



## Submission by the Office of the United Nations High Commissioner for Refugees in the case of 2019Nu61740 before the Seoul High Court

### Introduction

1. These observations are submitted by the Office of the United Nations High Commissioner for Refugees (“UNHCR”)<sup>1</sup> in relation to case 2019Nu61740, before the Seoul High Court of the Republic of Korea.
2. UNHCR has a direct interest in this matter, as the subsidiary organ entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions to the problem of refugees.<sup>2</sup> According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]”<sup>3</sup> This supervisory responsibility is reiterated in Article 35(1)<sup>4</sup> of the 1951 Convention relating to the Status of Refugees (“1951 Convention”)<sup>5</sup> and Article II of the 1967 Protocol relating to the Status of Refugees (“1967 Protocol”)<sup>6</sup>.
3. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretive guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention and the 1967 Protocol. Such guidelines include the UNHCR *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (“UNHCR Handbook”),<sup>7</sup> which was subsequently complemented by a number of *Guidelines on International Protection*.<sup>8</sup>

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<sup>1</sup> These submissions do not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoys under applicable international legal instruments and recognized principles of international law: UN General Assembly, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, <http://www.refworld.org/docid/3ae6b3902.html>.

<sup>2</sup> 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>.

<sup>3</sup> *Ibid.*, para 8(a).

<sup>4</sup> According to Article 35(1) of the 1951 Convention, States undertake to co-operate with UNHCR and “shall facilitate its [UNHCR’s] duty of supervising the application of the provisions of the Convention”.

<sup>5</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series No. 2545, vol. 189, p. 137: <http://www.unhcr.org/3b66c2aa10.pdf>.

<sup>6</sup> *Ibid.*

<sup>7</sup> UNHCR, *Handbook*, April 2019, HCR/1P/4/ENG/REV.4: <https://www.refworld.org/docid/5cb474b27.html>. The UNHCR Handbook and Guidelines on International Protection are intended to provide guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff.

<sup>8</sup> See in particular, *Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention* (“GIP No. 10 – Military Service”) and *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention* (“GIP No. 12 - Conflict and Violence”).

4. The UNHCR Handbook has been found by the Supreme Courts of Canada, the United Kingdom, and of the United States respectively to be a “highly relevant authority”,<sup>9</sup> a “highly persuasive authority”,<sup>10</sup> providing “significant guidance”,<sup>11</sup> and “should be accorded considerable weight’, in the light of the obligation of Member States under article 35 of the Convention to facilitate its duty of supervising the application of the provisions of the Convention”.<sup>12</sup> UNHCR’s Handbook and Guidelines have also been accepted as a valid source of interpretation under Article 31(3)(b) of the 1969 *Vienna Convention on the Law of Treaties*, in reflecting “subsequent practice in the application of the treaty”.<sup>13</sup>
5. UNHCR provides information on a regular basis to decision-makers and courts of law concerning the proper interpretation and application of the provisions within the 1951 Convention and has a history of third-party interventions in many national and regional jurisdictions. The Office is often approached directly by courts or other interested parties to obtain UNHCR’s “*unique and unrivalled expertise*”<sup>14</sup> on particular legal issues. UNHCR has been granted intervener status in numerous jurisdictions all over the world, including the European Court of Human Rights and the Court of Justice of the European Union, the US Supreme Court, the Supreme Court of Norway, the Supreme Court of the United Kingdom (as well as the former House of Lords), the German Federal Constitutional Court and the Supreme Court of Canada among others.
6. This submission is also provided pursuant to Article 29 of the Refugee Act (2013) which provides that the “Minister of Justice shall cooperate when UNHCR makes requests...on the matters in the following sub-paragraphs: ... [c]ompliance with and implementation of the Refugee Convention and Protocol”. It further provides that “[a]t the request of UNHCR, the Minister of Justice shall cooperate with UNHCR so that UNHCR may carry out the work stated in the following sub-paragraphs [...] [s]ubmit opinions on determinations of refugee status or appeals”.<sup>15</sup>
7. The appellant is a national of Syria whose refugee claim is based on the risk of forced military conscription by the Syrian government into the reservist army in the context of ongoing armed conflict and violence in Syria. The appellant’s refugee status application was rejected

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<sup>9</sup> *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593, Canada: Supreme Court, 19 October 1995, [http://www.refworld.org/cases,CAN\\_SC,3ae6b68b4.html](http://www.refworld.org/cases,CAN_SC,3ae6b68b4.html) at paras. 46 and 119; *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, Canada: Supreme Court, 30 June 1993, [http://www.refworld.org/cases,CAN\\_SC,3ae6b673c.html](http://www.refworld.org/cases,CAN_SC,3ae6b673c.html) at pp. 713-714.

<sup>10</sup> *R v. Secretary of State for the Home Department, Ex parte Adan*, United Kingdom: House of Lords (Judicial Committee), 19 December 2000, [http://www.refworld.org/cases,GBR\\_HL,3ae6b73b0.html](http://www.refworld.org/cases,GBR_HL,3ae6b73b0.html).

<sup>11</sup> *Immigration and Naturalization Service v. Cardoza-Fonseca*, 480 U.S. 421; 107 S. Ct. 1207; 94 L. Ed. 2d 434; 55 U.S.L.W. 4313, United States Supreme Court, 9 March 1987, <http://www.refworld.org/cases,USSCT,3ae6b68d10.html>.

<sup>12</sup> *Al-Sirri (FC) (Appellant) v Secretary of State for the Home Department (Respondent) and DD (Afghanistan) (FC) (Appellant) v Secretary of State for the Home Department (Respondent)*, [2012] UKSC 54, United Kingdom: Supreme Court, 21 November 2012, [http://www.refworld.org/cases,UK\\_SC,50b89fd62.html](http://www.refworld.org/cases,UK_SC,50b89fd62.html) at para. 36. Similarly, the Handbook has been found “particularly helpful as a guide to what is the international understanding of the Convention obligations, as worked out in practice”. *R v. Secretary of State for the Home Department, Ex parte Robinson*, Case No:FC3 96/7394/D, United Kingdom: Court of Appeal (England and Wales), 11 July 1997, [http://www.refworld.org/cases,GBR\\_CA\\_CIV,3ae6b72c0.html](http://www.refworld.org/cases,GBR_CA_CIV,3ae6b72c0.html) at para. 11.

<sup>13</sup> *Pushpanathan v Canada (Minister of Citizenship and Immigration)* [1998] 1 SCR 982 para. 54; *R v. Secretary of State for the Home Department, Ex parte Adan and Others*, United Kingdom: Court of Appeal (England and Wales), 23 July 1999, [http://www.refworld.org/cases,GBR\\_CA\\_CIV,3ae6b6ad14.html](http://www.refworld.org/cases,GBR_CA_CIV,3ae6b6ad14.html), para. 71.

<sup>14</sup> *R (on the application of EM (Eritrea)) v. Secretary of State for the Home Department*, [2014] UKSC 12, United Kingdom: Supreme Court, 19 February 2014, para.72, [http://www.refworld.org/cases,UK\\_SC,5304d1354.html](http://www.refworld.org/cases,UK_SC,5304d1354.html).

<sup>15</sup> Republic of Korea: Law No 11298 of 2012, Refugee Act, <http://www.refworld.org/docid/4fd5cd5a2.html>.

by the Ministry of Justice at first and second instance administrative levels. The appellant did not receive humanitarian status<sup>16</sup> either, unlike most other Syrian asylum-seekers in Korea. The lower court rejected the appellant's claim for refugee status mainly due to a lack of nexus between a well-founded fear of persecution and one or more of the Convention grounds and the absence of evidence proving past persecution by the Syrian government, as well as the lack of demonstrated individual risk in the context of generalized violence in Syria. The court also relied heavily on the fact that his application for refugee status was submitted after the issuance of a deportation order and detention order.<sup>17</sup> The court also dismissed the claim for humanitarian status on the ground that asylum-seekers in Korea do not have the right to apply for humanitarian status under the Refugee Act.<sup>18</sup>

8. Against this background, UNHCR expresses its views below on the issues arising in the present case, in order to assist the High Court of Korea in its deliberations. In this submission, UNHCR provides its interpretation of the relevant principles of international refugee and human rights law that govern the determination of refugee claims based on political opinion and objection to military service as well as the concept of individualized risk in the context of persons fleeing generalized conflict and violence. It further addresses the impermissibility of refusal of claims based on their late submission; as well as the State's duty of independent inquiry, preceding any removal measure, in accordance with the principle of non-*refoulement*. UNHCR further provides up-to-date relevant country of origin information on the situation in the Syrian Arab Republic.
9. UNHCR submits this *amicus curiae* to provide neutral and expert information on the interpretation of the international refugee law concepts before it. UNHCR will only address issues of legal principle arising from these points and will not address or comment on the particular facts of the claim or positions taken by the parties.

### **Refugee protection under the 1951 Convention criteria**

10. Article 1 A (2) of the 1951 Convention defines a refugee as a person who:

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<sup>16</sup> This can be seen as a form of 'complementary protection'. The Refugee Act of Korea defines humanitarian status in Article 2 (3) as follows:

"The term "person granted a humanitarian stay permit (hereinafter referred to as "humanitarian sojourner") means a foreigner granted a stay permit from the Minister of Justice as prescribed by Presidential Decree as a person who has rational grounds for recognizing that his/her life, personal liberty, etc. is very likely to be infringed by torture, other inhumane treatment or punishment or other events even though he/she does not fall under subparagraph 1."

<sup>17</sup> Article 8 (1) of the Refugee Act of Korea sets out the procedures to be followed when an application is received:

"The Chief who receives an application pursuant to Article 5 (Refugee status application) shall interview the refugee status applicant without delay, investigate the facts and report the results to the Minister of Justice in an attachment to the refugee status application."

However, this process may be shortened, according to Article 8(5):

"The Minister of Justice may omit part of the determination procedure provided in paragraph 1 for a refugee status applicant to whom any of the following applies: (...) 3. The refugee status applicant is an alien who has stayed in the Republic of Korea for one year or longer and who applied for refugee status when the expiration of the sojourn period was imminent, or is an alien subject to forcible removal who applied for refugee status for the purpose of delaying the enforcement of the removal order."

<sup>18</sup> Although UNHCR will not address the issue of humanitarian status under Korean law in detail in this intervention, it is noted that apart from the definition in Article 2 (3), the Act and its accompanying decree do not stipulate the procedures for granting humanitarian status or the rights of humanitarian status holders. In UNHCR's view, a single comprehensive procedure, before a central expert authority, for assessing whether an asylum-seeker qualifies for refugee status or for other forms of international protection represents an efficient means of identifying persons in need of international protection. See also paragraphs 13 and 14 *infra*.

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

11. The same definition is set out in Article 2 (1) of the Refugee Act of Korea. A person is a refugee when s/he meets the criteria set out in the definition, which forms the positive basis upon which the determination of refugee status is made.<sup>19</sup> Although a well-founded fear of persecution must be related to one or more of the five Convention grounds, in UNHCR's view, "the Convention ground must be a relevant contributing factor, though it need not be shown to be the sole, or dominant, cause."<sup>20</sup> Further, an applicant may decide "to ask for recognition of [their] refugee status after having already been abroad for some time."<sup>21</sup> Late or delayed applications for refugee status should not be treated as "abusive" or "manifestly unfounded" applications – that is, which would not merit full examination at every level of the procedure.<sup>22</sup> These and other aspects of the refugee definition which are relevant in the context of this case will be further addressed below.
12. The Executive Committee of the High Commissioner's Programme ('ExCom'), an intergovernmental body set up by the United Nations Economic and Social Council, has addressed the question of "abusive" or "manifestly unfounded" applications in its Conclusions. ExCom Conclusions are adopted by consensus by the States which are Members of ExCom and can therefore be considered as reflecting their understanding of legal standards regarding the protection of refugees. At present, 106 States are Members of the Executive Committee, including the Republic of Korea, which has been a member since 2000.<sup>23</sup> ExCom has defined applications for international protection as "clearly abusive" or "manifestly unfounded" if they are "clearly fraudulent or not related to the criteria for the granting of refugee status"<sup>24</sup> Only if the applicant makes "false allegations of a material or substantive nature relevant for the determination of his or her status and the claim clearly does not contain other elements which warrant further examination" could the claim be considered as such.<sup>25</sup>

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<sup>19</sup> See UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998: <http://www.refworld.org/docid/3ae6b3338.html>, which clarifies that the burden of proof is discharged by the applicant rendering a truthful account of facts relevant to the claim so that, based on the facts, a proper decision may be reached. In view of the particularities of a refugee's situation, the adjudicator shares the duty to ascertain and evaluate all the relevant facts. This is achieved, to a large extent, by the adjudicator being familiar with the objective situation in the country of origin concerned, being aware of relevant matters of common knowledge, guiding the applicant in providing the relevant information and adequately verifying facts alleged which can be substantiated.

<sup>20</sup> UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention*, 7 May 2002, para. 20, <http://www.unhcr.org/refworld/docid/3d36f1c64.html>.

<sup>21</sup> UNHCR, *Handbook*, para. 94.

<sup>22</sup> Executive Committee of the High Commissioner's Programme, Conclusion No. 30 (XXXIV): <https://www.refworld.org/docid/3ae68c6118.html>.

<sup>23</sup> <https://www.unhcr.org/excom/announce/40112e984/excom-membership-date-admission-members.html>.

<sup>24</sup> ExCom, Conclusion No. 30 (XXXIV), footnote 22 above.

<sup>25</sup> The mere fact of having made false statements does not, however, mean that the criteria for refugee status may not be met, nor would it obviate the need for asylum. False statements do not in themselves make the claim "clearly fraudulent" See UNHCR, *Aide-Memoire & Glossary of case processing modalities, terms and concepts applicable to RSD under UNHCR's*

UNHCR underlines that late submission of an asylum claim, including one which is made following the issuance of a deportation or detention order, is not a permissible grounds for rejection of a claim for refugee status or other form of international protection, on the grounds that it is “manifestly unfounded” or “clearly abusive” or otherwise.

