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**LEGAL AND PROTECTION POLICY  
RESEARCH SERIES**

**Maintaining the Civilian and Humanitarian  
Character of Asylum**

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# EXECUTIVE SUMMARY\*

## SECTION 1: INTRODUCTORY ISSUES IMPORTANCE OF THE PROBLEM AND RELATED LEGAL OBLIGATIONS

The presence of armed elements,\* and more specifically combatants, in an influx of refugees or in existing camps and settlements threatens the fundamental principle of the civilian and humanitarian character of asylum, and can generate serious security concerns for refugees, receiving states and local communities, as well as humanitarian workers. In some contexts, inter-state relations and regional stability may even be threatened, and the realisation of durable solutions such as voluntary repatriation may be hindered.

In its Conclusion No. 94 (LIII) – 2002 on the civilian and humanitarian character of asylum, the Executive Committee of UNHCR recommended that States receiving a mixed flow of refugees and combatants take measures, as early as possible, to:

- disarm those entering its territory bearing weapons,
- identify, and separate combatants from the refugee population, and
- intern them.

International law authorizes and, under certain conditions, requires the host State to take the above-listed measures. The legal framework which determines the host State's obligations in this regard can be derived from refugee law, the Law of Neutrality and international humanitarian law (IHL), as well as international legal principles governing the conduct of inter-State relations (UN Charter, art. 2(4)).

In particular, distinguishing and separating combatants from civilians is of fundamental importance for refugee law and refugee situations so as to:

- be able to determine who is eligible to ask for asylum (combatants are not, unless they have been deemed to have genuinely renounced military activities);
- protect refugees (*qua* civilians) from the dangers of being in mixed situations (e.g. residing in the same camp) with combatants;
- preserve the humanitarian and peaceful character of the institution of asylum (*vis-à-vis* all parties to the conflict and the host state).

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\* **Armed elements:** For the sake of convenience, the term ‘armed elements’ is often used in a refugee context, as a generic term to refer to combatants as well as civilians carrying weapons. It is a wide term which enables one to refer to *all* persons, whether combatants or ordinary civilians (refugees) who happen to be carrying weapons and who should therefore to be disarmed upon crossing the border into a host state. The term ‘combatants’ in this paper, as well as in ExCom 94, is also used as a generic term to refer to “*persons taking part in hostilities in both international and non-international armed conflict who have entered a country of asylum.*”

## SECTION 2: IDENTIFICATION AND SEPARATION

The object and scope of separation operations should not be broadly based but rather be guided by clear criteria and target specific sources of security threats; in the situations envisaged in this paper and ExCom 94, separation should be restricted to combatants. To the extent possible, information obtained from early warning systems should be used to assess the composition of the mixed influx and determine in advance methods for identification and separation strategies.

**Fundamental principles** for effecting separation operations in a refugee context include the following:

- **Required action:** all armed elements, whether combatants or civilians, present among the refugee population must be disarmed; combatants should, in addition, also be identified, separated and interned.
- A combatant cannot be considered an asylum seeker or a refugee.
- **Former** combatants should not automatically benefit from refugee status through group determination on a *prima facie* basis.
- The role of separation in the **eligibility process** (i.e., eligibility to seek asylum and/or be granted refugee status) is not definitive of any legal status.
- Where refugee status is based on group determination, civilian **family members** of combatants should be treated as refugees and should not be interned.
- **Child soldiers** should not be interned but should be identified in order that they may benefit from special protection and assistance measures.
- In case of mass exodus, the priority is to ensure **access to safety**; separation measures cannot be applied in such a way that they hinder entry by refugees.
- The identification and separation process must also not interfere with the principle of *non-refoulement*.

### **Guiding Considerations and Conclusions**

- In practice, situations of mixed influxes pose an immediate and **dual challenge** of providing for the protection and humanitarian **needs of refugees, and managing effectively and promptly the separation**, logistical and material assistance issues related to combatants who have already been identified and are awaiting internment. Where the host government authorities are unable to distinguish and manage these two separate regimes effectively and promptly, refugee (and local) security is likely to be compromised.
- **Key pre-requisites** for the disarmament, identification and separation process: These include the following:
  - (1) Effective early warning and rapid response mechanisms;
  - (2) Political will on part of the host government and local authorities; and
  - (3) Resources and capacity to undertake these activities /operations (or assistance in this regard).
- **Measures for the identification and separation** of combatants from refugee populations should be taken at the **earliest possible moment**, such as the point of

entry, and from thereon after taken into consideration into all other phases (and sites) of refugee operations.

- Although **host governments must take primary responsibility** for addressing the issue of the separation of combatants from refugee populations, in some situations, their capacity and resources may be limited and **new strategies to assist them** required. Mechanisms which have been proposed in this regard, include:
  - At the **domestic level**, the establishment of a *Task Force on Internment* composed of relevant government authorities and operational international agencies present in the host (UNHCR, ICRC, WFP). This could provide a useful model for inter-agency collaboration and a vehicle to help mobilize the necessary resources and assistance to governments.
  - At the **international level**, the need has been expressed for the designation of a lead or **responsible international agency** with a clear mandate to assist host governments in addressing situations of mixed influxes or populations.
  - The availability and rapid deployment of *humanitarian security officers (HSOs)*, along the lines of those proposed in the concept paper on operationalising the ‘ladder of options’, could also provide valuable assistance in assessing and providing solutions to improve the security situation in relation to armed elements and combatants, both at the emergency stage and in situations where established refugee camps or settlements are already militarised.
- Where the host **State’s inability or unwillingness to address security issues** has the consequence of precluding UNHCR from exercising its functions, and, in particular, where refugees are rendered vulnerable to harassment or infiltration by armed elements, this situation should be brought to the attention of the Secretary-General of the United Nations.
- UNHCR has an interest in observing **the identification** and separation procedure and can play a **mobilising role** in mixed population or mixed influx situations. Moreover, the **presence of UN** or other international organizations, as observers, in disarmament, identification and separation operations provides **confidence to combatants that the process is transparent and neutral**.

### Specific Operational Issues

#### (i) *Identification issues*

- When conducting screening and separation operations in a refugee context, differences in the *interpretation* of agreed upon criteria may occur, thus underlining the need for identification and separation principles and criteria to be formally set out, and clear to all actors involved in the process.
- Other practical challenges of identification or screening are related to the fact that the nature of certain conflicts renders it increasingly difficult to **distinguish combatants from ordinary civilians**. Military elements may include women and child recruits in their midst, and the often chaotic conditions associated with mass influx situations may only permit a rather  **cursory identification process** based on evidence immediately on hand rather than a more formal and rigorous screening

process. Nonetheless, some suggestions and **identification methods** include: the use of information gained from early warning mechanisms to establish the profile of persons arriving; the use of experienced persons to do the screening who are familiar with and recognize signs of military hierarchy and behaviour patterns; the promotion of self-identification and voluntary internment strategies; recognising evidence of classical military signs; denouncements, reports, or demonstrated level of discomfort by other refugees, especially witnesses and victims; profiles and evidence clearly different from the rest of the (refugee) arrivals (e.g., absence of belongings and family members); and responses to particular questions.

(ii) *Separation issues: effecting disarmament, and separation in different contexts*

Certain measures and approaches to the separation of combatants from refugee populations can significantly reduce the security risks of such operations as well as increase effectiveness. Strategies undertaken for effecting separation measures at entry points may also be fundamentally different than those employed when armed elements or combatants have already infiltrated refugee camps/settlements. The following are some suggestions and strategies for responding to these different situations:

▪ At entry points

In situations of large mixed influxes where it is possible to implement separation operations at entry points into the country (i.e. at border areas), early warning mechanisms, preparation, and a sufficient and rapid operational response capacity are pre-requisites and will largely determine the effectiveness of these operations.

▪ Inside the host country: adopting a holistic approach

Because operations to disarm armed elements and identify and separate combatants at entry points into the host country, are not always possible and rarely completely successful, **other ‘catch’ systems or deterrence measures** should also be set in place for when armed elements have already entered the country and are in or around refugee populated areas. These could include some of the following: the early presence of local law enforcement authorities in areas likely to be affected; awareness campaigns among local communities and refugee populations; and the integration of screening mechanisms during the registration or encampment process. In particular, **strengthening the screening element of the registration process** before or during encampment could be achieved by the following: ensuring the visible presence of security forces to deter combatants from attempting registration; the development and use of additional questions to be asked during registration when faced with suspicious cases; and training of staff undertaking the registration process on how to deal with such cases (this should not involve direct confrontation).

▪ Addressing the presence of armed elements and combatants in established refugee camps and settlements: ‘indirect’ strategies for effecting separation and the need for alternative neutralization measures.

