a transitional period during which they have received psycho-social assistance at an interim care facility. Wherever feasible, child soldiers should be given the opportunity to participate in special rehabilitation programmes. A legal guardian should be appointed for separated and unaccompanied children to promote decisions in their best interests and assist them in refugee status determination procedures.⁶⁴

f) Initiating exclusion procedures

64. In principle, the host State and/or UNHCR should carry out procedures to determine the applicability of Article 1F of the 1951 Convention to individuals identified as potentially excludable as soon as this becomes feasible. This would apply to former combatants who have been determined to be civilians, and who should enter an individual asylum procedure as soon as possible,⁶⁵ but also where

⁶³ An examination of the possible exclusion of a child would be relevant only if he or she has reached the age of criminal responsibility as established by national law. When considering the application of Article 1F of the 1951 Convention to a minor over the age of criminal responsibility, due consideration must be given to the child’s maturity at the time the acts in question occurred, as this will determine whether or not he or she had the mental capacity to be held responsible for any crimes committed. The younger the child, the greater the presumption that the requisite mental capacity did not exist at the relevant time. If mental capacity is established, all other factors which could negate a finding of individual responsibility must be carefully examined, notably whether there is a valid defence. For child soldiers, in particular, this will often involve questions of duress, coercion, defence of self or others, or involuntary intoxication. See UNHCR, Background Note on Exclusion, above footnote 4, at paragraphs 91–93.

⁶⁴ See UNHCR, “Refugee Children”, Global Consultations on International Protection, EC/GC/02/9, 25 April 2002, at paragraph 9; see also UNHCR Handbook, above footnote 7, at paragraph 214.

⁶⁵ See also above at paragraph 15.

there is information from reliable sources which provides sufficient basis for the opening of cancellation or revocation procedures.⁶⁶

65. With regard to cancellation or revocation procedures concerning certain persons from among a group of refugees, in particular, the appropriate timing for initiating such procedures will not only depend on whether or not sufficient information is available in the individual case. Factors such as the number of potentially excludable persons among the group, their background and profile, resources as well as security issues will normally also be relevant to the determination of when such procedures should be opened.

66. Depending on the circumstances, it may be necessary to give priority to the processing of certain categories of cases, such as former child soldiers or potentially excludable persons who constitute a security risk for refugees due to their conduct within the camps or because their presence or activities may attract violent attacks from outside the camp.⁶⁷

g) Dissemination of information on exclusion procedures and related measures

67. Where the host authorities and/or UNHCR carry out measures and procedures related to the possible application of Article 1F in a mass influx situation, the need to provide information will normally arise as soon as measures are undertaken which require the participation of some or all in the group. Under general principles of procedural fairness, those affected are entitled to be informed about the nature and purpose of such measures. The amount of information to be given as well as its content will depend on the stage of the process at which a particular measure is applied as well as on whether information is given to the entire refugee group or to the individuals to whom that measure is applied. In providing information to the group as a whole, the host State and/or UNHCR must ensure respect for the confidentiality of information related to the status of particular individuals identified as potentially coming within the scope of an exclusion clause.⁶⁸

68. Information for the entire group would generally consist of general explanations about refugee status and the need for the host authorities and/or UNHCR to ensure that protection and assistance is provided to those who are entitled to it, as well as the duty of asylum-seekers and refugees to cooperate with the authorities and/or UNHCR in measures which are necessary and reasonable for the exercise of their international protection obligations. Depending on the situation, it may also be advisable to provide the refugee group with information about threats to security and any corresponding measures.

69. Under applicable human rights standards, those who are separated from the group of refugees and/or detained have a right to be informed about the reasons for restrictions on their right to freedom of movement and/or liberty,⁶⁹ while the group

⁶⁶ On legal requirements which must be met under national legislation governing the re-opening of a final recognition decision see above at footnote 18.

⁶⁷ See also below at paragraphs 73–78.

⁶⁸ See also above at paragraph 46.

⁶⁹ See above at paragraphs 57–58.

as a whole should be informed in more general terms about the reasons for such measures. Specific information about the possible application of an exclusion clause of Article 1F of the 1951 Convention to certain individuals should be provided only to those concerned, at the appropriate stage of refugee status determination proceedings at the initial eligibility stage, or of cancellation or revocation procedures, as applicable.⁷⁰

70. In mass influx situations, country-of-origin information which is both reliable and relevant to exclusion is often not available, or not sufficient. In such situations, decision-makers would need to rely on facts obtained from the refugees themselves. Providing information about the proceedings is particularly important in the context of a mass influx, and especially in camp settings, where misinterpretation of exclusion procedures and related measures on the part of the refugees may jeopardize the process. However, in view of the difficulties involved in eliciting the facts required to determine the applicability of Article 1F when those concerned know that exclusion is being considered, the dissemination of information should be managed carefully.