13. UNHCR maintains that the criteria for refugee status in the 1951 Convention need to be interpreted through a full and inclusive approach, so that individuals or groups of persons who meet these criteria are duly recognized and protected.<sup>26</sup> Only when an asylum-seeker is found not to meet the refugee criteria in the 1951 Convention, or of broader refugee criteria elaborated in regional refugee instruments,<sup>27</sup> consideration should be given to other – complementary – forms of international protection, including humanitarian or subsidiary protection status,<sup>28</sup> for example derived from non-*refoulement* obligations in accordance with international or regional human rights law.<sup>29</sup>
14. To ensure this step-by-step approach is adequately followed, UNHCR recommends the establishment of a single comprehensive procedure, before a central expert authority, which first assesses whether an asylum-seeker qualifies for 1951 Convention refugee status and, if not, then assesses the need for other complementary forms of protection.<sup>30</sup> Such a procedure should also meet all the requirements of fairness, including the right to appeal with suspensive effect, and access to UNHCR.<sup>31</sup>

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Mandate (*The Glossary*), 2020: <https://www.refworld.org/docid/5a2657e44.html>, p. 20, and *UNHCR's Position on Manifestly Unfounded Applications for Asylum*, 1 December 1992, p. 397: <https://www.refworld.org/docid/3ae6b31d83.html>.

<sup>26</sup> UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, paras. 6 and 26: <https://www.refworld.org/docid/47fdfb49d.html>.

<sup>27</sup> For regional refugee criteria, see Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969, 1001 U.N.T.S. 45: <http://www.refworld.org/docid/3ae6b36018.html>; *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984: <http://www.refworld.org/docid/3ae6b36ec.html>; Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees*, 31 December 1966: <http://www.refworld.org/docid/3de5f2d52.html>. See also, UNHCR, *GIP No. 12 - Conflict and Violence*, paras 86 and 87.

<sup>28</sup> UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, para. 26: <https://www.refworld.org/docid/47fdfb49d.html>. See also, *UNHCR submission to the Senate Legal and Constitutional Affairs Legislation Committee in respect of its inquiry into the Migration Amendment (Complementary Protection and Other Measures) Bill 2015*, 3 December 2015, para. 13: <https://www.refworld.org/docid/56669e5e4.html>; *UNHCR intervention before the Court of Appeal of England and Wales in the case of QD (Iraq) v. Secretary of State for the Home Department*, 31 May 2009, C5/2008/1706, para. 15: <https://www.refworld.org/docid/4a6464e72.html>. For subsidiary protection, see, 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: <http://www.refworld.org/docid/4f197df02.html>.

<sup>29</sup> Such as: *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, UNTS, Vol. 1465: <http://www.refworld.org/docid/3ae6b3a94.html>, p. 85; *International Covenant on Civil and Political Rights*, 16 December 1966, UNTS, Vol. 999, p. 171: <http://www.refworld.org/docid/3ae6b3aa0.html>; *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5: <http://www.refworld.org/docid/3ae6b3b04.html>.

<sup>30</sup> Such procedure has been noted, from the year 2000, by various stakeholders, as the clearest, fastest and most economical means of identifying persons in need of international protection. See UNHCR, *Global Consultations on International Protection/Third Track: Complementary Forms of Protection*, para. 9, 4 September 2001, EC/GC/01/18: <https://www.refworld.org/docid/3bfa84345.html>. See also, ExCom Conclusion No. 8: <https://www.unhcr.org/excom/exconc/3ae68c6e4/determination-refugee-status.html>.

<sup>31</sup> UNHCR, *GIP No.1- Gender*, para. 32 and UNHCR, *GIP No. 12: Conflict and Violence*, paras 8 and 87; ExCom Conclusion No. 87 (L) 1999, para. (f); ExCom Conclusion No. 89 (LI) 2000. See also, UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, para. 27: <https://www.refworld.org/docid/47fdfb49d.html>; UNHCR, *Global Consultations on International Protection/Third Track: Complementary Forms of Protection*, 4 September 2001, paras. 9-10-11 e): <https://www.refworld.org/docid/3bfa84345.html>.

### *Imputed political opinion and military service*

15. Under the Convention ground of political opinion, it must be shown<sup>32</sup> that the applicant has a well-founded fear of being persecuted for holding certain political opinions (usually different from those of the Government or parts of the society), or because the holding of such opinions have been attributed to him or her.<sup>33</sup> The refugee definition does not require applicants to describe their beliefs or conduct as political for them to be considered political opinions for purposes of protection provided by the 1951 Convention. In UNHCR's view, the concept of political opinion should be understood in a broad sense, to incorporate "any opinion on any matter in which the machinery of State, government, society, or policy may be engaged".<sup>34</sup>
16. The concept of imputed political opinion has been analyzed by a number of the highest national courts around the world, starting with the Supreme Court of Canada which held in *Canada (Attorney General) v. Ward* that the political opinion at issue need not have been expressed outright; it can be perceived or imputed. Moreover, it need not necessarily conform to the claimant's true beliefs. What is relevant is the perception of the persecutor.<sup>35</sup>
17. Similarly, the United States Court of Appeals for the Ninth Circuit held in *Mario Ernesto Navas v. Immigration and Naturalization Service* that asylum-seekers "can establish persecution on account of imputed political opinion, that is, on account of a political opinion attributed to him or her by the persecutors."<sup>36</sup>
18. The Supreme Court of the United Kingdom addressed the issue and found: "the principle is not in doubt that an individual may be at risk of persecution on the grounds of imputed opinion".<sup>37</sup> More recently, the United Kingdom Upper Tribunal (Immigration and Asylum Chamber) in *MSM (Somalia) v. Secretary of State for the Home Department* cited the words of Article 10(1) (e) of the Qualification Directive i.e. "The concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant" and concluded that "These words embrace the twin concepts of actual and imputed political opinion. Both are protected."<sup>38</sup>

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<sup>32</sup> See footnote 19 above.

<sup>33</sup> 'Political opinions' also includes political neutrality or not having a political opinion. See *RT (Zimbabwe) and others v Secretary of State for the Home Department*, where the UK Supreme Court found that the right to not hold a political opinion is equally important. "I can see no basis in principle for treating the right to hold and not to hold political beliefs differently. Article 10 of the ECHR provides that everyone has the right to freedom of expression and that this right 'shall include freedom to hold opinions'. That must include the freedom not to hold opinions." [2012] UKSC 38, United Kingdom: Supreme Court, 25 July 2012: [http://www.refworld.org/cases,UK\\_SC,500fdacb2.html](http://www.refworld.org/cases,UK_SC,500fdacb2.html), para 36.

<sup>34</sup> Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* 74 (3rd ed. 2007), at p. 87; See also, UNHCR, *GIP No. 1- Gender*, para. 32 and UNHCR, *GIP No. 12 - Conflict and Violence* at para. 38.

<sup>35</sup> *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, Canada: Supreme Court, 30 June 1993: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/1023/1/document.do>, at p. 746-747.

<sup>36</sup> *Mario Ernesto Navas v. Immigration and Naturalization Service*, 98-70363, United States Court of Appeals for the Ninth Circuit, 20 June 2000: [http://www.refworld.org/cases,USA\\_CA\\_9,4152e0fb15.html](http://www.refworld.org/cases,USA_CA_9,4152e0fb15.html).

<sup>37</sup> *RT (Zimbabwe) and others v Secretary of State for the Home Department*, [2012] UKSC 38, United Kingdom: Supreme Court, 25 July 2012: [http://www.refworld.org/cases,UK\\_SC,500fdacb2.html](http://www.refworld.org/cases,UK_SC,500fdacb2.html). In addition to the discussion around imputed political opinion, the court found that the right to not hold a political opinion is equally important. See para. 36.

<sup>38</sup> *MSM (journalists; political opinion; risk) Somalia v. Secretary of State for the Home Department*, [2015] UKUT 00413 (IAC), United Kingdom: Upper Tribunal, 30 July 2015, [http://www.refworld.org/cases,GBR\\_UTIAC,55ba10194.html](http://www.refworld.org/cases,GBR_UTIAC,55ba10194.html) at para. 33.

19. In situations of armed conflict and violence, expressing objections or taking a neutral or indifferent stance to the strategies, tactics or conduct of parties or refusing to join, support, financially contribute to, take sides or otherwise conform to the norms and customs of the parties involved in the situation may – in the eyes of the persecutor – be considered critical of the political goals of the persecutor. It may furthermore be seen as deviating from religious or societal norms or practices. As such, such actions or lack thereof might indicate or create the perception in the eyes of the persecutor that the person holds a different political opinion, religious (or non) belief, or affiliation with or belonging to an ethnic or social group.<sup>39</sup>
20. Asylum cases involving objection to military service may be decided on the basis that there is a nexus between the well-founded fear of being persecuted and the political opinion ground in the 1951 Convention. Depending on the facts, an objection to military service may be viewed through the prism of actual or imputed political opinion. In relation to the latter, the authorities may interpret the individual’s refusal to participate in a conflict as a manifestation of political disagreement with its policies. The act of desertion or evasion<sup>40</sup> may in itself be, or be perceived to be, an expression of political views.<sup>41</sup>

***Individual and group based risks in situations of armed conflict and violence***

21. In accordance with the ordinary meaning to be given to the terms in their context and in light of the object and purpose of the 1951 Convention, Article 1A (2) applies to persons fleeing situations of armed conflict and violence. Indeed, the 1951 Convention definition of a refugee makes no distinction between refugees fleeing peacetime or “wartime” persecution. The analysis required under Article 1A (2) focuses on a well-founded fear of being persecuted for one or more of the Convention grounds.<sup>42</sup>
22. In situations of armed conflict and violence, an applicant may be at risk of being singled out or targeted for persecution. Equally, in such situations, entire groups or populations may be at risk of persecution, leaving each member of the group at risk.<sup>43</sup> The fact that many or all members of particular communities are at risk does not undermine the validity of any particular individual’s claim,<sup>44</sup> nor is the size of the group relevant. The test is whether an individual’s fear of being persecuted is well-founded. At times, the impact of a situation of armed conflict and violence on an entire community, or on civilians more generally, *strengthens* rather than weakens the well-founded nature of the fear of being persecuted of a particular individual.<sup>45</sup>

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<sup>39</sup> UNHCR, *GIP No. 12 – Conflict and Violence*, at para. 37.

<sup>40</sup> “Draft evasion occurs when a person does not register for, or does not respond to, a call up or recruitment for compulsory military service. The evasive action may be as a result of the evader fleeing abroad, or may involve, inter alia, returning call up papers to the military authorities. (...) Draft evasion may also be pre-emptive in the sense that action may be taken in anticipation of the actual demand to register or report for duty. (...) Draft evasion may be for reasons of conscience or for other reasons”; UNHCR, *GIP No. 10: Military Service*, para. 3.

<sup>41</sup> UNHCR, *GIP No. 10 – Military Service*, para. 52.

<sup>42</sup> UNHCR, *GIP No. 12 - Conflict and Violence*, para. 10.

<sup>43</sup> *Ibid.*, para. 17.

<sup>44</sup> UNHCR, *Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees*, April 2001: <http://www.refworld.org/docid/3b20a3914.html>, para. 20.

<sup>45</sup> UNHCR, *GIP No. 12 – Conflict and Violence*, at para. 17. According to the European Court of Human Rights: “in relation to asylum claims based on a well-known general risk, when information about such a risk is freely ascertainable from a wide number of sources, the obligations incumbent on the States under Articles 2 and 3 of the Convention in expulsion cases entail that the

23. In situations of armed conflict and violence, whole communities may be affected by, and be at risk from, aerial bombardments, the use of cluster munitions, barrel bombs or chemical weapons, artillery or sniper fire, improvised explosive devices, landmines, car bombs or suicide bombers, or siege tactics, for example. Exposure to such actions can amount to persecution within the meaning of Article 1A (2) of the 1951 Convention, either independently or cumulatively.<sup>46</sup>
24. As noted by leading refugee law scholar Guy S. Goodwin-Gill and his co-author Jane McAdam in *The Refugee in International Law*, the logic of denying refugee status to those affected by an armed conflict which itself engages or is driven by one or other Convention ground is unclear and may lead to absurd situations.<sup>47</sup> To illustrate why such an approach is flawed, the authors provide the example of a situation of armed conflict and violence which becomes genocidal, and where, according to the logic above, no persons would be eligible for refugee status.<sup>48</sup> In UNHCR's view, the fact that the violence prevailing in a country is generalized and widespread is often erroneously used against finding a nexus between a well-founded fear and a 1951 Convention ground.

***Forward looking nature of assessing the risk of persecution***

25. The refugee definition is forward-looking. The 1951 Convention protects those who – at the time of the decision – are at risk of persecution in their country of origin, regardless of whether they have already suffered persecution. A decision on whether a person has a well-founded fear of being persecuted requires a forward-looking assessment of all relevant facts of the case.<sup>49</sup> The wording “well-founded fear” does not require past persecution, although past persecution can be considered an indicator of the well-foundedness of continued fear.<sup>50</sup> International refugee protection is preventive in its nature and therefore a person does not need to wait until she or he has been persecuted before she or he can claim refugee status.<sup>51</sup>
26. It is important to note that not all asylum-seekers whose claims are based on objections to military service may have experienced persecution in the past. Past persecution is not a prerequisite for refugee status under the 1951 Convention and, in fact, the well-foundedness of the fear of persecution is a prospective test, to be based on the assessment of the

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authorities carry out an assessment of that risk of their own motion”; *F.G. v Sweden*, Application No. 43611/11, European Court of Human Rights, 23 March 2016: <http://www.refworld.org/docid/56fd485a4.html>, para. 126.