Some alternatives to forced separation operations may in certain instances be as affective as separation without presenting some of the important difficulties and negative consequences. For instance, **relocation** of camps further away from border



areas or new conflict areas (internal to host country) may itself result in a *de facto* separation of those elements bent on cross border military operations.

In other cases, **alternative neutralization** and **mitigating** measures, may be the only acceptable solution where capacity to separate is insufficient, forced separation methods would necessitate an unacceptable degree of force being used in a place where civilians live side by side combatants, or measures to separate certain elements might cause more harm than good by potentially destabilising a generally safe camp situation. In instances where a containment strategy would be preferable to forcible or direct action, some of the following alternative strategies could be useful:

- **Close monitoring** of suspected individuals within the camp or settlement;
- **Awareness campaigns** targeting the refugee and local populations, and relating to the dangers of militarization, domestic and international law, as well as camp rules;
- **Voluntary self-identification and internment campaigns for combatants; and voluntary disarmament** exercises;
- **Rehabilitation** activities and services which directly or indirectly target suspected combatants in the refugee camp or settlement;
- **Neutralization through control** measures requiring suspected armed elements to obtain permission to leave the camp, ensuring that they do **not assume positions of leadership**, management or decision making in camp structures, and conducting a periodic review of identification and **registration** to keep abreast of new persons in the camp, including possible infiltrators;
- Increased and effective **presence of security and international staff** in camps/settlements, as well as areas around the border. This will send the message that there are controls in place will help neutralize combatants within the camp by cutting them off from operatives and commanders on the outside.

(iii) *The Special Case of the Child Soldier*

While it is not contrary to international humanitarian law to separate and intern a child soldier of under 18 years of age, **UNHCR recommends** that child soldiers under this age should, in principle, not be interned but rather “benefit from special protection and assistance measures, in particular, as regards their demobilization and rehabilitation.” States are urged to put these ‘special measures’ in place outside of an internment facility and to reintegrate the child into civilian life on an expedited basis. **Exceptionally**, it may be necessary to intern child soldiers over 15 who pose a serious security threat, such as to the refugee population, but this decision should be made on an **individual basis** and in view of grave circumstances or concerns particular to that specific child.

**Practical Issues in relation to child soldiers:**

An operational definition and **policy on child soldiers should be agreed upon and adopted by host government** authorities responsible for effecting identification and separation operations in a refugee context. Additionally, a **specific programme** which includes both interim care services, further demobilization issues (where necessary), as well as the **social reintegration** of child soldiers (for example, into refugee camps or communities), must be set in place. It is important that those responsible for these programmes receive training *specific* to the situation of child soldiers, that such programmes be designed and implemented in order to facilitate the child soldier’s return to normal life,

and that a lead agency be identified in order to ensure that there is a coordinated response from the various organizations /and government ministries that may be involved. Such programmes should include and be consistent with the recommendations (adapted as necessary) provided in the Cape Town Principles, ARC and other guidelines provided by authoritative international agencies on this topic, such as UNICEF.

### **SECTION 3: INTERNMENT**

#### **Applicable regime and standards of treatment**

The regime of internment referred to in this paper, and deemed applicable to most situations where neutral states intern combatants who have crossed into their territory, is that provided in the Fifth Hague Convention and further elaborated in the Third Geneva Convention. As such, combatants have the right to the protection and status of a combatant in IHL, as well as the minimum standards of treatment afforded to them under these relevant instruments. In principle, states may intern combatants until the end of hostilities. It is not incompatible with the rules of neutrality however, for a state to release a former combatant who requested asylum and has been determined to have genuinely and permanently renounced military activities.

**General principles and conclusions** relating to internment which can be drawn from both existing standards and lessons learnt from past operations, include the following, *inter alia*:

- Responsibility for the protection and assistance of interned combatants rests with the *host state, however, governments may need support* to set up and maintain internment facilities;
- Once separated, combatants should be interned at a safe location from the border and refugee camps/settlements;
- Particular attention must be paid to the internal security of internment camps;
- Regular **monitoring** of these facilities is essential to ensure, *inter alia*, that conditions are adequate and rights of internees are being respected, to keep abreast of who has been interned and ensure transparency with regard to the separation process;
- Demobilisation and rehabilitation programmes should be provided whenever at all possible, and especially skills training;
- Finding solutions to mitigate the hardship of long term separation from families during internment should be a priority, given the high psycho-social and rehabilitative impact of families in such situations;
- The potential roles and contributions of different actors such as ICRC, UNHCR, OHCHR and others with respect to internment facilities should be more clearly articulated and formalised in line with respective mandates.

#### **System to manage refugee related issues in an internment context**

Internment facilities set up in a refugee context will require the establishment of a system or *modus operandi* between UNHCR and the host government to manage the refugee related aspects of internment facilities, including the following:

- a supervisory role by UNHCR to ensure that the principle of non-refoulement is upheld;
- a screening procedure for persons incorrectly interned (in addition to the general merits of such a procedure, persons incorrectly interned in this context, are likely to be asylum seekers and refugees);

- a process for internees claiming to have renounced military activities and requesting asylum.

**Former combatants or deserters having renounced military activities and seeking asylum must:**

- Make an explicit and **individual statement** of renunciation of military activities;
- Undergo a **process of verification**, which commences as soon as they have made the above statement. This verification process is a period of observation allowing authorities to confirm whether that person has indeed regained a civilian status and genuinely renounced military activities;
- Persons **claiming** to have renounced military activities should be accorded access to any available rehabilitation programmes on a priority basis;
- A period of **between 1-12 months** is proposed for the observation and verification process;
- The length of the **verification** process should be determined on an **individual rather than a group** basis and be determined according to relevant factors (including rank, and functions of person, length of service, manner of recruitment, circumstances related to identification and separation etc);
- At the end of the **verification** period, a **recommendation** should be prepared by relevant authorities and the entire case submitted to authorities for a determination on the genuineness of the renunciation, and where the result is positive, subsequent refugee status determination procedures;
- Given the **inherent** difficulties in determining whether a person has genuinely and permanently renounced military activities, appropriate mechanisms should be set in place from the moment of identification and separation which could facilitate this assessment process (e.g. ensuring there are records, notes regarding behaviour, completed personal or registration forms, and other sources of information).

## **SECTION 4: CAMP SECURITY**

The establishment (from the start of an emergency operation) of sound security and management systems in refugee camps and settlements should **remain the focus** of international and domestic attention and concerted action, and be undertaken in **conjunction** with separation operations at entry points. While measures to disarm armed elements and separate combatants from refugee populations should be taken at the earliest opportunity, and preferably, at entry points in the host country, such measures, are not always possible and are rarely completely successful; the latter should not divert attention or resources from good camp security and management.

### **A holistic strategy vis-à-vis the threat of militarization**

Security and management systems in refugee camps or settlements should be based on an integrated and holistic strategy, having three broad objectives vis-à-vis the threat of militarization:

- (i) a preventative effect in the form of continued **deterrence** against the infiltration of armed elements, and combatants (and militarization of the camp from the inside);
- (ii) fostering and **maintaining** the healthiest and safest environment possible for the refugee population; and

- (iii) Controlling or **mitigating** (neutralizing) the effects of armed elements, including combatants, in and around the camp or settlement.

Measures directly or indirectly impacting on the security conditions in refugee-populated areas are varied but may be broadly related to:

- 1) mechanisms for the **enforcement of law and order**;
- 2) **camp governance and management systems**;
- 3) **community services and/or socio-economic conditions**.

### **The need for preventive measures early on, and the importance of the location of camps/settlements**

Safety and security concerns should be integrated into refugee camp management in a holistic manner from the **outset** of a refugee emergency. In addition to some of the measures mentioned above, including disarmament and separation activities, the early presence of government authorities and UNHCR, the incorporation of a screening element in registration exercises, and the use of early assessment missions by HSOs and government experts (where necessary), the **location of refugee camps and settlements** is also of vital importance.

Considerations relating to the **location** of the refugee camp or settlement should be a **priority** from the beginning of a refugee influx. Refugee camps should be located a safe distance away from:

- border areas (especially of the country of origin);
- other armed conflicts (e.g., in the country of asylum);
- regions known to be inherently unstable or suffering from endemic violence/banditry;
- and internment camps.

**The size and physical layout** of refugee camps should also be conducive to the maintenance of security. Ideally, refugee camps should not exceed 20, 000 refugees.