71. In settings where those concerned may be expected to exchange information on the proceedings, certain measures could be taken to facilitate the process and permit the host authorities and/or UNHCR to establish the facts related to exclusion. For example, preliminary measures aimed at gathering information and identifying those for whom exclusion considerations arise could be done in the context of a more general process which involves a larger group of refugees (e.g. all persons among the group, or all persons over a certain age). Interviews with individual refugees should not focus solely on exclusion-related aspects but explore relevant questions as part of a more comprehensive effort at establishing the facts.⁷¹ As noted above, when deciding on the appropriate moment in time for initiating exclusion procedures in individual cases, regard should be had to the repercussions for the determination of other cases. Where cancellation or revocation procedures are being conducted for several persons among a group of refugees, it may be advisable to withhold notification of intent to cancel or revoke to the individuals concerned until that stage of the procedure has been reached for all persons whose refugee status is being reviewed,⁷² and to ensure that notification is given simultaneously to each of the individuals affected. Similar considerations would apply to the notification of decisions on refugee status.

72. Such measures may increase the human and financial resources required to conduct proper exclusion assessments in mass influx situations. This would need to be taken into account already at the planning stage. It should also be noted that the dissemination of information on exclusion procedures and related measures may create, or contribute to already existing, security risks. This is addressed below.

⁷⁰ See above at paragraphs 23–25.

⁷¹ This would apply to interviews with those for whom it may be necessary to conduct exclusion procedures, as well as witnesses.

⁷² See also above at paragraph 25.

C. Security-related issues

73. The host authorities and UNHCR need to be alert to security concerns from the very start of a mass influx situation. Security considerations are a major factor in both the planning and implementation of measures and procedures related to the application of the exclusion clauses and in their implementation. Depending on the circumstances of a mass influx, threats to security linked to exclusion may arise in different ways.

74. For example, the presence or activities of persons for whom exclusion considerations arise may constitute a danger to the safety of refugees, those assisting them and/or the population of the host country. There may also be situations in which initiatives related to exclusion create a security risk or exacerbate an already existing threat. For example, potentially excludable persons may resist attempts at being separated from the refugee group or use intimidation and violence against refugees or those conducting exclusion procedures and related measures. These risks are likely to be reinforced where excludable persons who were in positions of power in the country of origin have recreated the former power structures in refugee camps. Security risks may also emanate from persons who have been found to come within the scope of Article 1F, but who may oppose removal from camps and/or the withholding of assistance, or any other measures envisaged or undertaken by the host authorities.

75. Responsibility for maintaining law and order, and for guaranteeing the safety of refugees as well as that of the staff of UNHCR, its implementing partners and other humanitarian organizations, lies with the host authorities.⁷³ The need to protect national security and/or the rights and freedoms of others may, under the conditions outlined above at paragraphs 57-58, justify restrictions on the freedom of movement and, in case of a serious threat, the detention of persons who should undergo exclusion proceedings or have been excluded. As a first step, the host authorities and UNHCR should jointly assess the situation and identify the nature and source of any threats to security.

76. As noted above, procedural fairness requires that those who need to undergo a review of their eligibility for international refugee protection be informed of the nature of the process.⁷⁴ The dissemination of general information prior to initiating, and transparency throughout, exclusion proceedings and related measures are important factors in avoiding misunderstandings about their nature and purpose. While this may reduce possible security risks, there are also situations in which providing such information may create, or increase, security problems. Measures such as those outlined above at paragraph 71 may also help diminish the potential for threats to security.

77. More generally, UNHCR and/or implementing partners should cooperate in efforts to sensitize the host authorities as well as the refugee population concerning the need to prevent the abuse of international refugee protection and assistance by

⁷³ See Executive Committee, Conclusion No. 83 (XLVIII), 1997, on Safety of UNHCR Staff and Other Humanitarian Personnel, at paragraph (b)(iii).

⁷⁴ See above at paragraphs 23–25 and 67.

persons who are not deserving of refugee status. The presence of international, regional or local human rights monitors could also have a beneficial effect on the security situation in refugee camps and settlements.

78. There may be situations, however, where the host authorities are unable to provide the security needed. In situations of this kind, the support of the international community would be required to establish the conditions in which the applicability of Article 1F of the 1951 Convention may be considered, for example, by strengthening the host State's law enforcement capacity, or through a peace-keeping mission or a regional or international security presence, as and where applicable.⁷⁵

Protection Policy and Legal Advice Section
Department of International Protection
February 2006

⁷⁵ Different ways in which the international community may assist the host State in safeguarding the civilian and humanitarian character of refugee camps and settlements are described in UNHCR's proposals for a "ladder of options" and its operationalization in the High Commissioner's Information Notes of 14 January 1999 and 27 June 2000, respectively (see above at footnote 5). These measures may also be of use in the context of the applicability of the exclusion clauses in mass influx situations. See also Executive Committee, Conclusion No. 94 (LIII), 2002, on the Civilian and Humanitarian Character of Asylum, at (g), which calls upon UNHCR and the Department of Peacekeeping Operations of the United Nations (DPKO) to enhance their collaboration on all aspects related to maintaining the civilian and humanitarian character of asylum and envisages the deployment of multi-disciplinary assessment teams. In April 2004, the UN High Commissioner for Refugees and the Under-Secretary-General for Peacekeeping Operations signed a joint letter in which DPKO and UNHCR agreed on enhanced cooperation in a number of areas, including refugee security. See Executive Committee of the High Commissioner's Programme, "Update on Security Issues", EC/54/SC/INF.1, 8 September 2004, at paragraph 28.