<sup>46</sup> UNHCR, *GIP No. 12 - Conflict and Violence*, para. 18.

<sup>47</sup> Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, (3rd ed. 2007), p. 128.

<sup>48</sup> *Ibid.*

<sup>49</sup> UNHCR, *GIP No. 12 - Conflict and Violence*, para. 24.

<sup>50</sup> “It may be assumed that a person has a well-founded fear of being persecuted if he has already been the victim of persecution for one of the reasons enumerated in the 1951 Convention. However, the word “fear” refers not only to persons who have actually been persecuted, but also to those who wish to avoid a situation entailing the risk of persecution.” UNHCR Handbook, para. 45.

<sup>51</sup> In *Re C, Refugee Appeal No. 70366/97*, the New Zealand Refugee Status Appeals Authority held Article 1A(2) ‘require[s] a forward-looking or anticipatory, objective assessment of risk, not an examination of past persecution with a view to determining, whether on humanitarian grounds, a person who has suffered atrocious persecution in the past (but who no longer faces a risk of persecution) should be required to return to the country origin.’; [http://www.refworld.org/cases,NZL\\_RSAA,3ae6b73f14.html](http://www.refworld.org/cases,NZL_RSAA,3ae6b73f14.html). In *Karanakaran v Secretary of State for the Home Department*, Lord Justice Sedley found: ‘What matters throughout is that the applicant’s autobiographical account is only part of the picture. People who have not yet suffered actual persecution (one thinks of many Jews who fled Nazi Germany just in time) may have a very well-founded fear of persecution should they remain’: [2000] EWCA Civ. 11, United Kingdom: Court of Appeal (England and Wales), 25 January 2000, at para. 15: [http://www.refworld.org/cases,GBR\\_CA\\_CIV,47bc14622.html](http://www.refworld.org/cases,GBR_CA_CIV,47bc14622.html).



predicament that the applicant would have to face if returned to the country or origin.<sup>52</sup> Paragraph 42 of the UNHCR Handbook points out that:

*“In general, the applicant’s fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there.” [emphasis added]*

### **Principle of non-refoulement and international protection**

27. The obligation of States not to expel or return a person to territories where his or her life or freedom would be threatened is the cornerstone of the international refugee law,<sup>53</sup> most prominently expressed in Article 33 of the 1951 Convention which provides that:<sup>54</sup>

*“No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>55</sup>*

28. The principle of *non-refoulement* constitutes an essential binding and non-derogable component of international refugee protection<sup>56</sup> which has been restated in international<sup>57</sup> and regional refugee<sup>58</sup> and human rights instruments.<sup>59</sup> In addition to its enshrinement in these

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<sup>52</sup> See e.g. *HJ(Iran); Bromfield v. Mukasey*, US, 543 F.3d 1070, 1076-77 (9<sup>th</sup> Cir. 2008); *RRT Case No. 1102877*, [2012] RRTA 101, Australia, Refugee Review Tribunal, 23 February 2012: [http://www.refworld.org/cases,AUS\\_RRT,4f8410a52.html](http://www.refworld.org/cases,AUS_RRT,4f8410a52.html), para. 91.

<sup>53</sup> See Elihu Lauterpacht and Daniel Bethlehem, “*The Scope and Content of the principle of non-refoulement: Opinion*”, in E. Feller, V. Türk and F. Nicholson (eds.), *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection*, Cambridge University Press, Cambridge (2003), at pp. 87–177. See also UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=45f17a1a4> and UNHCR, *Note on the Principle of Non-Refoulement*, November 1997: <http://www.unhcr.org/refworld/docid/438c6d972.html>.

<sup>54</sup> Unlike some provisions of the 1951 Convention, Article 33 is not dependent on the lawful residence of a refugee in the territory of a Contracting State.

<sup>55</sup> While Article 33 (2) of the 1951 Convention foresees exceptions to the principle of *non-refoulement*, international human rights law and most regional refugee instruments set forth an absolute prohibition, without exceptions of any sort.

<sup>56</sup> Article 42(1) of the 1951 Convention and Article VII(1) of the 1967 Protocol, list Article 33 as one of the provisions of the 1951 Convention to which no reservations are permitted. See also, UNHCR, *Declaration of States Parties to the 1951 Convention and or its 1967 Protocol relating to the Status of Refugees*, 16 January 2002, HCR/MMSP/2001/09, para. 4: <http://www.unhcr.org/refworld/docid/3d60f5557.html>.

<sup>57</sup> An explicit *refoulement* provision is contained in Article 3 of the 1984 *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which stipulates that no State Party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The *International Covenant on Civil and Political Rights*, as interpreted by the Human Rights Committee also encompasses the obligation not to extradite, deport, expel or otherwise remove a person from a State’s territory where there are substantial grounds for believing that there is a real risk of irreparable harm. See Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 10 March 1992, U.N. Doc. HRI/GEN/1/Rev.7, para. 9 and General Comment No. 31 on the Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 12.

<sup>58</sup> See, Article III (3) of the *Bangkok Principles* concerning the Treatment of Refugees adopted by the Asian-African Legal Consultative Committee at its Eighth Session in Bangkok in 1966, which states that: “No one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the populations, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.” Similarly, the principle of non-refoulement is set out in Article II (3) of the Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa* (“*OAU Convention*”), and in the *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984: <https://www.refworld.org/docid/3ae6b36ec.html>.

<sup>59</sup> In the Americas, the principle of *non-refoulement* is enshrined in Article 22(8) of the *American Convention on Human Rights*: it provides that: “In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality,

instruments, the principle of *non-refoulement* has also found expression in the constitutions and/or national legislation of a number of States.<sup>60</sup> It is a norm of customary international law<sup>61</sup> and is consequently binding for all States, whether or not they are parties to the 1951 Convention or its 1967 Protocol.<sup>62</sup> The fundamental and non-derogable character of the principle of *non-refoulement* has also been reaffirmed in numerous ExCom Conclusions.<sup>63</sup>

29. The prohibition of *refoulement* is applicable to any form of removal, including deportation, expulsion, extradition, informal transfer or ‘renditions’, as well as non-admission at the border. This is evident from the wording of Article 33(1) of the 1951 Convention, which refers to expulsion or return (*refoulement*) ‘in any manner whatsoever’.<sup>64</sup> This wording should be understood as indicating that a wide range of State conduct, the categories of which do not fall into a closed list, may engage *non-refoulement* obligations.
30. UNHCR underlines that the responsibility of a State to protect a person from *refoulement* is engaged wherever its conduct exposes that person to a risk of being subject to persecution or ill-treatment in another country, in particular if the person has expressed a fear of such, or the individual circumstances or characteristics of the person or group to which she belongs indicates a risk of which the State ought to be aware.<sup>65</sup>
31. Under the obligations of *non-refoulement*, States have a duty to ensure, prior to implementing any removal measure to the country of origin or any third country, that the person whom it intends to remove from its territory or jurisdiction is not at risk of persecution, serious human rights violations or other serious harm.<sup>66</sup> States have a duty to inquire into the reasons an individual seeks protection including, where relevant, prior to the execution of a removal order.<sup>67</sup> “As a general rule, in order to give effect to their obligations under the 1951

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religion, social status or political opinions” whereas the European Court of Human Rights has held that *non-refoulement* is an inherent obligation under Article 3 of the European Convention on Human Rights.

<sup>60</sup> UNHCR, *Note on Non-Refoulement*, 23 August 1977, EC/SCP/2, para. 11: <https://www.refworld.org/docid/3ae68ccd10.html>.

<sup>61</sup> See Conclusion III(5): Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984: <http://www.refworld.org/docid/3ae6b36ec.html>. This principle has also been confirmed by the Inter-American Court of Human Rights in *Advisory Opinion OC-21/14, “Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection”*, 19 August 2014, para. 211: <https://www.refworld.org/cases,IACRTHR,54129c854.html> and *Advisory Opinion OC-25/18*, 30 May 2018, para. 181: <https://www.refworld.org/cases,IACRTHR,5c87ec454.html>.

<sup>62</sup> *Ibid*, *Advisory Opinion OC-21/14*, para. 211.

<sup>63</sup> See ExCom Conclusions No. 25 (XXXIII) 1982, (b); No. 29 (XXXIV) 1983, para. (c); No. 50 (XXXIX) 1988, para. (g); No. 52 (XXXIX) 1988, para. (5); No. 55 (XL) 1989, para. (d); No. 62 (XLI) 1990, para. (a) (iii); No. 65 (XLII) 1991, para. (c); No. 68 (XLIII) 1992, para. (f); No. 71 (XLIV) 1993, para. (g); No. 74 (XLV) 1994, para. (g); No. 77 (XLVI) 1995, para. (a); No. 81 (XLVIII) 1997, para. (h); No. 82 (XLVIII) 1997, para. (d)(i); No. 85 (XLIX) 1998, para. (q); No. 91 (LII) 2001, para. (a); No. 94 (LIII) 2002, para. (c)(i); No. 99 (LV) 2004, para. (1); No. 103 (LVI) 2005, para. (m); and No. 108 (LIX) 2008, para. (a).

<sup>64</sup> UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007 (“UNHCR, *Advisory Opinion*”), para. 7: <https://www.refworld.org/docid/45f17a1a4.html>.

<sup>65</sup> See UNHCR’s oral intervention at the European Court of Human Rights Hearing of the case *Hirsi and Others v. Italy*, p. 4: <https://www.refworld.org/pdfid/4e0356d42.pdf>. See also, UNHCR’s oral intervention before the European Court of Human Rights in the case of *N.D. and N.T. v. Spain*, 26 September 2018, p. 6: <http://www.refworld.org/docid/5bb3873b4.html>.

<sup>66</sup> UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of A.S.N and T.K.M v The Netherlands (Appl. no. 68377/17)* before the European Court of Human Rights, 20 March 2018, 68377/17: <https://www.refworld.org/docid/5b9283cc4.html>. See also UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of D.A. and others v. Poland (application no. 51246/17) before the European Court of Human Rights*, 5 February 2018, 51246/17, available at: <https://www.refworld.org/docid/5a9d6e414.html>.

<sup>67</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Appl. no. 30696/09, 21 January 2011, para. 359, <http://www.refworld.org/docid/4d39bc7f2.html>. See also, Final Appeal Nos 18, 19 & 20 of 2011 (Civil) between C, KMF, BF (Applicants) and Director of Immigration, Secretary for Security (Respondents) and UNHCR (Intervener), Hong Kong: Court of

Convention and/or 1967 Protocol, States will be required to grant individuals seeking international protection access to the territory and to fair and efficient asylum procedures.”<sup>68</sup>

32. Lastly, given that a person is a refugee within the meaning of the 1951 Convention as soon as he or she fulfils the criteria contained in the refugee definition, refugee status determination is declaratory in nature: a person does not become a refugee because of recognition but is recognized because he or she is a refugee. It follows that the principle of *non-refoulement* applies not only to recognized refugees, but also to those whose status has not yet been determined.<sup>69</sup>
33. In UNHCR’s view, in cases where an applicant applies for refugee status after receiving a deportation order, the State is obliged to determine the risk of refoulement prior to carrying out deportation. To ensure a secure status which will effectively protect the individual from removal to face persecution or serious harm, States must first assess the applicant’s eligibility under the 1951 Convention, and if found not to meet the refugee criteria, then consideration should be given to other forms of international protection, including humanitarian or subsidiary protection status.

#### **Assessment of refugee protection needs of persons fleeing conflict and violence in Syria**

34. UNHCR acknowledges the difficulties decision-makers encounter in determining whether harm inflicted in situations of conflict and violence amounts to persecution, or whether it has been carried out for a Convention reason. In this respect, UNHCR draws attention to its *International Protection Considerations with regard to people fleeing the Syrian Arab Republic*, which provides pertinent and detailed analysis on how to assess those needs; and to its recently issued *COI Note: Participation in Anti-Government Protests; Draft Evasion; Issuance and Application of Partial Amnesty Decrees; Residency in (Formerly) Opposition-Held Areas; Issuance of Passports Abroad; Return and "Settling One's Status"*.<sup>70</sup> A core function of these documents is to assist the decision-maker with the correct interpretation and application of the legal concepts. UNHCR’s guidance and the aforementioned additional *COI Note* are based on in-depth research on a broad range of sources of country of origin

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Final Appeal, 25 March 2013, paras. 56 and 64, <http://www.refworld.org/docid/515010a52.html>; UNHCR, Intervention before the Court of Final Appeal of the Hong Kong Special Administrative Region in the case between C, KMF, BF (Applicants) and Director of Immigration, Secretary for Security (Respondents), 31 January 2013, Civil Appeals Nos. 18, 19 & 20 of 2011, paras. 74 and 75, <http://www.refworld.org/docid/510a74ce2.html>.

<sup>68</sup> The 1951 Convention and the 1967 Protocol define those to whom international protection is to be conferred and establish key principles such as non-penalisation of entry (Article 31) and nonrefoulement (Article 33). However, they do not set out procedures for the determination of refugee status as such. Yet it is generally recognised that fair and efficient procedures are an essential element in the full and inclusive application of the 1951 Convention outside the context of mass influx situations. See UNHCR, *Asylum Processes (Fair and Efficient Asylum Procedures)*, EC/GC/01/12, 31 May 2001, paras. 4–5. See also Executive Committee, Conclusion No. 81 (XLVIII) “General” (1997), para. (h); Conclusion No. 82 (XLVIII), “Safeguarding Asylum” (1997), para. (d)(iii); Conclusion No. 85 (XLIX), “International Protection” (1998), para. (q); Conclusion No. 99 (LV), “General Conclusion on International Protection” (2004), para. (l), in UNHCR, *Advisory Opinion*, para 8. See also, P. Weis, *The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary* by Dr. Paul Weis, Cambridge University Press, Cambridge (1995), at p. 342.