### **The following are some principles and suggestions for good camp security and management:**

- **Refugees themselves should have a role in ensuring their security**, and the peaceful and humanitarian character of refugee camps/settlements. Programmes empowering refugees to take a role in their own security could include refugee watch systems, and awareness raising activities relating to issues of militarization, and their rights and responsibilities in the host country. In particular, **refugee watch systems** can provide an invaluable assistance to host authorities to help maintain security in the refugee camps or settlements, and are often used to complement security packages (see below);
- **Camp rules and camp administration systems** which are participatory, representative (e.g. gender), and least likely to be exploited by political factions and armed elements, should be promoted. In particular, **refugee leaders and representatives** should be elected among candidates that are committed to promoting the civilian and humanitarian character of their camp, and should be elected or appointed through a transparent and open process ensuring the full participation by all sections of the refugee community. **The establishment of**

**effective and safe information channels, as well as reporting** and complaint mechanisms is also part of good camp management.

- An effective **administration of justice system** should be set in place. It should include a system for recording and addressing crimes in and around refugee camps or settlements, and ensure that a culture of impunity is not permitted to take hold. Providing a visible and effective government and **international presence** (e.g. UNHCR protection staff) in and around refugee camps and settlements on an ongoing basis is also important to build confidence and a rapport of trust with the refugee community.
- **Securing and protecting the legal rights of refugees:** Recognizing refugees as having clear legal rights in the country of asylum is fundamental to their protection, while the absence of such rights increases their vulnerability. Measures which can improve their legal protection and rights include: providing refugees with individualized and proper legal documentation; ensuring access to prompt and effective legal remedies; providing protection from arbitrary arrest or detention; ensuring that the right to freedom of movement is respected; implementing mass information programmes to inform refugees about their rights and obligations.
- **Establishing an effective relief distribution system that guarantees the delivery of assistance to refugees** and minimizes the risk of diversion to armed elements. Refugee leaders for example, should never be the conduit for distribution.
- **Constant dialogue and cooperation with local populations and authorities** can be a powerful tool to ensure effective security around refugee areas. In addition to dialogue, other trust-building measures between refugees and local populations should also be promoted, and appropriate mediation mechanisms should be in place, should conflicts arise.
- The **family provides a fundamental protection function** with regard to its individual members, particularly in situations of displacement. The integrity of refugee families must therefore be protected and everything should be done to restore the unity of the family should it be broken.
- **Expansion of educational opportunities and other structures programmes** (including recreational) should be vigorously promoted, especially for *at risk* groups. In particular, UNHCR and the international community should expand refugee education programmes, including at the secondary and tertiary level, so that refugees, especially the youth, are engaged positively and provided alternatives and hope for the future.
- **A partnership approach: a strategy of cooperation programmes with national law enforcement authorities.** When the resources of a host state are overwhelmed by security problems in refugee populated areas, cooperation programmes with national law police forces (and UNHCR, for example) may be necessary. In some situations, supporting governments through the adoption of such **security packages**, can significantly improve the overall security situation of refugees.



# MAINTAINING THE CIVILIAN AND HUMANITARIAN CHARACTER OF ASYLUM

## SECTION 1: INTRODUCTORY ISSUES

### I. INTRODUCTION

#### A. Nature and Importance of the Problem

The presence of armed elements in an influx of refugees, or in existing camps or refugee-populated areas, threatens the fundamental principle of the civilian and humanitarian character of asylum, and can generate serious security concerns for refugees, receiving states and host communities, as well as humanitarian workers. For refugees in an already fragile security situation<sup>1</sup>, the presence of armed elements exacerbates the situation as it often leads to forced military recruitment, an increase in rape and other forms of physical and sexual abuse, a general breakdown in law and order, trafficking in its various forms, political manipulation, and the diversion of humanitarian aid. It can also make refugees vulnerable to external attacks by the state of origin or the local hosting community, and result in xenophobic attitudes and perceptions of refugees.<sup>2</sup> When the insecurity is no longer tolerable, refugees may be effectively forced to make a hasty return to uncertain conditions. Armed elements may also inhibit the realisation of durable solutions, such as voluntary repatriation and local integration.

In some contexts, national security or regional stability may be threatened, as well as inter-state relations. The resulting risk to security and an often limited response capacity may lead prospective host states to deny access to international protection altogether or to limit freedom of movement of refugees and other rights that normally accompany asylum. Whilst it poses a major challenge, drawing a distinction between refugees on the one hand, and military elements, on the other, is clearly in the interest of states, refugees<sup>3</sup> and the institution of asylum as a whole.

#### B. Call for Operational Strategies and Solutions

While the issues associated with the presence of armed elements in refugee camps and settlements are not new, they are the subject of renewed focus by the international

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<sup>1</sup> By virtue of their displacement, refugees often already face a myriad of security problems which take many forms, including: the breakdown of social and cultural norms, the separation from and loss of family members and community support; impunity for perpetrators of crimes and violence; sexual and gender-based violence (SGBV) against women and girls such as rape, sexual exploitation, forcible recruitment, and abduction and trafficking.

<sup>2</sup> Such as has been the case in Tanzania, and Guinea.

<sup>3</sup> UNHCR, *Agenda for Protection*, UNHCR Geneva, October 2003 (3<sup>rd</sup> edition), at 66. This document, which resulted from the Global Consultations on International Protection, was endorsed by the UNHCR's Executive Committee and subsequently welcomed by the UN General Assembly in Resolution A/RES/57/187 of 4 December 2002. It is hereinafter referred to as *The Agenda for Protection*.

community. The Security Council has specifically and repeatedly<sup>4</sup> addressed the issue of creating a secure environment for civilians in times of conflict, noting the vulnerability of refugee camps to infiltration by armed elements, and the fact that such situations may constitute a threat to international peace and security. It has expressed “its willingness to consider such situations and, where necessary, adopt appropriate steps [...], including by providing support to States concerned in this regard...”<sup>5</sup> The Security Council has recognized that, conversely, the provision of security to refugees and the maintenance of the civilian and humanitarian character of refugee camps and settlements could “**contribute to the maintenance of international peace and security.**”<sup>6</sup> The Secretary General, in the context of his reports to the Security Council on the protection of civilians in armed conflict, has also specifically noted the importance of maintaining the humanitarian and civilian character of asylum<sup>7</sup>. The most recent of these reports makes reference to the measures outlined in the UNHCR *Agenda for Protection*<sup>8</sup> to address security related concerns and ensure the physical safety of refugees, particularly in refugee camps. As follow up to the *Agenda for Protection*, UNHCR’s Executive Committee Conclusion No. 94 (LIII) – 2002 (hereinafter ExCom 94) specifically addresses the issue of maintaining the civilian and humanitarian nature of asylum.

### C. Objectives of the Experts’ Roundtable

This experts’ meeting has been convened at the direction of UNHCR’s Executive Committee which in ExCom 94 called for this forum in order to support the “elaboration of measures for the disarmament of armed elements and the identification, separation, and internment of combatants, including the clarification of relevant procedures and standards, in consultation with states, United Nations Secretariat entities and agencies, and interested organizations, such as the ICRC, and report back to the Executive Committee on progress achieved.”<sup>9</sup> UNHCR was further asked to “explore how it may develop, in consultation with relevant partners, its own institutional capacity to address insecurity in refugee camps, *inter alia* by assisting states to ensure the physical safety and dignity of refugees, building, as appropriate, upon its protection and operational expertise.”<sup>10</sup> **This specific Roundtable is therefore intended to result in conclusions which will inform operational guidelines, to be drafted by UNHCR in 2004, for the effective implementation of ExCom 94 in the field.**

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<sup>4</sup> See, in particular, Security Council Resolution 1296 of April 19, 2000, and Security Council Resolution 1208 of 19 November 1998. UNHCR’s Executive Committee has also repeatedly addressed the issue, including most notably, in Executive Committee Conclusions (ExCom) Nos. 27, 32, and 72 which relate to military attacks on refugee camps and the personal security of refugees; as well as in ExCom Conclusions Nos. 47, 84, and 64 concerning refugee children and adolescents, and refugee women respectively.

<sup>5</sup> Security Council Resolution 1296 of April 19, 2000, para. 14.

<sup>6</sup> Security Council Resolution 1208 of 19 November 1998, at the third statement from the top.

<sup>7</sup> S/1999/957 of September 1999; S/2001/331 of March 2002 and S/2002/1300 of November 2002.

<sup>8</sup> See, more specifically, “Addressing security-related concerns more effectively” which is Goal no. 4 of the *Agenda for Protection*, *ibid*, at 66-69, and includes the following four objectives: (1) the resourcing of states for securing the safety of refugees and for the separation of armed elements from refugee populations; (2) keeping the Secretary-General and the Security Council seized with the issue; (3) prevention of military recruitment of refugees, including refugee children; and (4) prevention of age-based and sexual and gender-based violence.

<sup>9</sup> UNHCR, Executive Committee Conclusion No. 94 (LIII – 2002), “Conclusion on the civilian and humanitarian character of asylum” (hereinafter, ExCom 94), at para. (d).

<sup>10</sup> *Ibid*. para (h).