<sup>69</sup> UNHCR Handbook, para. 28. See also, ExCom Conclusion, No. 6 (XXVIII) - 1977, para. (c); ExCom Conclusion, No. 79 (XLVII) - 1996, paras. (i)(j); UNHCR, *Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017* (Conclusion No. 1 – 114), October 2017, <https://www.refworld.org/docid/5a2ead6b4.html>.

<sup>70</sup> UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update V*, 3 November 2017, available at: <https://www.refworld.org/docid/59f365034.html>; See also: UNHCR, *COI Note: Participation in Anti-Government Protests; Draft Evasion; Issuance and Application of Partial Amnesty Decrees; Residency in (Formerly) Opposition-Held Areas; Issuance of Passports Abroad; Return and "Settling One's Status"*, 7 May 2020, available at: <https://www.refworld.org/docid/5ec4fcff4.html>.

information (COI) rigorously reviewed for reliability. UNHCR encourages the Court to carefully consider the information provided in these documents.

35. In view of the serious and widespread violations of international humanitarian law and violations and abuses of human rights law and ongoing armed conflict in many parts of the country, UNHCR continues to characterize the flight of civilians from Syria as a refugee movement, with the vast majority of Syrian asylum-seekers continuing to be in need of international refugee protection, fulfilling the requirements of the refugee definition contained in Article 1 A (2) of the 1951 Convention.<sup>71</sup>
36. Available country of origin information demonstrates that the Syrian Government has harshly suppressed anti-government protests since 2011, and continues to violently suppress and punish any real or perceived dissent in areas under its control.<sup>72</sup> It employs very broad criteria when determining what constitutes political dissent: any criticism, opposition or insufficient loyalty to the government expressed in any way or form<sup>73</sup> regularly results in serious repercussions for the individual.<sup>74</sup>
37. Amongst those regularly perceived to be holding an anti-government opinion are civilians (and particularly men and boys of fighting-age) from **(formerly) opposition-held areas**;<sup>75</sup>

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<sup>71</sup> UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update V*, 3 November 2017, available at: <https://www.refworld.org/docid/59f365034.html>.

<sup>72</sup> “President Bashar al-Assad’s government systematically detains, tortures and kills political opponents in Syria”; European Center for Constitutional and Human Rights (ECCHR), *2019 ECCHR Annual Report*, 2020, available at: <https://bit.ly/35q9ufv>, p. 11. “The regime routinely characterized expression as illegal, and individuals could not criticize the regime publicly or privately without fear of reprisal. (...) It monitored political meetings and relied on informer networks”; US Department of State, *2019 Country Reports on Human Rights Practices – Syria*, 11 March 2020, available at: [www.ecoi.net/en/document/2026345.html](http://www.ecoi.net/en/document/2026345.html). “Political rights and civil liberties in Syria are severely compromised by one of the world’s most repressive regimes and by other belligerent forces in an ongoing civil war. The regime prohibits genuine political opposition and harshly suppresses freedoms of speech and assembly. (...) the government maintains a powerful intelligence and security apparatus to monitor and punish opposition movements that could emerge as serious challengers to Assad’s rule. (...) The government engages in heavy surveillance of private and online discussion and harshly punishes dissent in areas it controls”; Freedom House, *Freedom in the World 2020 – Syria*, March 2020, available at: <https://freedomhouse.org/country/syria/freedom-world/2020>; See also, UNHCR, *International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic, Update V*, 3 November 2017, available at: [www.refworld.org/docid/59f365034.html](http://www.refworld.org/docid/59f365034.html), pp. 35-36 (and sources referenced therein).

<sup>73</sup> On the reported monitoring of critics’ online activities, including through a centralized surveillance system run by Syrian telecommunication companies, see: “Arbitrary arrests raised fears that authorities could arrest internet users at any time for online activities perceived to threaten the regime’s control, such as posting on a blog, tweeting, commenting on Facebook, sharing a photograph, or uploading a video”; US Department of State, *2019 Country Reports on Human Rights Practices – Syria*, 11 March 2020, available at: [www.ecoi.net/en/document/2026345.html](http://www.ecoi.net/en/document/2026345.html). “The Syrian intelligence services, especially the military intelligence, have been collecting without cause information about political opponents, members of the opposition and human rights activists. Numerous reports from Syria indicate that the government of Bashar al-Assad uses the intercepted data in part to identify, arrest and interrogate critics”; ECCHR, *Surveillance in Syria: European Firms May Be Aiding and Abetting Crimes Against Humanity*, accessed 7 May 2020, available at: <https://bit.ly/2xwGdD0>. See also, Hivos, *Silencing Across Borders: Transnational Repression and Digital Threats Against Exiled Activists from Egypt, Syria, and Iran*, February 2020, available at: <https://bit.ly/3a7FTb5>; Freedom House, *Freedom on the Net 2019 – Syria*, 4 November 2019, available at: <https://freedomhouse.org/country/syria/freedom-net/2019>.

<sup>74</sup> “According to Kristyan Benedict, Amnesty International UK’s crisis campaigns manager, “[A]nybody who the regime suspects of being disloyal can be a target for detention in Assad’s nightmarish prison system where torture remains systematic and widespread – these include political activists, protesters, human rights defenders, journalists, lawyers, doctors and humanitarian aid workers.” Nicholas Heras of the Centre for a New American Security assessed that “(...) anyone with ties to the opposition, even distantly, or to foreign actors like the United States and Turkey, are enemies. (...) It [the government] still feels vulnerable and it therefore is in no mood for leniency or any compromises”; (emphasis added); The Independent, *Assad Regime Detains Thousands of Syrians in Crackdown on Recaptured Areas*, 6 June 2019, available at: <https://bit.ly/2V1UwIS>.

<sup>75</sup> “In Duma, Jalaa, and Dhameer towns [Rural Damascus Governorate], GoS forces also conducted three large arrest operations for military aged males”; The Carter Center, *Weekly Conflict Summary | 23 - 29 September 2019*, 4 October 2019, available at: <https://bit.ly/2W3l2iT>, p. 4. “In Yabrud and Qalamun (Rif Dimashq), for example, dozens of men aged between 20 and 25 years were arrested and forcibly disappeared during the period under review”; UN Human Rights Council, *Report of the Independent International Commission of Inquiry*, 15 August 2019, available at: [www.ecoi.net/en/file/local/2016403/a\\_hrc\\_42\\_51\\_E](http://www.ecoi.net/en/file/local/2016403/a_hrc_42_51_E), para. 67. “The Commission has previously documented a widespread and systematic pattern in which men above the age of 15 years had been arbitrarily arrested and detained by Government security, armed forces, or militia acting on their behalf during mass arrests, at checkpoints, or during house searches” (emphasis added); UN Human Rights Council, *Death Notifications in the Syrian Arab Republic*, 28 November 2018, available at: <https://bit.ly/2FypAsl>, para. 1.

**draft evaders and deserters;**<sup>76</sup> local council members;<sup>77</sup> activists;<sup>78</sup> journalists and citizen journalists;<sup>79</sup> humanitarian workers and civil defence volunteers;<sup>80</sup> medical personnel;<sup>81</sup> human rights defenders;<sup>82</sup> and academics.<sup>83</sup> [emphasis added]

<sup>76</sup> “During the reporting period, activists, civil defence volunteers, conscript deserters, recent returnees and others generally perceived to be opposition supporters were the most likely to be detained arbitrarily” (emphasis added); UN Human Rights Council, *Report of the Independent International Commission of Inquiry*, 31 January 2019, available at: <https://bit.ly/2nHPkvi>, para. 73. “Syrian Regime forces also carried out raids and mass arrests targeting all segments of society aged between 18 and 42 years, with the aim of forced conscription and reserve military service in their forces”; Syrian Network for Human Rights (SNHR), *At least 441 Cases of Arbitrary Arrests Documented in Syria in September 2019*, 2 October 2019, available at: <https://bit.ly/2pa5yy2>, p. 5. “Those that were arrested were transferred to security branches for interrogation before being referred to the military judiciary. Dozens [of Palestinian draft evaders] were tortured to death during the process”; Omran for Strategic Studies, *The Syrian Military Establishment in 2019 – Sectarianism, Militias and Foreign Investment*, May 2019, available at: <http://bit.ly/2XiPeGZ>, pp. 72-73. See also, The Washington Institute, *Can Assad’s Demobilization, Demilitarization, and Rehabilitation Strategy Actually Consolidate Syria’s Paramilitary Forces?*, 6 March 2019, available at: <https://bit.ly/2WSC6sH>; Atlantic Council, *Forced Conscription Continues Despite Amnesty by Syrian Government*, 13 February 2019, available at: <https://bit.ly/2Yqfzn9>; UN Human Rights Council, *Report of the Independent International Commission of Inquiry*, 31 January 2019, available at: <https://bit.ly/2nHPkvi>, para. 73; Middle East Monitor, *Photo of Shackled Syria Men Forced to Serve in Military Goes Viral*, 4 December 2018, available at: <https://bit.ly/2VyvHkF>.

<sup>77</sup> “Another group targeted for arrests are former members of the ‘local councils’ that operated, and provided administrative governance, in eastern Ghouta while rebel factions controlled the territory”; Atlantic Council, *Breaking Ghouta Post-Reconciliation*, accessed 7 May 2020, available at: <https://bit.ly/35hivXC> (with examples). See also, Syria Direct, *A Year After “Reconciliation”: Arrests and Disappearances Abound in Southern Syria*, 18 July 2019, available at: <https://bit.ly/2GiADW1>; European Institute for Peace (EIP), *Refugee Return in Syria: Dangers, Security Risks and Information Scarcity*, July 2019, available at: <https://bit.ly/2MW5U59>, pp. 30, 31; Enab Baladi, *A Year after the Syrian Alienation: How Has the Situation in Eastern Ghouta Changed?*, 21 February 2019, available at: <https://wp.me/p7cv3Y-d18>; Qantara, *Local Government under Syria’s Opposition: Of the People, by the People, for the People*, 20 December 2018, available at: <https://bit.ly/2PsL273>

<sup>78</sup> “The regime generally denies registration to nongovernmental organizations with reformist or human rights missions, and regularly conducts raids and searches to detain civic and political activists”; Freedom House, *Freedom in the World 2020 – Syria*, March 2020, available at: <https://freedomhouse.org/country/syria/freedom-world/2020>. See also, Syrian Observatory for Human Rights (SOHR), *Large-Scale Arrest Operation in Zabadani City West of Rif Dimashq after the Spread of Writings on Walls of the City Against the Syrian Regime*, 17 September 2019, available at: <https://bit.ly/32MlwNX>; UN Human Rights Council, *Report of the Independent International Commission of Inquiry*, 31 January 2019, available at: <https://bit.ly/2nHPkvi>, para. 73.

<sup>79</sup> “(...) freedom of expression is heavily restricted in government-held areas, and journalists or ordinary citizens who criticize the state face censorship, detention, torture, and death in custody”; Freedom House, *Freedom in the World 2019 – Syria*, 4 February 2019, available at: [www.ecoi.net/en/document/2016055.html](http://www.ecoi.net/en/document/2016055.html). “Since anti-government protests broke out in 2011, the authorities have detained hundreds of internet users, including several well-known bloggers and citizen journalists. (...) Once in custody, citizen journalists, bloggers, and other detainees frequently endure beatings and torture at the hands of government authorities”; Freedom House, *Freedom on the Net 2018 – Syria*, 1 November 2018, available at: [www.ecoi.net/en/document/2001025.html](http://www.ecoi.net/en/document/2001025.html). See also, Reporters Sans Frontières (RSF), *Syria – Unbearable Environment*, accessed 7 May 2020, available at: <https://rsf.org/en/syria>; Committee to Protect Journalists (CPJ), *Syrian Journalist Alaa Nayef al- al-Khalidi Died under State Torture, Official Tells Family*, 22 July 2019, available at: <https://cpj.org/x/78b8>; Syria Direct, *With Return of ‘Kingdom of Silence,’ Journalists Contending with Checkpoints, Secret Police in Government-Held Syria – Report from the Shadows*, 10 December 2018, available at: <http://bit.ly/2mWePJE>.

<sup>80</sup> “(...) the Commission received accounts of enforced disappearances throughout Dar’a Governorate, with the majority of victims being humanitarian workers deemed to have ‘betrayed the country’ for documenting attacks by the Government”; UN Human Rights Council, *Report of the Independent International Commission of Inquiry*, 15 August 2019, available at: [www.ecoi.net/en/file/local/2016403/a\\_hrc\\_42\\_51\\_E](http://www.ecoi.net/en/file/local/2016403/a_hrc_42_51_E), para. 69. On the targeting of rescue workers, including members of the White Helmets (Syria Civil Defense), by government forces, see e.g., SNHR, *The Most Notable Violations Against the Humanitarian Field During the Conflict in Syria*, 13 March 2019, available at: <https://bit.ly/2TKIzYe>, p. 5; UN Human Rights Council, *Report of the Independent International Commission of Inquiry*, 31 January 2019, available at: <https://bit.ly/2nHPkvi>, para. 73; Human Rights Watch (HRW), *White Helmets Evacuation Shows What Can Be Accomplished in Syria*, 23 July 2018, available at: <https://bit.ly/2LGySCO>.

<sup>81</sup> “Throughout the conflict in Syria, the Syrian government has systematically targeted medical facilities and personnel, killing doctors, nurses, and others as they care for the sick and injured in hospitals, clinics, and in the field. Health professionals have also been arrested, disappeared, imprisoned, tortured, and executed – often for upholding their professional commitment to treat all patients, regardless of political affiliation. PHR has documented the deaths of 912 medical personnel from the start of the conflict in 2011 through August 2019”; Physicians for Human Rights (PHR), *Medical Personnel Are Targeted in Syria*, 2019, available at: <https://bit.ly/2mt9okH>. See also, New York Times, *Where Doctors Are Criminals*, 20 December 2019, available at: <https://nyti.ms/2FqSDN4>; Atlantic Council, *Breaking Ghouta Post-Reconciliation*, accessed 7 May 2020, available at: <https://bit.ly/35hivXC> (with examples); SOHR, *The Regime’s Security Forces Arrest a Doctor and a Number of Nurses from Douma City in the Countryside of the Capital Damascus*, 28 September 2019, available at: <https://bit.ly/2onRaCz>; World Medical Association, *World’s Health Professionals Call for an End to Syria Hospital Air Strikes*, 16 September 2019, available at: <https://bit.ly/2pJn6BL>; Amnesty International, *Syria: Families Left Alone to Find Answers about Disappeared Relatives*, 30 August 2019, available at: <https://bit.ly/2MKH2yg>.

<sup>82</sup> “The Syrian government and its allies have also systematically targeted health facilities and health workers as part of a wider strategy of war aimed at breaking civilian populations and forcing them into submission. (...) the majority of the formerly detained health workers interviewed by PHR were arrested by Syrian government forces specifically because of their status as care providers, and their real or perceived involvement in the provision of health services to opposition members and sympathizers”; PHR, *“My Only Crime Was That I Was a Doctor” – How the Syrian Government Targets Health Workers for Arrest, Detention, and Torture*, 4 December 2019, available at: <https://bit.ly/37YwYnQ>. See also, Frontline Defenders, *#Syria*, accessed 7 May 2020, available at: <https://bit.ly/35R1vrD>; Amnesty International, *Syria: Families Left Alone to Find Answers about Disappeared Relatives*, 30 August 2019, available at: <https://bit.ly/2MKH2yg>; UN Office of the High Commissioner for Human Rights (OHCHR), *“The Syrian Crisis Is Breaking Our World” – Briefing to the Security Council under Arria Formula on the Situation in the Middle East (Syria): Statement by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein*, 19 March 2018, available at: <https://bit.ly/2m6SZC8>.

<sup>83</sup> “University professors in government-held areas have been dismissed or imprisoned for expressing dissent, and some have been killed for supporting regime opponents”; Freedom House, *Freedom in the World 2020 – Syria*, March 2020, available at: <https://freedomhouse.org/country/syria/freedom-world/2020>.

38. As noted in UNHCR’s International Protection Considerations (Update V), a particular feature of the conflict in Syria is that different parties to the conflict frequently impute a political opinion to larger groups of people<sup>84</sup> who, without individually being singled out, may become the targets for repercussions by different actors for reason of real or perceived support to another party to the conflict.<sup>85</sup> Therefore, an overall assessment of an applicant’s claim for international protection will have to take into account all elements relevant to his or her claim, including all aspects of the applicant’s profile as well as all other relevant circumstances of the case such as the applicant’s place of origin/residency and conflict-related developments in the area, religious/ethnic background, gender, age, professional/educational background, family and tribal links, political activities, military service duty and the mode of departure (legal/illegal exit). Given that parties to the conflict in Syria use very broad criteria to attribute political affiliation to individuals and whole groups or communities, it is of particular importance to carefully assess cases in a holistic manner. For this purpose, **an assessment of whether the applicant meets the criteria of the refugee definition in the 1951 Convention must consider each aspect of the applicant’s profile, taken alone and in combination with each other.**<sup>86</sup>

39. UNHCR’s International Protection Considerations (Update V) identifies thirteen different profiles of people likely to be in need of international protection, notably Syrian civilians and former habitual residents of Syria falling under the below mentioned categories which are relevant to the issues discussed in this submission:

1. ***Persons opposing, or perceived to be opposing, the government***, including, but not limited to, members of political opposition parties; protestors, activists and others perceived to be sympathizing with the opposition; persons perceived to be members of anti-government armed groups; government and Ba’ath Party officials who abandoned their positions; and civilian inhabitants of urban neighbourhoods, towns and villages perceived to be opposing the government.

2. ***Draft evaders and deserters from the Armed Forces.***

[...]

4. ***Persons opposing, or perceived to be opposing, ISIS in areas under its de facto control or influence.***

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<sup>84</sup> “Communities countrywide have been fragmented, separated from one another by checkpoints, frontlines or ongoing clashes. When displaced by violence or the fear of violence, religious and ethnic communities have tended to cluster together. In seeking safety, their flight has aligned the geographic divisions with differences in real or perceived political loyalties. There is a danger of such geographic divisions becoming entrenched”; UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 11 February 2016, available at: <http://www.refworld.org/docid/56d6b3843ea.html>, para. 95.

<sup>85</sup> In situations of armed conflict and violence, individuals or entire groups or populations may be at risk of being singled out or targeted for persecution for reasons of the 1951 Convention. In its Guidelines on claims for refugee status related to situations of armed conflict and violence, UNHCR noted that: “Situations of armed conflict and violence may be rooted in, motivated or driven by, and/or conducted along lines of race, ethnicity, religion, politics, gender or social group divides, or may impact people based on these factors. In fact, what may appear to be indiscriminate conduct (i.e. conduct whereby the persecutor is not seeking to target particular individuals), may in reality be aimed at whole communities or areas whose inhabitants are actual or perceived supporters of one of the sides in the situation of armed conflict and violence. Who belongs to or is considered or perceived to be affiliated with, a particular side in a situation of armed conflict and violence, is often interpreted broadly by actors during such situations – and may include a range of people, including family members of fighters as well as all those who belong to the same religious or ethnic groups or reside in particular neighbourhoods, villages or towns. A Convention ground is regularly imputed to groups of people based on their family, community, geographic or other links”; UNHCR, *Guidelines on International Protection No. 12*, 2 December 2016, available at: <http://www.refworld.org/docid/583595ff4.html>, para. 33.

<sup>86</sup> UNHCR, *COI Note: Participation in Anti-Government Protests; Draft Evasion; Issuance and Application of Partial Amnesty Decrees; Residency in (Formerly) Opposition-Held Areas; Issuance of Passports Abroad; Return and “Settling One’s Status”*, 7 May 2020, available at: <https://www.refworld.org/docid/5ec4fcff4.html>.

**5. Persons opposing, or perceived to be opposing, anti-government armed groups in areas under their de facto control or influence. [...]**<sup>87</sup>

40. In Syria, draft evasion is a criminal offence.<sup>88</sup> The right to conscientious objection is not legally recognized and there are no provisions for substitute or alternative service.<sup>89</sup> Independent observers note that draft evasion is likely considered by the government as a political, anti-government act, particular in the following circumstances: previous anti-government activities such as participating in protests, or expressing real or perceived anti-government views in the press or on social media; originating from an area currently or formerly held by anti-government armed groups; family ties to a person opposing or perceived to be opposing the government; or having fled abroad.<sup>90</sup> Draft evaders perceived to be opposing the government would likely be subjected to punishment beyond the relevant sanctions for the criminal offence of draft evasion<sup>91</sup> including harsher treatment during arrest, interrogation, detention and, once deployed, during military service.<sup>92</sup> In practice, rather than facing criminal sanctions (imprisonment) under the Military Penal Code, draft evaders are reportedly deployed to a frontline fighting position within days or weeks of their arrest, often with only minimal training, as a form of punishment for their perceived disloyalty.<sup>93</sup> Draft

<sup>87</sup> The risk profiles are based on information available at the time of writing, and hence, a claim should not be considered as without merit simply because it does not fall within any of the profiles identified here. UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update V*, 3 November 2017, available at: <https://www.refworld.org/docid/59f365034.html>, p. 34

<sup>88</sup> Draft evaders who do not present themselves for military service within 30 days after the prescribed notice period are subject to imprisonment ranging from one to six months (during peacetime), in addition to having to serve the regular military service. In wartime, the punishment for draft evasion is imprisonment for up to five years, depending on the circumstances. After having served the sentence, the draft evader has to serve the regular military service; Law No. 61 of 1950, as amended (Military Penal Code) [Syrian Arab Republic], 16 February 2017, available at: <http://www.refworld.org/docid/58a5e1b34.html>.

<sup>89</sup> Only Christian and Muslim religious leaders are exempt from military service based on conscientious objection, although Muslim religious leaders are required to pay an exemption fee; US Department of State, *2018 Report on International Religious Freedom: Syria*, 21 June 2019, available at: [www.ecoi.net/en/document/2011033.html](http://www.ecoi.net/en/document/2011033.html); See also: TIMEP, *TIMEP Brief: Conscription Law*, 22 August 2019, <https://bit.ly/2Y8sDRw>; UN Human Rights Committee, *Concluding Observations: Syrian Arab Republic*, 9 August 2005, CCPR/CO/84/SYR, available at: [www.refworld.org/docid/43f2ff770.html](http://www.refworld.org/docid/43f2ff770.html), para. 11. On the right to conscientious objection against compulsory military service, see also, UNHCR, *Guidelines on International Protection No. 10: Claims to Refugee Status Related to Military Service Within the Context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees*, 3 December 2013, available at: [www.refworld.org/docid/529ee33b4.html](http://www.refworld.org/docid/529ee33b4.html), paras 8-11.

<sup>90</sup> According to Sara Kayyali of HRW, "(...) individuals who were in areas previously held by the opposition that were retaken, and who were forcibly conscripted by the Syrian government are very likely to be considered as holding an anti-government opinion. Individuals returning from abroad are also likely to be seen as holding anti-government opinions. Individuals originally from areas now in anti-government control may also be perceived as such"; E-mail communication with Sara Kayyali, Syria Researcher, Middle East and North Africa Division, HRW, 9 March 2020 (e-mail on file with UNHCR). "From two sources I know that your treatment depends largely on how well connected you are in the regime. Alawites with solid 'connections' ('wasta' in Arabic) will not suffer the worst consequences, and in the two cases mentioned had to pay a 'compensation' ('badal' in Arabic) of about €8000. All others, especially working-class Sunni men from rebellious neighborhoods and areas (such as Eastern Ghouta) are dealt with much more ruthlessly. The latter are perceived to have been disloyal to the army, and are routinely ill-treated, suffer violent hazing rituals, and often have to endure physical training that would amount to torture according to European soldiering standards. Some are shot point blank on the fronts, their deaths being attributed to a 'suicide', an 'accident', or 'combat' " (emphasis added); Prof. Dr. Ugur Umit Üngör, Professor of Holocaust and Genocide Studies, Institute for War, Holocaust and Genocide Studies, Amsterdam, 8 April 2020 (e-mail on file with UNHCR). See also, UNHCR, *International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic, Update V*, 3 November 2017, available at: [www.refworld.org/docid/59f365034.html](http://www.refworld.org/docid/59f365034.html), pp. 39-40 (and sources referenced therein).

<sup>91</sup> "The Convention ground [here: political or imputed political opinion] **needs only to be a contributing factor to the well-founded fear of persecution; it need not be shown to be the dominant or even the sole cause**" (emphasis added); UNHCR, *Guidelines on International Protection No. 10: Claims to Refugee Status Related to Military Service Within the Context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees*, 3 December 2013, available at: [www.refworld.org/docid/529ee33b4.html](http://www.refworld.org/docid/529ee33b4.html), para. 47

<sup>92</sup> "The intent or motive of the persecutor can be a relevant factor in establishing the causal link between the fear of persecution and a Convention ground but it is not decisive, not least because it is often difficult to establish"; UNHCR, *Guidelines on International Protection No. 10: Claims to Refugee Status Related to Military Service Within the Context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees*, 3 December 2013, available at: [www.refworld.org/docid/529ee33b4.html](http://www.refworld.org/docid/529ee33b4.html), para. 48.

<sup>93</sup> According to Prof. Dr. Ugur Umit Üngör "[O]fficially, you're supposed to be tried and convicted of failing to comply with military law, and if you are found guilty, it is a felony offense. In practice, from what we know from interviews with young Syrian men, the regime is struggling with a shortage of manpower and chooses pragmatically to send draft dodgers to the army directly, to complete the most deadly [sic] tasks (right at the frontline). In some cases, it does lead to a 'field court' ('mahkama maydaniya') in which severe punishments are meted out. Anybody who is unlucky enough to actually get convicted and end up in prison, suffers the same treatment as all the other miserable victims in Syria's Gulag. (...) Most recent research demonstrates that the category of individuals considered to be opposing the government (e.g. persons from retaken areas, former opposition fighters, opposition activists) are especially under deadly threat. There are forced disappearances, formal arrests, and summary executions being reported. These men are sent to the front as a form of punishment indeed, which can only be understood by looking at the deep resentment that the pro-regime milieu feels at the 'disloyalty' of those men. Regime officials and sympathizers feel that for years, their sons have sacrificed themselves for the 'homeland' and the 'nation', and that these draft dodgers are getting off easily, and now must be taught a lesson";

evaders in detention face a risk of torture and other forms of ill-treatment,<sup>94</sup> a practice reported to be endemic in Syria.<sup>95</sup> Finally, since 2011, different cohorts of conscripts have been forced to serve in the army for extended periods of time, beyond the mandatory military service.<sup>96</sup>