This background paper is intended to provide a common basis for discussion, and facilitate the articulation of practical measures to achieve the above objectives.<sup>11</sup> It does not attempt to resolve all open questions but provides a framework based on legal and policy considerations, and offers some practical suggestions which can contribute to the development of a set of practical guidelines. It has been divided into 4 sections, which can be read as a whole, but also as distinct pieces on the relevant issues of the legal framework, identification and separation, internment, and camp security and management. This format should facilitate working with this document during the roundtable.

It is hoped that through discourse and sharing of past practice and institutional perspectives, the participants of the Roundtable will be able to advance strategies to preserve the civilian and humanitarian character of asylum and thus enhance both refugee and state security.<sup>12</sup>

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<sup>11</sup> While this paper addresses many existing gaps, lessons learnt from past experiences, as well the inherent difficulties in operationalising separation exercise, a certain amount of implementation capacity is also assumed –which includes some minimum political will as well as some actual government capacity or means to undertake these operations (e.g., military might and presence, existence of facilities which can be used for internment purposes). This assumption must be made in order to provide a context which is operational to some degree, and against which some of the preliminary guidelines and recommendations in this paper can be usefully implemented. The development of operational guidelines would be rendered meaningless otherwise. Nonetheless, this paper does attempt to cover a range of possible scenarios, going from ideal situations where both political will and sufficient capacity are present, to situations where serious deficiencies in implementing state obligations result in infiltration by combatants and the militarization of existing camps. A variety of alternative measures are proposed where the ideal solution is not possible, and as each situation is unique, the relevant actors in each specific situation will have to decide which measures are most appropriate. Certainly, grave situations where there is no political will or capacity at all on the part of the host government to fulfill their obligations will occur, but these are then likely to fall to the responsibility of the international community – in which case many of the suggestions in this working paper will still be applicable, even though other important considerations will then also have to be taken into account. These situations are elaborated for example, in the UNHCR ‘Ladder of Options’ (see below) and more specifically, under the ‘hard options’ 5-8 for very serious situations, which can involve the deployment of international police forces, regional military forces with or without UN endorsement, or the deployment of international military forces either under Chapter VI or VII of the UN Charter. See: UNHCR, *Ensuring the Civilian and Neutral Character of Refugee-Populated Areas: A Ladder of Options*, July 1998. Also see: UNHCR, High Commissioner’s Information Note of 14 January 1999, *The Security, and Civilian and Humanitarian Character of Refugee Camps and Settlements*, EC/49/SC/INF. 2, Executive Committee of the High Commissioner’s Programme, Standing Committee 14<sup>th</sup> Meeting, (hereinafter, ‘Note on security and civilian character of camps’); and UNHCR, High Commissioner’s Information Note of 27 June 2000, *The Security, Civilian and Humanitarian Character of Refugee Camps and Settlements: Operationalising the “Ladder of Options”*, EC/50/SC/INF.4, Executive Committee of the High Commissioner’s Programme, Standing Committee, 18<sup>th</sup> Meeting, (hereinafter, ‘Note on Operationalising the Ladder of Options’).

<sup>12</sup> In addition to requesting an experts’ meeting to elaborate practical guidelines, ExCom 94 also calls upon UNHCR and the Department of Peacekeeping Operations (DPKO) to enhance collaboration on all aspects of this matter. In particular, ExCom 94 para. (g), calls on UNHCR and DPKO to “deploy [as appropriate], with the consent of host states, multi-disciplinary assessment teams to an emerging crisis area in order to clarify the situation on the ground, evaluate security threats for refugee populations and consider appropriate practical responses.” In this regard, the recent Inter-Office Memorandum of 7 April 2004, between DPKO and UNHCR, and *Information Note on Cooperation between UNHCR and DPKO*, should be noted. Particular mention was also

## D. Situational Scope

The scope of this paper, as well as the Experts Roundtable, pertains to situations where mixed refugee flows (i.e., mass refugee influxes which are characterized by the mixed presence of both refugees and combatants) enter a third *neutral* state, as a result of either an international or internal armed conflict. Situations of mixed flows into an *enemy* state (in the event of international armed conflict) or mixed flows of civilian and combatants within the country of origin (*internally displaced* persons) will not be specifically addressed as they raise their own set of legal and operational complexities, and legal regimes.

## E. The Legal Framework and Applicable Definitions

### 1. *The legal framework*

In its Conclusion No. 94 (LIII) – 2002 on the civilian and humanitarian character of asylum, the Executive Committee of UNHCR recommended that States receiving a mixed flow take measures, as early as possible, to:

- 1) disarm those entering its territory bearing weapons,
- 2) identify, and separate combatants from the refugee population, and
- 3) intern them.

International law authorizes and, under certain conditions, requires the host State to take the above-listed measures. The legal framework which determines the host State's obligations in this regard can be derived from refugee law, the law of neutrality<sup>13</sup> and international humanitarian law (hereinafter referred to as "IHL"),<sup>14</sup> as well as international legal principles governing the conduct of inter-State relations

In particular, distinguishing and separating combatants from civilians is of fundamental importance for refugee law and refugee situations so as to:

- 1) be able to determine who is eligible to ask for asylum (combatants are not, unless they have been deemed to have genuinely renounced military activities);

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made in ExCom 94 of the need for states to ensure that measures are taken to prevent recruitment of refugees (and particularly of refugee children),<sup>12</sup> and for relevant United Nations organs and regional organizations, as well as the international community at large, to mobilize adequate resources to support and assist host states in maintaining the civilian and humanitarian character of asylum.<sup>12</sup> In these respects, it is also hoped that this Experts' Roundtable will **serve as an opportunity to enhance international cooperation on this issue, and to push forward the process of articulating the possible *specific* roles and activities of different actors in addressing this problem, in line with their mandates and areas of expertise.**

<sup>13</sup> The 'Law of Neutrality' refers to the rules of neutrality contained in the Fifth Hague Convention of 1907 respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (hereinafter, the 'Fifth Hague Convention'). The Law of Neutrality is often considered by some experts to be distinct from IHL (as it related to rules of neutrality rather than rules regulating the conduct of parties to an armed conflict). Nonetheless, for the purposes of convenience, IHL is often referred to as a general body of law which includes the rules of neutrality. In this paper, when we refer to IHL it should also be assumed to include the rules of neutrality, although where relevant we sometimes refer to the Law of Neutrality distinctly.

<sup>14</sup> The distinction between combatants and civilians lies at the heart of IHL and effectively determines who may be lawfully targeted during hostilities.

- 2) to protect refugees from the dangers of being in mixed situations (e.g. residing in the same camp) with combatants;
- 3) to preserve the humanitarian and peaceful character of the institution of asylum (vis-à-vis all parties to the conflict and the host state).

The position taken in this paper is that various sources of international law do provide a basis and even an obligation to undertake the separation and internment of combatants when they are mixed with a refugee population. However, in most situations envisaged by this paper (please refer to the situational scope above), the legal framework most directly applicable to undertake these activities will be the rules of neutrality and IHL (see below). The author further suggests that this framework is also the most suitable legal framework for the actual **implementation** of disarmament, separation and internment<sup>15</sup> activities in a refugee context, and should form the general basis upon which to develop the operational guidelines recommended in ExCom 94. This is so for the following reasons:

- 1) it is the international legal framework *specifically* providing for and regulating the separation, internment and treatment of ‘**combatants**’ as such, which are the principal targets of concern in ExCom 94 and this meeting ;
- 2) and, importantly, it offers an already established implementation framework for addressing this issue (i.e., an existing implementation framework complete with internationally accepted standards and a defined regime of internment); thus lending itself to rapid implementation by host states facing the problem of mixed populations of combatants and refugees.<sup>16</sup>

As noted above, the United Nations Charter, international humanitarian law, and refugee law are all relevant in defining the roles and responsibilities with regard to the separation of combatants from refugee populations. Below are briefly elaborated, how these different areas of law provide grounds for the disarmament, identification, and separation of combatants from refugees in mixed flow situations.

- *The principle of neutrality in refugee law*

The very existence of international refugee law and the protection it confers is premised on the acceptance of its fundamentally neutral character by the international community, and more specifically, on the peaceful and humanitarian (non-political) character of asylum. The granting of asylum by a host state is therefore not to be taken as an act of aggression by the country of origin.

This is expressed in the Preamble of the Convention relating to the Status of Refugees (hereinafter, the 1951 Convention) where: “*The High Contracting Parties [express] the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States.*”<sup>17</sup> The OAU Convention Governing the Specific Aspects

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<sup>15</sup> For this reason, the regime of internment used in this paper is also that of the Fifth Hague Convention and the Geneva Convention (III) relative to the Treatment of Prisoners of War, of 12 August 1949 (hereinafter, Third Geneva Convention).