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Prof. Dr. Ugur Umit Üngör, Professor of Holocaust and Genocide Studies, Institute for War, Holocaust and Genocide Studies, Amsterdam, 8 April 2020 (e-mail on file with UNHCR). “*In the absence of any ability to conscientiously object from conscription and with the legal scheme being applied in a discretionary manner, the regime has used conscription as a tool of punishment and power consolidation, rather than to establish a culture of service to protect the nation*” (emphasis added); TIMEP, *TIMEP Brief: Conscription Law*, 22 August 2019, available at: <https://bit.ly/2Y8sDRw>. “*Numerous reports and testimonies speak of the widespread practice in which the people who have entered ‘reconciliation agreements’ and their families, are at the same time wanted by the security branches for being ‘connected to anti-regime elements’ and by the military for deployment to the most dangerous frontlines in Idlib and Hama regions. Once they are recruited, they are immediately shipped to these frontlines where they often die at the hands of their former comrades or in murky circumstances away from the frontline itself. Forced recruitment has become a way for the regime to obliterate what it sees as anti-regime elements standing in the way of its vision of demographically engineering a loyal and obedient population. Examples testifying to this method of retaliation against the people who ‘reconciled’ are numerous*” (emphasis added); Syrian Association for Citizens’ Dignity (SACD), *Reconciling with Death, Disappearance and Fear*, 24 July 2019, available at: <https://bit.ly/2VJQmWx> (with examples of possible frontline executions of recruits from ‘reconciled’ areas). On the deployment of former opposition fighters: “*(...) several former rebels from the Damascus region serving in the 1st Division were killed during the May 2019 fighting in Hama and Idlib and ex-rebel anti-tank guided missile (ATGM) units within the 9th Division are reportedly being trained by the Russians in Jableh, Latakia. Furthermore, a large contingent of reconciled rebels have joined the 5th Corps’ 4th Brigade and are currently stationed in the Homs desert around Palmyra. According to one interview with a Palmyra NDF member currently stationed there, these ex-rebels are being sent on patrols around the ISIS-controlled region of Mount Bashiri and dying by the dozens every day. The source stated that ‘it’s very suspicious that these guys get sent out in the desert with little support and they seldom return, and if they return, they get sent out again. Tactic seems to get rid of many of these reconciled rebels in this area’*” (emphasis added); Middle East Institute (MEI), *The Lion and The Eagle: The Syrian Arab Army’s Destruction and Rebirth*, 18 July 2019, available at: <https://bit.ly/2VCIOVi>. “*Many locals are troubled that former opposition fighters – who had agreed to surrender as part of a reconciliation deal and serve as local security – were instead being conscripted into the army or detained. Conscripts endure terrible conditions while serving in the army and have been essentially used as cannon fodder in regime offensives*”; *The New Arab*, *Syria Weekly: Idlib under Attack*, 11 March 2019, available at: <https://bit.ly/3bLqfUM>. On the deployment of military-aged men from Al-Tal to the frontlines, see also below Section 4 (“*Residency in Formerly Opposition-Held Areas*”).

<sup>94</sup> “*(...) the vast majority of detainees involved in the popular uprising for democracy in Syria, including political and human rights activists, media workers, and relief activists, and similar prisoners of conscience, have been accused by the security branches of several charges based on testimonies taken from detainees by the regime under coercion, intimidation and torture. (...) Detainees and individuals forcibly disappeared by Syrian Regime forces are subjected to exceptionally brutal and sadistic methods of torture, which have assumed a vengeful character since the popular uprising for democracy began in March 2011*” (emphasis added); SNHR, *At least 156 Cases of Arbitrary Arrests Documented in Syria in March 2020*, 2 April 2020, available at: <https://bit.ly/2Vyb75Z>, pp. 5, 6. “*Human rights activists, the COI, and local NGOs, however, reported thousands of credible cases of regime authorities engaging in frequent torture, abuse, and inhuman treatment to punish perceived opponents, including during interrogations. (...) Human Rights Watch (HRW) and the COI reported regular use of torture against perceived regime opponents at checkpoints and regime facilities run by the Air Force, Political Security Division, General Security Directorate, and Military Intelligence Directorate*” (emphasis added); US Department of State, *2019 Country Reports on Human Rights Practices – Syria*, 11 March 2020, available at: [www.ecoi.net/en/document/2026345.html](http://www.ecoi.net/en/document/2026345.html).

<sup>95</sup> “*From the moment of his or her arrest, the detainee is deprived of all legal and human rights and subjected to multiple forms of torture (...) there is hardly any male or female detainee who has not been subjected to some form of torture which is practiced from the very first moments of detention*”; SNHR, *Documentation of 72 Torture Methods the Syrian Regime Continues to Practice in its Detention Centers and Military Hospitals*, 21 October 2019, available at: <https://bit.ly/2p7PMEh>, p. 2. See also, UN News, *UN Security Council ‘Utterly Failed’ Syrian Detainees; A Victim Voices Her Plea to ‘End Impunity and Stop this Horror’*, 7 August 2019, available at: <https://bit.ly/2TjZcYe>; SOHR, *Prisons of The Syrian Regime: Cellars of Death Claim the Lives of Tens of Thousands of Syrians*, 30 July 2019, available at: <https://bit.ly/2o8dlfi>; SNHR, *At Least 14,227 Individuals, Including 177 Children and 62 Women, Killed as a Result of Torture in Syria*, 27 June 2019, <https://bit.ly/2mvVTBb>; Amnesty International et. al., *Syria: Tell Families of Missing the Fate of Loved Ones*, 13 May 2019, [www.ecoi.net/en/document/2015414.html](http://www.ecoi.net/en/document/2015414.html); New York Times, *Inside Syria’s Secret Torture Prisons: How Bashar al-Assad Crushed Dissent*, 11 May 2019, available at: <https://nyti.ms/2Hbj18K>; LDHR, “*Death Became a Daily Thing*”, August 2018, available at: <https://bit.ly/2nRsWjD>, p. 32.

<sup>96</sup> Rather than the regular 18 to 21 months of mandatory military service (depending on the level of education), conscripts have regularly been retained for much longer periods since 2011. “*During the war, the regime has kept some conscripts in the army despite the completion of their compulsory service. In July 2019, a social media campaign entitled ‘We want to be discharged’ resurfaced after two years. The campaign, which first appeared in 2017, calls for the discharge of soldiers who had been fighting beyond their required service. There has been no reported demobilization order in response to this most recent campaign, but state media agency SANA previously reported two demobilization orders in 2018*”; TIMEP, *TIMEP Brief: Conscription Law*, 22 August 2019, available at: <https://bit.ly/2Y8sDRw>. “*Syrian conscripts are not treated well, fed well, and serve for extended periods of time*”; Omran Center for Strategic Studies, *Transformations of the Syrian Military: The Challenge of Change and Restructuring*, 31 December 2018, available at: <https://bit.ly/2VFLWJB>, p. 87. “*Since 2011, the Syrian regime has kept thousands of Syrian men in its military service as emergency forces – serving for an unspecified period – and refusing to discharge successive batches of army conscripts; some of whom have served for eight years in compulsory service*”; The Atlantic Council, *Forced Conscription Continues Despite Amnesty by Syrian Government*, 13 February 2019, available at: <https://bit.ly/2KBAsXA>. See also, AFP, *Syrian Army Allows more Pre-2011 Conscripts Home*, 2 January 2019, available at: <https://bit.ly/2Sa8TsA>; Reuters, *Syrian Army Demobilises Some Conscripted, Reservist Officers*, 10 December 2018, available at: <https://reut.rs/35djqnm>; SANA, *Army’s General Command Issues Order on Demobilizing Conscripted Officers of Batch No. 103*, 31 December 2018, available at: <https://bit.ly/3cSUO17>; Asharq Al-Awsat, *Deserters Wary of Syrian Regime’s Pledge of Pardon*, 14 November 2018, available at: <https://bit.ly/3cYzCAv>. In late March 2020, two administrative orders were issued by the General Command of the Army and Armed Forces, terminating the service of certain categories of “kept-in-service” conscripts and “called up” reservists as of 7 April 2020. These orders, however, do not cover those who have not been actually recruited, or those who will be recruited in the future, or deserters; SANA (in Arabic), 29 March 2020, available at: <https://bit.ly/3faW4sd>. See also, Enab Baladi, *Syrian Soldiers Desperate for Demobilization after Retention in Regime’s Armed Forces*, 16 April 2020, available at: <https://bit.ly/2VX9Jey>.



41. Through a combination of military operations, sieges<sup>97</sup> and “reconciliation” agreements, Syrian government forces<sup>98</sup> have reasserted control over significant parts of the country,<sup>99</sup> including in areas previously controlled by anti-government armed groups (in Damascus and Rural Damascus, Dera’a, and northern Homs Governorates)<sup>100</sup> or by the “Islamic State of Iraq and Al-Sham” (ISIS).<sup>101</sup> [...] Despite the “reconciliation agreement”, numerous real and perceived government opponents who had been arrested since 2011 were reported to remain in detention.<sup>102</sup> Arbitrary arrests and forced conscription for mandatory and reservist service through raids on homes and arrests at government-run checkpoints are reported to have restarted following the retaking of Al-Tal by government forces,<sup>103</sup> and continued into 2019

<sup>97</sup> “Siege strategies during war represent a most serious violation, as society is starved through ‘collective punishment’ until submission. Some 2.5 million people have faced sieges between 2015 until 2018, with a peak in 2017 when around 970,000 people were simultaneously under sieges in Ghouta, Deir el -Zour, Aleppo, Al-Rastan and other areas. Siege conditions included denial of access to food and humanitarian assistance, restrictions on the movement of populations, and targeting of besieged areas with various types of weapons”; Syrian Center for Policy Research, *Food Security & Conflict in Syria*, May 2019, available at: <https://bit.ly/2tkdCz>, p. 8. “Since the beginning of the Syrian popular uprising in 2011, different parties in the conflict, but in particular the Syrian government and allies, used sieges to punish towns, neighborhoods, and cities where they had lost control. Tactics such as the blocking of humanitarian aid - restrictions on civilian movement - and targeted attacks on hospitals, were intended to inflict maximum suffering”; Siege Watch, *Out of Sight, Out of Mind: The Aftermath of Syria’s Sieges*, March 2019, available at: <https://bit.ly/2mlXUzg>, p. 8. “Sieges throughout the Syrian Arab Republic, however, have been regularly used as a form of collective punishment – intentionally laid to erode the viability of civilian life, to turn the besieged civilian population against the warring party ‘governing’ them, to compel surrender, and to forcibly displace dissident civilians”; UN Human Rights Council, *The Siege and Recapture of Eastern Ghouta*, 20 June 2018, A/HRC/38/CRP.3, available at: [www.ecoi.net/en/document/1438560.html](http://www.ecoi.net/en/document/1438560.html), para. 76. See also, World Peace Foundation, *Accountability for Starvation Crimes: Syria*, Policy Brief No. 3, June 2019, available at: <https://bit.ly/2paixjR>.

<sup>98</sup> The term “government forces”, unless specified otherwise, includes the Syrian Armed Forces and security and intelligence agencies, as well as a range of pro-government armed groups that are, to varying degrees, affiliated with the government and/or act on behalf of the government, Russian forces, as well as foreign pro-government groups such as Hezbollah and Iraqi and other Shi’ite militias. “Regime forces do not have a monopoly on the use of force and depend on Russian airpower and Iranian and Iran-backed ground forces to maintain control”; Syria Study Group, *Final Report and Recommendation*, September 2019, available at: <https://bit.ly/2utiEsV>, pp. 25-26.

<sup>99</sup> “The Government consolidated control over several NSAG [non-state armed groups]-held areas over the course of 2018 through military operations and localized agreements that involved significant loss of human life, largescale displacement and extensive destruction of civilian infrastructure”; United Nations Office for the Coordination of Humanitarian Affairs (OCHA), 2019 Humanitarian Needs Overview: Syrian Arab Republic, 1 March 2019, available at: <https://bit.ly/2N8mLS6>, p. 36. “Government forces used a combination of unlawful tactics, including prohibited weapons, indiscriminate strikes, and restrictions on humanitarian aid, to force anti-government groups to surrender in these areas, resulting in mass displacement”; HRW, *World Report 2019 – Syria*, 17 January 2019, available at: [www.ecoi.net/en/document/2002172.html](http://www.ecoi.net/en/document/2002172.html).

<sup>100</sup> The term “anti-government armed groups” refers to various non-state armed groups and alliances, whose primary goal is to overthrow the Syrian Government through violent means. The term also includes jihadist groups such as the UNSC-listed terrorist organization Hay’at Tahrir Al-Sham (HTS, previous name Jabhat Al-Nusra/JAN) and Al-Qa’eda affiliate Hurras Al-Din, which split from JAN in early 2018 after HTS cut its ties with Al-Qa’eda in 2016; see: UNSC, *Al-Nusra Front for the People of the Levant*, last updated on 5 June 2018, available at: <https://bit.ly/2mpgsi8>. In 2018, government forces retook significant portions of areas held by anti -government armed groups, including Eastern Ghouta and the Qalamoun area of Rural Damascus Governorate (April 2018), the northern part of Homs Governorate (May 2018), the suburbs of Yalda, Babila and Beit Sahem in southern Damascus (May 2018), and parts of Dera’a and Quneitra Governorates (July 2018), leading to large-scale displacements and the evacuation of civilians and fighters to areas in Syria’s north -west. In August 2019, government forces retook areas in northern Hama and southern Idlib, including the town of Khan Sheikhoun (Idlib Governorate), which sits strategically on the Aleppo-Damascus highway, and in January 2020, government forces retook Maarat Al-Numan, the second largest town in Idlib Governorate; Reuters, *Syrian Government Forces Enter Town South of Idlib City*, 28 January 2020, available at: <https://nyti.ms/2U0Mpw5>; BBC, *Khan Sheikhoun: Syria Rebels Pull Out of Key Town after Five Years*, 20 August 2019, available at: <https://bbc.in/2mdGyVD>; Associated Press (AP), *Syria Retakes Territory in NW Held by Rebels since 2012*, 23 August 2019, available at: <https://yhoo.it/2ncyq8y>; BBC, *Deraa, Birthplace of Syria Uprising, Retaken by Government Forces*, 12 July 2018, available at: <https://bbc.in/2utQhHt>; Reuters, *Syrian Rebels Pull Out of Their Last Besieged Area*, 16 May 2018, available at: <https://reut.rs/2rNK8EJ>; France 24, *Syrian Army Claims Recapture of Eastern Ghouta*, 15 April 2018, available at: <http://f24.my/2qia.T>.

<sup>101</sup> Since late 2017, government forces have retaken territory from ISIS, including the cities of Deir Ez-Zour and Albu Kamal in Deir Ez-Zour Governorate (November 2017), the southern Damascus neighbourhoods of Yarmouk, Qadam, Hajar Al-Aswad and Tadamon (May 2018), and Al-Safa region in south-east Syria (November 2018); Reuters, *Syrian Army Advances Against Islamic State in Southeastern Desert*, 18 November 2018, <https://reut.rs/2PAUwyl>; BBC, *Syria War: IS Militants Leave Damascus Suburbs*, 20 May 2018, available at: <https://bbc.in/2lZ2sLT>.

<sup>102</sup> As at May 2017, the Violations Documentation Centre (VDC) accounted for over 1,000 persons from Al -Tal, who remained in government detention; European University Institute, “*Local Reconciliation Agreements*” in Syria: A Non-Starter for Peacebuilding, June 2017, available at: <https://bit.ly/3eyFxOp>, p. 15.

<sup>103</sup> “As in other forcibly surrendered communities, international charities besides SARC did not appear to have access to the area, and there were some signs that the pro-government forces may have started committing a steady stream of human rights violations aimed at purging potential future dissent, most notably with a new wave of detentions” (emphasis added); The Syria Institute / PAX, *Siege Watch: Fifth Quarterly Report on Besieged Areas in Syria in November 2016 - January 2017*, available at: <https://bit.ly/34Tx03U>, p. 39. “The regime sometimes renege on its promises to deliver services; in Al-Tal, electricity was not restored and there were arbitrary arrests by the pro regime Qalamoun Shield militia” (emphasis added); Raymond Hinnebusch and Omar Imady, *Syria’s Reconciliation Agreements, 2017*, available at: <https://bit.ly/2VqSsdK>, p. 4. “Over the past few days, the Syrian regime security services launched large-scale raids and arrest campaigns in the city of al-Tal, north of Damascus. The arrests affect some residents although their situations were legally ‘settled’ according to the reconciliation agreement signed with the regime in November 2016”; *Zaman Al Wasl, Al-Tal Town: Youth Arrested Despite Reconciliation Deal with Regime*, 22 July 2017, available at: <https://bit.ly/2x3JwBG>. See also, Syria Call, *Massive Arrests by the Syrian Regime in “Al-Tal” City of Damascus Countryside*, 1 December 2018, available at: <https://bit.ly/3bu5hJN>; Syria Call, *Large-Scale Crackdown Taking Place in Reconciliation Areas of Damascus Countryside*, 21 October 2018, available at: <https://bit.ly/3cCELxV>; SOHR, *The Regime’s Air Force Intelligence Arrests 115 citizens from the Eastern Ghouta*

and 2020.<sup>104</sup> Individuals found to be communicating with relatives in areas held by anti-government armed groups are reported to be subjected to monitoring and arbitrary arrest by government security services.<sup>105</sup>

42. While Syrian authorities employ a vetting mechanism for those seeking to “settle their status” prior to returning to Syria from abroad,<sup>106</sup> the criteria based on which security clearance is

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*of Damascus and Al-Tal City Including 7 Females Worked in Medical Centers Before the Regime’s Control over the Area, 13 September 2018, available at: <https://bit.ly/3eE05F8>; SNHR, Syrian Regime Forces Arrested Several Civilians in al Tal City in Damascus Suburbs on June 5, 6 June 2018, available at: <https://bit.ly/2yvTxrJ>; SNHR, Syrian Regime Forces Arrested Several Civilians in al Tal City in Damascus Suburbs on March 27, 27 March 2018, available at: <https://bit.ly/3cHezTI>; SNHR, Civilians Arrested by Syrian Regime Forces in al Tal City in Damascus Suburbs Governorate on January 9, 9 January 2018, available at: <https://bit.ly/3cz64Jm>; SNHR, Civilians Arrested by Syrian Regime Forces in al Tal City in Damascus Suburbs on December 28, 28 December 2017, available at: <https://bit.ly/3cz5Tha>; SNHR, Civilians Arrested by Syrian Regime Forces in al Tal City in Damascus Suburbs on December 2, 2 December 2017, available at: <https://bit.ly/3eJ64so>; Syria Direct, ‘No such Thing as Finished’: Residents of North Damascus Suburb Stay Close to Home after Reconciliation amid Fears of Arrest, Conscriptio, 9 November 2017, available at: <https://bit.ly/2XVzX2t>; SNHR, Civilians Arrested by Syrian Regime Forces in al Tal City in Damascus Suburbs on October 26, 27 October 2017, available at: <https://bit.ly/2Koolax>; SNHR, Civilians Arrested by Syrian Regime Forces in al Tal City in Damascus Suburbs Governorate on September 26, 26 September 2017, available at: <https://bit.ly/2XUN6ZH>; SNHR, Civilians Arrested by Syrian Regime Forces in al Tal City in Damascus Suburbs Governorate on August 11, 11 August 2017, available at: <https://bit.ly/3cDkblx>; SNHR, Syrian Regime Forces Arrested Civilians in al Tal City in Damascus Suburbs, on May 7, 7 May 2017, available at: <https://bit.ly/3cClhbB>.*

<sup>104</sup> “In March [2020], Syrian Regime forces continued to pursue and arrest individuals who had settled their security situation in areas that have signed settlement agreements with the Syrian regime; these arrests have been concentrated in the governorate of Damascus Suburbs, with most occurring during mass campaigns of raids and arrests (...);” SNHR, *The Most Notable Human Rights Violations in Syria in March 2020*, 3 April 2020, available at: <https://bit.ly/2RXxjW7>, p. 5. “The Syrian government has undertaken arrest operations in Damascus and in Rural Damascus suburbs. The government has been arresting a lot of people from the al-Tal area that is close to Damascus city, where IDPs from different areas in Syria reside. Such arrests are common and take place almost on a daily basis”; Danish Immigration Service (DIS), *Syria: Security Situation in Damascus Province and Issues Regarding Return to Syria*, February 2019, available at: [www.ecoi.net/en/file/local/2003890/Syrien\\_FFM\\_rapport\\_2019\\_Final\\_31012019.pdf](http://www.ecoi.net/en/file/local/2003890/Syrien_FFM_rapport_2019_Final_31012019.pdf), para. 85. See also, SNHR, *Syrian Regime Arrested Civilians in al Tal City in Damascus Suburbs, on Feb 21, 23 February 2020*, available at: <https://bit.ly/34X2VRI>; SNHR, *Syrian Regime Forces Arrested Civilians in al Tal City in Damascus Suburbs, on October 20, 22 October 2019*, available at: <https://bit.ly/3eHzbw9>; SNHR, *Syrian Regime Forces Arrested Civilians in al Tal City in Damascus Suburbs, on October 17, 18 October 2019*, available at: <https://bit.ly/3bu9VaH>; SNHR, *Syrian Regime Arrested a Civilian in al Tal City in Damascus, on October 2, 3 October 2019*, available at: <https://bit.ly/3cEsfhr>; SOHR, *Tension Prevails al-Tal City in Rif Dimashq after Tens of “Reconciliation” Factions Refused to Join Their Military Barracks not to Be Taken to the Military Operations in the Syrian North*, 12 September 2019, available at: <https://bit.ly/2KnDZbV>; Syria Call, *Tensions in Rural Damascus after 100 Deserters Refuse to Be Involved in Northern Syria’s Battles*, 10 September 2019, available at: <https://bit.ly/2xQteW7>; SOHR, *Security Tightening on People Getting Out of the Eastern Ghouta Towards Damascus as a Main Road Between the Eastern Ghouta and the Capital Damascus Is Opened by the Regime Forces*, 7 July 2019, available at: <https://bit.ly/34VDwax>; SOHR, *Arbitrary Arrests of 5 People Including a Woman by Regime’s Intelligence in al-Tal City North of the Capital Damascus*, 21 April 2019, available at: <https://bit.ly/2RZo9bK>; Syria Call, *Assad Regime’s “Oppressive Policy” Resumes Carrying Out Raids and Arrests of Rural Damascus*, 18 April 2019, available at: <https://bit.ly/2x22fxq>; SOHR, *As Part of the Continuous Operations for the Recruitment and Reserve Services, Tens of Young Men Are Arrested in al -Tal City in Rif Dimashq*, 27 January 2019, available at: <https://bit.ly/2RYkLOT>; Syria Call, *Political Security Ambushes Persons Wanted for the Recruitment Division in Al-Tal in Rif Dimashq Province*, 13 January 2019, available at: <https://bit.ly/2Vsr131>.

<sup>105</sup> SOHR, *Regime Political Intelligence Arrests Several Civilians from Al-Tal City in Western Rif-Dimashq*, 23 February 2020, available at: <https://bit.ly/2XYbXvB>; Syria Call, *Assad Regime Arrests Women in Damascus Countryside Due to Remittances*, 28 August 2019, available at: <https://bit.ly/2Krnvuv>; Zaman Al Wasl, *Al-Tal Town: Youth Arrested Despite Reconciliation Deal with Regime*, 22 July 2017, available at: <https://bit.ly/2x3JwBG>; SOHR, *Regime’s Security Branches Continue Their Abusive Operations in Rif Dimashq and Arrest 2 Families in al -Tal City North of the Capital Damascus*, 6 May 2019, available at: <https://bit.ly/2XXKiv4>. See also, Atlantic Council, *Breaking Ghouta Post-Reconciliation*, accessed 7 May 2020, available at: <https://bit.ly/35hivXC>; SNHR, *Record of the Most Notable Human Rights Violations in Syria in 2019, Particularly in December*, 5 January 2020, available at: <https://bit.ly/37KsJ3b>, p. 5; UN Human Rights Council, *Report of the Independent International Commission of Inquiry*, 15 August 2019, available at: [www.ecoi.net/en/file/local/2016403/a\\_hrc\\_42\\_51\\_E](http://www.ecoi.net/en/file/local/2016403/a_hrc_42_51_E), para. 69; EIP, *Refugee Return in Syria*, July 2019, available at: <https://bit.ly/2MW5U59>, p. 25; Syria Direct, *Silence, Paranoia in Decimated East Ghouta Suburbs One Year after Government Recapture*, 11 April 2019, available at: <http://bit.ly/2mWiOG9>; Middle East Monitor, *Syria Regime Arrests Family for Phoning Idlib Relatives*, 3 April 2019, available at: <https://bit.ly/2mfOjL>. According to the SOHR, women and children from Rural Damascus, who visited or attempted to visit their male relatives following the latter’s evacuation to northern Syria, have also been subjected to arrest; SOHR, *Intelligence of the Regime Releases Tens of Citizens Women of “Arbin” after Being Arrested at Qamishli Airport Northeast Syria*, 18 October 2019, available at: <https://bit.ly/34d4Orr>; SOHR, *The Regime’s Air Force Intelligence Arrests 3 Citizen Women in Adra City after Coming Back from the Syrian North*, 26 April 2019, available at: <https://bit.ly/36bcUCG>; SOHR, *Large Number of Children and Women Arrested During Their Attempt to Move from Rif Dimashq and Its Surroundings Towards Factions’ Areas in the Syrian North*, 20 March 2019, available at: <https://bit.ly/31YHLiE>.

<sup>106</sup> “In order to avoid arrest upon return, Syrians engage in what is colloquially known as tafyish – the act of obtaining information about one’s security file and clearing it, if possible”; ICG, *Easing Syrian Refugees’ Plight in Lebanon*, 13 February 2020, available at: [www.ecoi.net/en/file/local/2024712/211-easing-syrian-refugees-plight-in-lebanon.pdf](http://www.ecoi.net/en/file/local/2024712/211-easing-syrian-refugees-plight-in-lebanon.pdf), p. 17. “To return **from abroad** or internally, as well as to reconcile affairs with the state, individuals must fill in extensive forms that defy international practice for refugee returns. (...) **For Syrians living abroad** – in neighbouring countries, or Europe – or in areas outside of government control within the country itself, there is presently no pathway to return that does not involve volunteering extensive amounts of information” (emphasis added); EIP, *Refugee Return in Syria: Dangers, Security Risks and Information Scarcity*, July 2019, available at: <https://bit.ly/2MW5U59>, pp. 4, 5. In Lebanon, those seeking to return in an organized manner to Syria are required to approach one of the registration offices run by the Lebanese General Security Office or other actors involved in organizing returns, which in turn will share a list of potential returnees with the Syrian authorities for security clearance; Carnegie Middle East Center, *Into the Fire*, 11 September 2019, available at: <https://bit.ly/2p6vNWH>; US News, *In Lebanon, a Push for Refugees to Go Home*, 27 June 2019, available at: <https://bit.ly/2XDv8v2>; Amnesty International, *Q&A – Why Are Returns of Refugees from Lebanon to Syria Premature?*, 12 June 2019, available at: <https://bit.ly/35q0kin>, pp. 2-3.

granted are not known, nor is there information available as to how many persons have had their return request approved or denied by the Syrian authorities.<sup>107</sup>

43. Further, across government-held areas, returnees are reported to be among those subjected to harassment, arbitrary arrest,<sup>108</sup> incommunicado detention, torture and other forms of ill-treatment, as well as property confiscation, including on account of individuals' perceived anti-government opinion.<sup>109</sup> [...] Men of military age are also at risk of being arrested for the purpose of forced conscription upon return.<sup>110</sup> [...] Arrests have been reported to occur immediately upon entry, at land borders with Lebanon, Jordan and Turkey and at Damascus airport, or within days or months following return.<sup>111</sup> Arrests are also reported to have

<sup>107</sup> SAWA for Development and Aid, *Unpacking Return Unpacking Return – Syrian Refugees' Conditions and Concerns*, 6 February 2019, available at: <https://bit.ly/2FEdCfl>, p. 22. See also, Washington Post, *Assad Urged Syrian Refugees to Come Home. Many are Being Welcomed with Arrest and Interrogation*, 2 June 2019, available at: <https://wapo.st/31XSYAG>.