<sup>16</sup> This is not the case for refugee law and the UN Charter for example, which provide justification and even an obligation to separate and confine or neutralize combatants but no comprehensive implementation framework to put this into practice. Thus, states would have to develop standards for domestic legislation governing such situations.

<sup>17</sup> Convention relating to the Status of Refugees (hereinafter, the 1951 Convention), of 28 July

of Refugee Problems in Africa (hereinafter, OAU Convention) reiterates this principle by stating explicitly that “[t]he grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any Member State” and stresses the need to make a “distinction between a refugee who seeks a peaceful and normal life and a person fleeing his country for the sole purpose of fomenting subversion from outside.”<sup>18</sup>

In order to effectively preserve the humanitarian character of asylum, host states must therefore ensure that indeed the granting of asylum, and refugee camps and settlements, are not misused for political purposes or exploited to support or achieve military objectives (such as using refugee camps as bases for conducting military training, recruitment activities or for providing rest and recuperation to combatants). This includes a clear duty (when confronted with mixed populations) in international refugee law to **separate combatants from refugee populations**; a duty which is based both on the host state’s responsibility to ensure the protection and physical security of refugees on their territory,<sup>19</sup> and on their obligation to maintain the peaceful and neutral character of asylum vis-à-vis the parties to a conflict. This obligation to separate combatants from refugees is articulated very explicitly in the OAU Convention which establishes the need to **distinguish** between refugees and persons wishing to foment subversion from outside their country.

Moreover, relevant provisions in the OAU Convention prohibiting refugees from engaging in subversive activities<sup>20</sup> for example, and article 9 of the 1951 Convention can be used by states to enforce this principle of the neutrality of asylum with regard to asylum seekers and refugees.<sup>21</sup>

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1951, paragraph 5 of the Preamble.

<sup>18</sup> OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (hereinafter, OAU Convention), adopted 10 September 1969 (entry into force 20 June 1974), Article II, para. 2, and Preamble, para. (4) respectively.

<sup>19</sup> As discussed in detail in this paper, the presence of combatants amongst refugee populations places them at serious risk of increased crime, human rights violations, and attacks by local communities or the country of origin.

<sup>20</sup> Article III of the OAU Convention notes the duty of refugees to conform to the laws of the host country as well as to the measures it takes for the maintenance of public order, and to abstain from any subversive activities against any Member State or the OAU. In paragraph 2 Signatory States further undertake to prohibit refugees in their territory from “attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arms, through the press, or by radio.”

<sup>21</sup> In relation to article 9 of the 1951 Convention, Atle Grahl-Madsen comments that it refers to situations amounting to “other grave exceptional circumstances” during which a Contracting State may take measures which it considers essential to national security. He notes further that this could include: “conditions bordering on war, e.g., a state of **neutrality** in a conflict between important or neighboring countries; a period when the State is threatened with armed aggression by another State; or the existence or threat of civil war.” Atle Grahl-Madsen, *Commentary on the Refugee Convention 1951*, UNHCR Geneva, 1963, at 43. It must be further mentioned that this provision is only applicable with regard to asylum seekers and refugees however, and not combatants, who do not fall within the ambit of either this provision or indeed, the 1951 Convention itself. The reference to provisional measures in article 9 refers therefore to special provisions to be applied to refugees and not combatants, who will be subject to a different legal regime. **Article 9** reads as follows:

**Provisional Measures:** “Nothing in this Convention shall prevent a Contracting State, in time of war or other grave exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.”

- *IHL and the Law of Neutrality*

In situations where mixed populations are fleeing from a state experiencing an armed conflict into a state at peace, the Law of Neutrality also lays down certain rules which are relevant to the question of the separation of combatants from refugees. States which are not participating in an armed conflict must not provide any assistance to either side to the conflict. For example they must not permit hostilities to be conducted from their territory, or the movement of troops across their territory.<sup>22</sup> Under the Law of Neutrality, neutral states have a duty to intern members of the armed forces of parties to a conflict who enter their territory. Rules regulating the conduct of neutral states are laid down in the Fifth Hague Convention of 1907 respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (hereinafter, the ‘Fifth Hague Convention’), which provides specifically in article 11 (Chapter II) that:

“A Neutral Power which receives on its territory troops belonging to the belligerent armies **shall intern** them, as far as possible, at a distance from the theatre of war. It may keep them in camps and even confine them in fortresses or in places set apart for this purpose. It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.”

Also of relevance, is article 12 of the Fifth Hague Convention which further provides that:

In the absence of a special convention to the contrary, the Neutral Power shall supply the interned with the food, clothing, and relief required by humanity. At the conclusion of peace the expenses caused by the internment shall be made good.

These provisions in the Fifth Hague Convention are considered to have attained customary law status.<sup>23</sup> Moreover, although this convention relates specifically to the duties of neutral states in situations of *international* armed conflict, it is generally accepted, including by ICRC,<sup>24</sup> that it can also be applied by analogy in situations of *non-international* armed conflicts, in which combatants either from the government side or from armed opposition groups have fled into a neutral state. Indeed, it is an increasingly accepted position in international law that the provisions in IHL (taken to include the rules of neutrality) which provide for an **obligation** of neutral third states to disarm and separate combatants from the civilian population, and intern (or otherwise neutralize) them at a safe distance from the border such that they no longer pose a threat to others or continue to engage in conflict, has

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<sup>22</sup> See in particular, articles 2 to 4 and article 5 of the Fifth Hague Convention:

**Art. 5:** “A Neutral Power must not allow any of the acts referred to in articles 2 to 4 to occur on its territory. [...]” **Articles 2 to 4** forbid belligerents from moving troops or convoys across the territory of the neutral power, to erect apparatuses for the purpose of communication with belligerent forces, use any installation of this kind set up by them before the war for purely military purposes, and to form or recruit corps of combatants in the territory of the neutral state to assist belligerents.

<sup>23</sup> The obligations of neutral states may, however, suffer exceptions in two specific circumstances: (i) where enforcement measures have been adopted by the Security Council on the basis of Chapter VII; (ii) with regard to their right of collective self-defense (article 51 of the UN Charter).

<sup>24</sup> ICRC, ‘The Civilian Character of Asylum: Separating Armed Elements from Refugees’, ICRC Official Statement to the UNHCR Global Consultations on International Protection, first meeting, 8-9 March 2001, (hereinafter, ‘ICRC Official Statement’ ). The full text of this statement is available at the following: <http://www.icrc.org>

in fact, become a core norm applicable to all armed conflicts, including internal ones.<sup>25</sup> This is a position which is in fact also indirectly supported by article 2(4) of the UN Charter, as we see below.

Moreover, while it is true that host states may at times have particular political sympathies or state interests with regard to one of the parties to a conflict, and that this may sometimes affect their policies or responses to mixed refugee situations, their overall position of neutrality must still remain the context for operational guidelines – other efforts by the international community could then include awareness raising, training and advocacy efforts, as well as individual country strategies to address issues of state capacity, cooperation and compliance.

- *The UN Charter: the duty to refrain from threat or use of force against the territorial integrity of another state*<sup>26</sup>

Article 2(4) of the United Nations Charter, considered the cornerstone of the Charter, provides that states are to:

refrain in their international relations from the threat or use of force against the territorial

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<sup>25</sup> This is the position also taken in: UNHCR, *The Civilian Character of Asylum: Separating Armed Elements From Refugees*, Global Consultation in International Protection, EC/GC/01/5, 19 February 2001, (hereinafter, ‘Global consultations on civilian character of asylum’).

Global consultations on civilian character of asylum, at 2, section IV, where reference is made to art. 2(4) of the UN Charter, art. 11 of the Hague Convention, arts. 48-54 of Protocol I, arts. 13-14 of Protocol II, and relevant provisions in international refugee instruments; by Beyani Chaloka, in “International Legal Criteria for the Separation of Members of Armed Forces, Armed Bands and Militia from Refugee in Territories of Host States”, *International Journal of Refugee Studies*, Vol. 12, Special Supplementary Issue, July 2000, at 251 and 268, who considers the application of internment in the case of non-international armed conflicts to have become part of customary law; and by Stephane Jacquemet in “Under what Circumstances can a Person who has Taken an Active Part in the Hostilities of an International or a Non-International Armed Conflict Become an Asylum Seeker?”, May 2004, unpublished (with the author and distributed at the present meeting of experts), at 20, 32, and 34. To further support their positions, reference is made by the last two authors to the principles of the 1928 Convention concerning the Duties and Rights of States in the Event of Civil Strife, which oblige states to disarm and intern rebel forces who come across their boundaries.