<sup>108</sup> "OHCHR has continued to receive reports of arbitrary arrests and enforced disappearances. Reported cases include **those of returnees in areas controlled by the Government** through various government security forces. Relatives of those persons were not informed or were denied information about the circumstances, outcome and location of their family members" (emphasis added); UN Security Council, *Implementation of Security Council Resolutions 2139 (2014), 2165 (2014), 2191 (2014), 2258 (2015), 2332 (2016), 2393 (2017), 2401 (2018) and 2449 (2018)*, 16 December 2019, S/2019/949, available at: <https://bit.ly/37M7oq1>, para. 17.

<sup>109</sup> "(...) returnees to government held areas are at risk of arbitrary detention, disappearances, assassinations, forced conscription, and deprivation of their livelihoods and basic needs"; SJAC, *The State of Justice: Syria 2020*, March 2020, available at: <https://bit.ly/2Y5Zu9p>, p. 12. "(...) Assad regime seems determined to punish returnees whom it perceives as disloyal or threats to its survival"; German Institute for International and Security Affairs, *Repatriation to Turkey's "Safe Zone" in Northeast Syria*, SWP Comment No. 1, January 2020, available at: <https://bit.ly/3eZJBHo>, p. 4. "There had also been reports of individuals being detained after returning to Syria in response to the granting of a partial amnesty by Syrian President Bashar al-Assad"; UN Geneva, *Regular Press Briefing by the Information Service*, 8 November 2019, available at: <https://bit.ly/2r2gK0K>. "Returnees are reported to be among those subjected to harassment, arbitrary arrest, detention, torture, enforced disappearance and forced conscription"; UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 15 August 2019, A/HRC/42/51, available at: [www.ecoi.net/en/file/local/2016403/a\\_hrc\\_42\\_51\\_E](http://www.ecoi.net/en/file/local/2016403/a_hrc_42_51_E), para. 8. "Significant numbers of arrests and detentions are occurring across the country, in all categories of returnees: refugees returning from abroad, IDPs returning from within the country, or through reconciliation. (...) Particular risk profiles appear to be more susceptible to arrest, such as those who return without seeking security permissions and reconciling before travelling, individuals who worked in sectors or activities believed to be associated with the opposition (journalism, aid work, local councils, rescue workers), **men of military age**, and those with family members who were forcibly displaced to Idlib or Aleppo. However, arrests are taking place across all demographics, and it cannot be assumed that only those within these groups are at risk of being detained or arrested, now or in the future. (...) Those who are arrested while returning to the country face (...) the very real risk of being tortured during detention, even if they are later released" (emphasis added); EIP, *Refugee Return in Syria: Dangers, Security Risks and Information Scarcity*, July 2019, available at: <https://bit.ly/2MW5U59>, pp. 5, 14. "Overall, it is not safe for many Syrian refugees to return given persistent and well-documented protection concerns such as extrajudicial killings and forced disappearances, forced conscription, refusal of entry at the border, movement restrictions, extortion, kidnappings, and gender-based violence including rape and sexual assault. (...) The risk of detention and disappearance continues unabated, and **returnees may be disproportionately affected**" (emphasis added); SAWA for Development and Aid, *Unpacking Return Unpacking Return – Syrian Refugees' Conditions and Concerns*, 6 February 2019, available at: <https://bit.ly/2FEdCfl>, pp. 29, 40. "During the reporting period, activists, civil defence volunteers, conscript deserters, **recent returnees and others generally perceived to be opposition supporters were the most likely to be detained arbitrarily**" (emphasis added); UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 31 January 2019, A/HRC/40/70, available at: <https://bit.ly/2nHPkvi>, para. 73. According to Leen Hashem of Amnesty International, "[A]rbitrary arrests, enforced disappearances, property confiscation, harassment, social stigma, these are the dangers [for returnees]"; The National, *Some Syrians Are Returning Home to Arrests as Others Brave the Sea*, 26 September 2018, available at: <https://bit.ly/2xPMjuw>. "(...) those from certain families, face suspicion of association with opposition groups and possible revenge from former adversaries"; Refugees Deeply, *Dangerous Exit: Who Controls How Syrians in Lebanon Go Home*, 8 August 2018, available at: <https://bit.ly/2noWXUn>. See also, *The New Arab*, *Fears for Syrian Opposition Activist after 'Detention' on Return to Damascus 'Under Mysterious Circumstances'*, 24 February 2020, available at: <https://bit.ly/2SILxk5>; HRW, *Syrians Deported by Lebanon Arrested at Home*, 2 September 2019, available at: [www.ecoi.net/en/document/2015682.html](http://www.ecoi.net/en/document/2015682.html); Financial Times, *Climate of Fear Deters Syrian Refugees from Returning Home*, 14 July 2019, available at: <https://on.ft.com/2YTBxZF>; NPR, *Thousands of Refugees Returning to Syria End Up Detained, Imprisoned, Tortured*, 24 June 2019, available at: <https://n.pr/2NcsnNn>.

<sup>110</sup> Reports suggest that a grace period granted by the government to returnees of military age is not strictly adhered to and returnees have been arrested and conscripted before the lapse of the agreed time period: "At this point, military-age Syrian men have well-founded fears of being forcibly conscripted at the border, regardless of exemption status or promises of temporary amnesty, if they try to return"; SAWA for Development and Aid, *Unpacking Return Unpacking Return – Syrian Refugees' Conditions and Concerns*, 6 February 2019, <https://bit.ly/2FEdCfl>, pp. 30-31. "(...) considering increasing reports that individuals who have been signing reconciliation agreements with the Syrian regime have been forcibly conscripted, or in other cases, arrested, tortured, assassinated, or killed, there are no assurances that returnees will be safe"; TIMEP, *TIMEP Brief: Conscription Law*, 22 August 2019, available at: <https://bit.ly/2Y8sDRw>. See also, SNHR, *The Syrian Regime Continues to Pose a Violent Barbaric Threat and Syrian Refugees Should Never Return to Syria*, 15 August 2019, available at: <https://bit.ly/2NkueOw>, p. 16.

<sup>111</sup> "Detention of returnees has been concentrated directly at the border crossings, after returnees' names and passports have been examined by regime personnel at these crossing points. Upon discovering that a returning individual is wanted by one of the security services, the security forces will arrest him/her immediately. This is particularly the case at the Masna' border crossing with Lebanon, the Kasab border crossing with Turkey, and the Nasib border crossing with Jordan. These returnees may not have been living exclusively in a neighboring country, with some of the returnees' families informing us that some of these individuals returned from different countries worldwide to neighboring countries before returning to Syria"; SNHR, *The Syrian Regime Continues to Pose a Violent Barbaric Threat and Syrian Refugees Should Never Return to Syria*, 15 August 2019, available at: <https://bit.ly/2NkueOw>, p. 6. "Recent detainees gave information about being arrested and brutally tortured in government custody within months of their return to the country"; EIP, *Refugee Return in Syria: Dangers, Security Risks and Information Scarcity*, July 2019, available at: <https://bit.ly/2MW5U59>, p. 23. See also, Syrian Human Rights Committee (SHRC), *The 18th Annual Report on Human*

occurred despite the individual having obtained security approval from the Syrian Government prior to returning.<sup>112</sup> Deaths in custody of returnees have also been reported.<sup>113</sup> Some returnees are reported to have had their passports confiscated to prevent them from leaving the country and others have been called in for interrogations on a regular basis.<sup>114</sup> Some returnees may also face movement restrictions, including the need to obtain security approval to return to their area of origin.<sup>115</sup>

## Conclusion

44. In summary, UNHCR submits that:

- Asylum cases involving objection to military service may be decided on the basis that there is a nexus between a well-founded fear of being persecuted and the political opinion ground in the 1951 Convention. Depending on the facts, an objection to military service may amount to actual or imputed political opinion. In relation to the latter, the authorities may interpret the individual's refusal to participate in a conflict as a manifestation of political disagreement with its policies. The act of desertion or evasion may in itself be, or be perceived to be, an expression of political opinion.
- The fact that the violence prevailing in a country is generalized and widespread does not preclude finding a nexus between a well-founded fear and a 1951 Convention ground. On the contrary, UNHCR guidance indicates that people fleeing such violence in situations of armed conflict will in many circumstances fall within the definition of a refugee.<sup>116</sup>
- The determination of an individual's risk of persecution is essentially a forward-looking assessment as to the risks facing the person if returned to their country of origin. An

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*Rights Situation in Syria 2019*, January 2020, available at: <https://bit.ly/37ZKNGu>, p. 71; SOHR, *Regime Intelligence Arrests Young Men in Hujayrah South of Damascus after Returning from Lebanon*, 27 December 2019, available at: <https://bit.ly/37P4xgd>; SOHR, *The Regime Forces Arrest 5 Young Men from al-Tal City in Rif Dimashq when They Returned from Turkey and Entered the Syrian Territory from Latakia Countryside*, 25 September 2019, available at: <https://bit.ly/2Nkx5pf>; Washington Post, *Assad Urged Syrian Refugees to Come Home. Many are Being Welcomed with Arrest and Interrogation*, 2 June 2019, available at: <https://wapo.st/31XSYAG>; Al-Mashareq, *Syrian Returnees Arrested, Tortured by Regime*, 27 June 2019, available at: <https://bit.ly/2N1Opit>; Foreign Policy, *A Deadly Welcome Awaits Syria's Returning Refugees*, 6 February 2019, available at: <https://bit.ly/2HYBK0r>; Action Group for Palestinians of Syria (AGPS), *Three Palestinian Returnees from Lebanon Arrested upon Entrance to Syria*, 28 August 2018, available at: <https://bit.ly/2AZTdPC>; Irish Times, *Arrests and Torture of Syrian Refugees Returning Home Reported*, 17 March 2018, available at: <https://bit.ly/2nrAUjk>.

<sup>112</sup> "(...) throughout October [2019], Syrian Regime forces continued to pursue and arrest refugees returning to Syria via land crossings, including women, particularly at the Kasab border crossing with Turkey, **despite the returnees' having settled their security situations prior to their return, or after reaching their original areas of residence**" (emphasis added); SNHR, *The Most Notable Human Rights Violations as a Result of the Conflict in Syria in October 2019*, 3 November 2019, available at: <https://bit.ly/2r1seSk>, p. 4. "Even among the self-selecting 'voluntary' returnees, hundreds of detentions and arrests have been reported – **including of refugees from abroad**, IDPs from armed opposition areas, and those who have undergone a 'reconciliation' in an area retaken by the government" (emphasis added); EIP, *Refugee Return in Syria: Dangers, Security Risks and Information Scarcity*, July 2019, available at: <https://bit.ly/2MW5U59>, p. 4. See also, SNHR, *At least 4,671 Cases of Arbitrary Arrests Documented in 2019*, 2 January 2020, available at: <https://bit.ly/2QvylIC>, p. 15; SNHR, *The Syrian Regime Continues to Pose a Violent Barbaric Threat and Syrian Refugees Should Never Return to Syria*, 15 August 2019, available at: <https://bit.ly/2NkueOw>, p. 6. See also, The National, *Some Syrians Are Returning Home to Arrests as Others Brave the Sea*, 26 September 2018, available at: <https://bit.ly/2xPMjuw>.

<sup>113</sup> "(...) the report records the deaths of 15 of these detainees as a result of torture, with 11 of those killed under torture having returned from Lebanon (...)" ; SNHR, *The Syrian Regime Continues to Pose a Violent Barbaric Threat and Syrian Refugees Should Never Return to Syria*, 15 August 2019, available at: <https://bit.ly/2NkueOw>, p. 5. See also, *Irish Times, Arrests and Torture of Syrian Refugees Returning Home Reported*, 17 March 2018, available at: <https://bit.ly/2nrAUjk>.

<sup>114</sup> Euro-Mediterranean Human Rights Monitor (EuroMed Rights), *Syrians Denied Asylum Faced Death or Torture Following Return to Syria*, 19 March 2018, <https://bit.ly/2DDj5zS>; Irish Times, *Arrests and Torture of Syrian Refugees Returning Home Reported*, 17 March 2018, available at: <https://bit.ly/2nrAUjk>.

<sup>115</sup> SAWA for Development and Aid, *Unpacking Return – Syrian Refugees' Conditions and Concerns*, 6 February 2019, available at: <https://bit.ly/2FEdCfl>, p. 33.

<sup>116</sup> UNHCR, *GIP No. 12 - Conflict and Violence*.

individual seeking refugee protection is not required to establish prior persecution, but needs rather to establish his or her risk of persecution in the future.

- It is not permissible to reject a claim for refugee status or other form of international protection, as “manifestly unfounded” or “clearly abusive” or otherwise, on the grounds that it was submitted following the issuance of a deportation or detention order.
- The criteria for refugee status need to be interpreted in a full and inclusive manner so that individuals who fulfil the criteria are duly recognized and protected under the 1951 Convention and 1967 Protocol, rather than being granted complementary protection.
- Persons who evaded conscription into compulsory or reservist military service in Syria are likely to be in need of international refugee protection due to a well-founded fear of persecution on the basis of their political opinion or imputed political opinion, and/or other relevant grounds, depending on the individual circumstances of the case.
- The principle of *non-refoulement* constitutes an essential binding and non-derogable component of international refugee law and international human rights law. UNHCR underlines that the responsibility of a State to protect a person from *refoulement* is engaged wherever its conduct exposes that person to a risk of being subject to persecution or ill-treatment in another country.

**UNHCR**  
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