In particular, Jacquemet in the above article, makes a very noteworthy argument regarding state obligations under the UN Charter: The law of neutrality, including internment measures, serves three main purposes: it renders the neutral power immune from attacks given its duty and position of abstaining from taking part of providing military assistance to the conflict; it protects the state at war against attacks by troops who are using the territory of the third state for this purpose-this is derived from its duty of prevention; and it offers a protective status to persons who have been interned. This duty of abstention and prevention of neutral states is very analogous, argues Jacquemet (at 20) to state obligations under article 2(4) of the UN Charter, suggesting therefore that rules of neutrality and more particularly, article 11 of the Fifth Hague Convention, do belong to the “core norms” applicable to all armed conflict. He states (at 20) : “**[t]he duty of a neutral state to remain out of the conflict resembles the obligations under article 2, paragraph 4 of the UN Charter which is [...] a norm of customary international law. It is therefore reasonable to conclude that article 11 of the 5<sup>th</sup> Hague Convention belongs to these core norms applicable to all armed conflicts, including internal ones.**”

<sup>26</sup> The discussion on the UN Charter in this part of the paper, has drawn significant on the work of my colleague, Stephane Jacquemet, in “Under what circumstances”, *ibid*, at 25-28.

integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

This provision also provides a basis to argue in a refugee context, for the obligation of neutral states to disarm armed elements, and separate and intern combatants, in both international *and non-international* armed conflicts. Article 2(4) should be read and interpreted within the wider spirit of the UN Charter, and particularly article 1, which lists the purposes of the United Nations to include the development of friendly relations among nations and international cooperation to solve problems of a humanitarian character, as well as the maintenance of international peace and security - the principal purpose of the UN Charter. Thus, in addition to refraining from actions which might endanger international peace and security, states also have a duty to take steps which will strengthen peace and promote friendly relations with other nations. The nature of article 2(4) as well as the type of actions which are prohibited by that provision was interpreted by the International Court of Justice in *Nicaragua v. U.S. (1986) ICJ 14 (27 June 1986)*. In that case, the court held, *inter alia*, that indeed article 2(4) is a declaration of customary law, and that the type of prohibitions resulting from that provision extend to acts which are less grave than a direct armed attack. The ICJ refers to the General Assembly Resolution 2625 (XXV) in order to elaborate more precisely the types of state actions which are prohibited under article 2(4) of the UN Charter.

Resolution 2625, which adopts the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations*, is particularly relevant to the issue in this paper as well. It states, *inter alia*, the following principles:

Every state has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another state.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force. [...]

[N]o State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State. [highlights added]<sup>27</sup>

Prohibitions under the Charter thus extend beyond direct inter-State military force and attacks, and cover ‘indirect’ armed force, including the use or “ ‘instrumentalization’ by a state of unofficial armed bands, irregulars, mercenaries or rebels, but also the mere ‘assisting’, ‘encouraging’ and even ‘tolerating’ armed activities by private individuals, whether nationals or foreigners.”<sup>28</sup> Moreover, as mentioned above, the state has the obligation to suppress and prevent the use of its territory by individuals whose purpose is to attack another state, or instigate the violent overthrow of its regime. The host state has a duty of due diligence in this regard, such that it must use the means at its disposal to prevent or suppress these wrongful acts in situations where the risk is foreseeable, otherwise it will

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<sup>27</sup> Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, G. A. Res. 2625 (XXV) of 24 October 1970.

<sup>28</sup> Jacquemet, “Under what circumstance”, *ibid*, at 27.

be in breach of article 2(4) of the Charter.

Thus, as seen above, the Charter provides its own independent basis for the obligations of states to disarm, separate, and intern combatants. At the same time, since article 2(4) of the Charter is considered customary international and it is both similar to and supports the rules of neutrality (and more specifically, article 11 of the Fifth Hague Convention), it serves to strengthen the argument that this obligation of neutral states under IHL (including the Law of Neutrality) has indeed become a core norm of international law, applicable to internal armed conflicts as well as international ones.

- *The regime of internment*

The regime of internment referred to in this paper, and more specifically in section 3, is that which is applicable to the rules of neutrality and IHL, and which is elaborated in most detail in the Third Geneva Convention. This internment regime is detailed in the Section 3 of this paper.

## 2. *Applicable definitions*

ExCom 94 and the present paper make reference to both ‘combatants’ and ‘armed elements’,<sup>29</sup> which are defined and distinguished below.

- *Armed elements*: an operational definition for mixed influx situations

For the sake of convenience, the term **‘armed elements’ is often used in a refugee context, as a generic term to refer to combatants as well as civilians carrying weapons.** It is a wider term which enables one to refer to *all* persons, whether combatants or ordinary civilians (refugees) who happen to be carrying weapons (for reasons unrelated to any military activities- for example, they may have it for purely self –defense reasons, hunting etc.), and who should therefore to be disarmed upon crossing the border into a host state.

- *Combatants*

In this paper, as well as in ExCom 94, the term ‘combatant’ is also used as a generic term to refer to **“persons taking part in hostilities in both international and non-international armed conflict who have entered a country of asylum.”**<sup>30</sup>

This is an advantage as it allows one to refer to combatants (i.e., ‘fighters’), regardless of whether they are involved in an international or non-international armed conflict – a fundamental distinction in IHL<sup>31</sup> but which would be too restrictive for our purposes.

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<sup>29</sup> It should be noted that both the term ‘armed elements’ and ‘combatants’ are used throughout this paper. However, they are used in keeping with the definitions provided above and each term is specifically selected to fit the particular context in which it is being used. For example, when speaking about disarmament, reference is usually made to both armed elements and combatants as both must be disarmed; on the other hand for separation and internment, reference is made to combatants; and with regard to refugee camp security in section 4, reference is often made to the dangers represented by armed elements rather than only combatants, since the former are also a threat to camp security (including by bringing arms into the refugee camp), and require special measures. Moreover, when reference is made to general threats to camp security and the humanitarian and peaceful character of asylum, both armed elements and combatants are mentioned.

<sup>30</sup> ExCom 94, footnote 1.

<sup>31</sup> It should be stressed that the definition of the term ‘combatant’ that is used in this paper and ExCom 94 is proposed in order that one may refer generally and easily to the notion of ‘fighters’ whether they be engaged in an international or internal armed conflict. However, in IHL the term



The definition of ‘combatant’ provided below, contains clear criteria, and is proposed as the operational definition for the purposes of identification and separation operations in refugee situations.

‘*Combatant*’ refers to any person who is:  
a member of an armed or military organization or establishment, whether regular or irregular, or someone who has been participating actively in military activities and hostilities, or has undertaken activities to recruit or train military personnel, or has been in a command or decision-making position in an armed organization or establishment, or is in military uniform, or carrying arms openly<sup>32</sup>, or having presented himself in the receiving country as a civilian, assumes or shows the intention to assume any of the above attributes.<sup>33</sup>

‘combatant’ is generally restricted to situations of *international* armed conflicts. In that context, the term can be broadly defined as “members of armed forces: i.e., their members are organized under responsible command and subject to an internal disciplinary system which enables the enforcement of the rules of international law applicable in armed conflicts.” (ICRC Official Statement, *ibid*, at 1); See also for example, article 4 (A)1 of the Third Geneva Convention relative to the Treatment of Prisoners of War, which applies to members of the ‘armed forces’ of a party to the conflict as well as to members of militias or volunteer corps forming part of these militias.

In the Fifth Hague Convention, the international instrument most directly applicable in the situations relevant to this paper (i.e., with regard to neutral states), reference is made not to ‘combatants’ or ‘members of armed forces’ but rather to ‘troops’. For example, article 11 of that Convention requires neutral states to intern ‘troops’ of belligerent armies. In the case of *international* armed conflicts, these ‘troops’ are the members of the armed forces of the parties to the conflict. The position is more complicated with regard to **non-international armed conflicts**, because the notion of combatant does not exist in these situations. Instead, reference is made to a person who takes “a direct part in hostilities”. Such persons lose the immunity against attack afforded to civilians, and can for the present purposes, be considered as ‘fighters’ who should be separated and interned. IHL does not provide a definition but “it is generally understood that the commission of acts which, by their nature or purpose are intended to cause actual harm to enemy personnel and *materiel*, amounts to a direct participation in hostilities, while the supply of food and shelter to combatants or generally ‘sympathizing’ with them does not.” See, ICRC Official Statement, *ibid*, at 1.

<sup>32</sup> This reference to ‘carrying arms openly’ is used in IHL in **the context of confrontations, so that a refugee crossing the border who happens to be carrying a weapon would not be considered a combatant on that basis alone.**

<sup>33</sup> This working definition of ‘combatants’ was devised by the ICRC for the purposes of this paper using the generic criteria applicable to combatants in international armed conflicts, and tailored to be inclusive of internal conflict situations. Please see the footnote above with regard to persons taking a “direct part in hostilities” in the context of an **internal** armed conflict, and below is also a more formal listing of who can be considered a ‘combatant’ in **international** armed conflicts –which is provided in article 4(a) (1)-(3) of the Third Geneva Convention, and articles 43 and 50 of Protocol I. These can be listed as follows: Combatants are:

- Members of the armed forces of a party to the conflict, as well as members of militias or volunteer corps forming parts of such armed forces; or
- Members of regular armed forces, even those which profess allegiance to a government or authority not recognized by the adverse power; or
- Members of all organized armed groups and units, as long as these groups and units are under a command that is responsible for the conduct of its subordinates, even if the party to the conflict to which it responds is represented by a government or authority not recognized by an adverse party [...]

Hence, persons who are members of “guerilla” forces or small armed groups may have the status of combatants or of members of armed forces, as long as they follow certain conditions. These include carrying arms openly during confrontations, being commanded by a person responsible for his or her

- *Internment and Internees*

The term ‘*internment*’ in this paper is used formally and as a term of art to refer to the regime of internment as provided for under the rules of neutrality (article 11, 12 of the Fifth Hague Convention) and further elaborated in the Third Geneva Convention.<sup>34</sup>

The term ‘*internees*’ will be used throughout this paper to refer to persons deemed ‘combatants’ who have crossed the border in the context of a state experiencing either an international or internal armed conflict, and who are interned by a third neutral state whose territory they have entered. It refers specifically to combatants interned under the rules of neutrality and IHL (see above).

- *Child Soldier*

“...any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and those accompanying such groups, other than purely as family members. It includes girls recruited for sexual purposes and forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms.”(see section 2)

- *Separation*

Refers to the physical removal of certain individuals from a larger group. In the context of ExCom 94 and this paper, ‘separation’ activities are restricted to the separation of combatants present in mixed flows, who enter a third neutral state.

- *Screening*

This term is used to refer to a process of identification of individuals for a certain purpose (e.g., in order to identify who is a combatant, or who may come under the exclusion clause). This process requires the use of certain criteria which fit the particular purpose.

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subordinates, and following an internal disciplinary system that –among other things- enforces compliance with the rules of international law applicable in armed conflict.” See, Bouchet-Saulnier, Françoise, *The Practical Guide to Humanitarian Law*, first English edition, (ed.and transl. by Laura Brav), Rowman & Littlefield Publishers, Inc, Maryland, USA, 2000, at 50-51.

The status of combatant and prisoner of war (POW) can also be applied in the case of internal armed conflicts. However, it should be noted that **mercenaries** do not have the right to the status of combatant or of POW (see section on internment); they are nonetheless entitled to the fundamental guarantees. The term ‘fundamental guarantees’ refers to rules governing the minimum standards of protection for individuals that remain applicable in all circumstances, and are defined and reflected in international human rights law as well as IHL. See in this respect, Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, *ibid*, at 107.

<sup>34</sup> The expression ‘internment’ is also used in parenthesis at certain times in the paper in order to refer to situations where this term has been misused, used loosely to refer to a variety of confinement measures (for persons or situations where the rules of neutrality and the Third Geneva Convention are not deemed to apply), or to other regimes of internment such as that of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (hereinafter, the Fourth Geneva Convention).

**SECTION 2: IDENTIFICATION AND SEPARATION**  
**THE CHALLENGES OF DISARMAMENT, IDENTIFICATION AND SEPARATION**  
**ACTIVITIES: SOME LEGAL AND OPERATIONAL CONSIDERATIONS**

**I. THE CONTEXT**

**A. The Nature of Modern Armed Conflict: Its Impact and Challenges to Identification and Separation**

Most armed conflicts today are internal rather than international in nature. This has raised new challenges, including with regard to the issue of identification of armed elements. During the UNHCR Global Consultations on the topic of preserving the civilian character of asylum, this challenge was expressed as follows:

[I]dentification in the context of persons fleeing from internal conflict remains difficult, as it is not easy in practice to distinguish those who have been engaged in combat from those who have not. Members of militia rarely wear military uniforms, or may hide their uniform or arms and mingle with civilians. The volatility of modern internal conflict frequently leads to patterns of mobilization, demobilization and remobilization, as well as the forced recruitment of children and other civilians in the war effort, making it difficult to distinguish between fighters, former fighters and others. In situations where the persons are visibly identifiable, for instance, by their heavy arms, they may be superior in strength to the host government authorities and pose a threat to those who seek to disarm them.<sup>35</sup>

In addition to the above, the increasing situations of internal strife or the absence of a functioning central government within the very host countries where refugees are seeking protection presents further and important protection challenges. This includes the challenge of disarming, and separating combatants from refugees in large mixed influx situations; in these situations international organizations such as UNHCR may have to deal with non-state actors (e.g., rebel groups or war lords in control of that specific territory) to secure access to safety for refugees and may have to appeal to the international community to address the issue of the separation of combatants.<sup>36</sup> The existence of situations of internal strife or instability within host states themselves also, of course, pose serious security risks for refugee populations in those areas of the country, as well as the risk of subsequent militarization of the refugee camp or settlement by local factions to the fighting, including forced recruitment of refugees.

**B. The Realities on the Ground During Mass Influx Situations**

In practice, the development and implementation on the ground, often in the chaotic conditions of a mass influx, of indicators which make possible the identification of armed

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<sup>35</sup> UNHCR, *The Civilian and Humanitarian Character of Asylum*, *ibid*, at para. 12.

<sup>36</sup> This was in fact the situation in Zongo, see Lisa Yu, “Separating ex-combatants and refugees in Zongo, DRC: peacekeepers and UNHCR’s ‘Ladder of options’”, in UNHCR, *New Issues in Refugee Research*, Working Paper no. 60, August 2002, (hereinafter, ‘Separating ex-combatants in Zongo’). Available online under ‘publications’ at: [www.unhcr.org](http://www.unhcr.org)

Such situations highlight, what some describe as ‘gaps’ at the international level, such as the absence of a lead or principal agency responsible for assisting governments with separation operations or to address situations where there is no government to identify or separate combatants from refugees.

elements is very difficult. Reliable and prompt country of origin information (as part of an early warning and preparation mechanism), including on the nature of the conflict and the composition of the refugee flows is vitally important, as are military intelligence and the availability of experienced military personnel (knowledgeable of regional or local conflict dynamics and actors, as well military culture) – even prior to deciding to undertake a separation operation. Other pre-requisites for effective identification and separation are political will, and sufficient resources and capacity to undertake operations which may amount to forcible disarmament, physical separation and internment. Host governments frequently do not have the resources to undertake such activities on their own, and in some instances their political allegiances or other interests result in a lack of political will to affect the necessary measures.

Moreover, while all efforts should indeed be made to ensure that identification and separation takes place at the earliest possible moment, and ideally at the point of entry into the host state, in practice there are a myriad of constraints with regard to the implementation of separation operations at entry points, especially during mass influx situations. Furthermore, even when undertaken, such operations are unlikely to always be completely effective in catching all armed elements.

This reality underlines the need for:

- 1) *preventative* measures, as well as the early set up and maintenance of good security, management and governance systems in and around refugee-populated areas (see section 4) and;
- 2) developing capacities to address situations of *existing* insecurity in and around established refugee camps/settlement;
- 3) and more specifically, developing ‘indirect’ separation (or alternative neutralization) strategies appropriate for *different contexts* and for different phases of refugee operations (including in an established camp, and in less controlled refugee settlement situations), particularly where forcible separation is not advisable or possible.

## II. RESTRICTING THE TARGETS FOR IDENTIFICATION AND SEPARATION<sup>37</sup> TO COMBATANTS

Undertaking separation measures in a refugee context can raise complex questions regarding the applicable legal framework as well as how to operationalise the framework in often difficult situations on the ground. This has been demonstrated in the problems that

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<sup>37</sup> Separation or screening operations, especially during large mixed influxes, should be guided by a definition or clear criteria for separation which meets the particular needs of that situation. While the use of a wider scope for separation than that suggested here may appear to be operationally useful, especially during certain large mixed influxes, it is strongly recommended that in general, the operational parameters for separation be both *restrictive* and *precise*. As mentioned above, the object and scope of separation should not be broadly based but rather target specific sources of security threats and categories of persons. To the extent possible, early warning systems and information should be used to assess the composition of the mixed influx and determine in advance specific targets for identification (screening) and separation according to clear criteria.

If a fairly open scope is used for separation purposes however, it is important that initial screening criteria (which may be necessary to stabilize the situation) not have definitive legal implications for the status or rights of the person, and that it be quickly followed by a more careful screening process. At the same time, the proper legal frameworks and appropriate separation/detention facilities should be in place for the different categories of intersected persons.

have resulted in past practices where a variety of categories of persons (e.g. excludable persons, intimidators and others) have been separated from refugees and held under myriad forms of ‘detention’ regimes without a sufficiently clear operational or legal framework. For this reason, and as noted in the introduction, we suggest limiting the criteria for separation, so that:

*the targets for identification and separation operations are restricted to **combatants** who enter a third **neutral state** as part of a mixed refugee flow resulting from an armed conflict, or who are already present in refugee camps or refugee populated areas.*

These parameters facilitate separation exercises by having a clear and precise target, namely, combatants (as stipulated in ExCom 94), and provide a common legal framework in IHL and the rules of neutrality more specifically. In some situations, it is possible that other categories of persons (i.e., non combatants) present a danger either to refugees or to the host state, and should be separated. This issue is briefly addressed later in this section.

### **III. GUIDING PRINCIPLES AND CONSIDERATIONS: APPLICABLE TO SEPARATION ACTIVITIES IN A REFUGEE CONTEXT**

#### **A. Fundamental Principles**

**Required action** with respect to armed elements and combatants:

- 1) All armed elements, whether they be combatants or civilians, present among the refugee population must be disarmed.
- 2) Moreover, combatants should, in addition to being disarmed, also be identified, separated and interned (or subject to alternative measures of ‘neutralization’).<sup>38</sup>

A **combatant** cannot be considered an asylum seeker or a refugee.<sup>39</sup>

**Former** combatants should not automatically benefit from refugee status through group determination on a *prima facie* basis. They should not be considered as asylum seekers until

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<sup>38</sup> During mass influx emergency situations, the initial identification process will in many instances be done simply through an preliminary ‘screening’ process whereby a person is first identified or suspected of being an armed element based on the immediate evidence at hand. While the objective is to identify and distinguish civilians from combatants, it may be difficult in some instances to determine whether an armed element is truly a civilian or not. Where this is unclear, in practice the person will most likely be separated until a more careful screening process can be undertaken. In such situations, the person should ideally be properly screened before he or she is transferred to a permanent internment camp, and where the person is determined to simply be a civilian, he or she should be disarmed and release (and not interned).

<sup>39</sup> This refers to an ‘active’ combatant, who has not renounced or given up military activities or objectives. One cannot be both an asylum seeker/refugee and a combatant at the same time, as the two positions of seeking asylum while conducting military activities are irreconcilable. However, even if they cannot be considered asylum seekers, they have certain rights as combatants under IHL, including protection against forced return to their country of origin, and guarantees of humane treatment. With regard to refugee law, while they are not yet properly speaking persons of concern, they are protected against *refoulement* (for example, during the period of their verification period in internment) should they make a request for asylum. Once they have been determined to have genuinely and permanently renounced military activities, their asylum request may then also be considered, and where applicable, refugee status granted. See section 3 on internment in this regard.

it has been clearly established that they have genuinely and permanently renounced military activities.”<sup>40</sup> Separation is therefore necessary.<sup>41</sup>

Persons who do not qualify for or are excluded from refugee status should not be **accommodated** in refugee facilities.<sup>42</sup>

The role of separation in the **eligibility** process (i.e., eligibility for refugee status) is not definitive of any legal status.<sup>43</sup> It is an interim measure, until the person’s status and intentions are determined or verified.

Where refugee status is based on group determination, civilian **family members** of combatants or former combatants should be treated as refugees and should not be interned.<sup>44</sup>

**Child soldiers** should be separated from, and not interned with, or detained alongside combatants. They should benefit from special protection and assistance measures (including with regard to their demobilization), and a specialized regime of rehabilitative care and education.<sup>45</sup>

In case of mass exodus, the priority is to ensure **access to safety** and protection away from the territory where refugees are in danger. In conditions of mass influx, activities related to screening and separation cannot be applied in such a way that it hinders or prohibits entry by refugees.<sup>46</sup>

It is imperative that the identification and separation process does not interfere with the

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<sup>40</sup> See ExCom 94, para. (c) (vii), and also the ‘Global consultations on civilian character of asylum’, *ibid*, at (g)

<sup>41</sup> Even those who *desert or renounce* military activities after having entered the host country should be held separately from the refugee population until their status as civilians has been resolved positively. See ExCom 94, para. (c) (vii), and also the ‘Global consultations on civilian character of asylum’, *ibid*, at (j); the latter adds that “[t]he separation should be for a limited period pending verification, and they should be reunited with their family members upon recognition.”

<sup>42</sup> Please see: UNHCR, Draft Guidelines on the application of the exclusion clause of the 1951 Convention relating to the Status of Refugees in mass influx situations, version dated 23 April 2004, (hereinafter, ‘Draft Guidelines on Exclusion in Mass Influx’); also see, the discussion in this section with regard to the separation of ‘other’ categories of persons besides combatants, and issues related to their detention.

<sup>43</sup> See also in this respect, Beyani, “International Legal Criteria for the Separation”, *ibid*, at 258.

<sup>44</sup> See ExCom 94, para. (c) (vi). Where combatants are arriving with their families, it is important to ensure that relevant information necessary to maintain family contact and to facilitate family reunification at the end of the internment period is recorded and provided to the family members. Measures should also be taken to ensure that they do not become the victims of reprisals once in the refugee camp.

<sup>45</sup> See ExCom 94, para. (c) (viii). Treatment of former child soldiers should be governed by the framework of the UN Convention on the Rights of the Child and regional children’s rights instruments, and should draw on the work of UNICEF, in particular the UNICEF Staff Working Paper ‘Children in Armed Conflict’, May 1999. In cases where they have been interned, they should benefit from the special protections and conditions conferred to them in IHL and International Human Rights. Also see further details on the treatment of child soldiers later in this section and in the section on Internment in this paper.

<sup>46</sup> ExCom 94, para. (c) (i).

principle of *non-refoulement*.<sup>47</sup>

## B. Guiding Considerations

### **Responsibilities of host governments and types of possible assistance:**

Host governments have the responsibility to disarm all armed elements and to separate and intern combatants on their territory. They should take responsibility for the operations from the outset of the emergency and involve local law enforcement authorities (especially around the relevant border areas). However, in some cases, governments may not have the necessary capacity to undertake these operations on their own and may require international assistance.<sup>48</sup> For instance, they may lack the military means to separate combatants, the logistical means to transport them to an internment camp, or even the means to secure their basic (humanitarian and material) needs once they are identified and separated. It is important in this context to note that it is host governments and *not* UNHCR, for example, who must provide for the immediate needs (i.e., the “food, clothing and relief required by humanity”)<sup>49</sup> of combatants once they are identified and separated (both pending and during internment).

Thus, in practice, situations of mixed influxes often pose an immediate and dual challenge of providing for the protection and humanitarian needs of refugees, *and* managing effectively and promptly the separation, logistical and material assistance issues related to combatants who have already been identified and are awaiting internment. Where the host government authorities are unable to distinguish and manage these two separate regimes for these two different groups of persons effectively and promptly, refugee (and local) security is likely to be compromised.

The lack of effective rapid response mechanisms and a clearly designated or leading international agency with a clear mandate to assist host governments in managing the issue of combatants in such situations has been noted as an important gap which directly affects refugee security.<sup>50</sup> As discussed below, an international agency/institution, or at the

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<sup>47</sup> The principle of *non-refoulement* in refugee law is established in article 33 of the 1951 Convention, the OAU Convention, and is deemed to be part of customary international law. See also, ExCom 94, para. (c)(i). In the context of mixed flows, the principle of *non-refoulement* clearly applies to asylum seekers and refugees, but it also applies to former combatants and deserters for example, who should be interned and *not* summarily detained and returned by the host country without a clear determination of their status or their need for protection. See the section on internment in this paper for further details on this aspect. Moreover, *non-refoulement* is distinguished from prohibition of entry (the second principle mentioned), since mixed influxes could actually be allowed to enter the host state, but be subsequently *refouled en mass* when subsequent identification and separation activities are undertaken (e.g. during the encampment process, or even in established refugee camps or settlements) and some armed elements or combatants found.

<sup>48</sup> In this regard, see Security Council Resolution 1208, paras. 4 and 6 which refer to the development of institutions and procedures to help implement state obligations relating to refugees, and request international assistance for these purposes, as well as to the range of measures which are needed from the international community to share the burden and support the efforts of African States to ensure the security and the civilian and humanitarian character of refugee camps and settlements –including in the area of disarmament of armed elements, and the separation of refugees from other persons who do not qualify for international protection.

<sup>49</sup> See the Fifth Hague Convention, articles 11 and 12.

<sup>50</sup> This conclusion was expressed during the Pretoria Symposium, see UNHCR, Summary Conclusions of the UNHCR Regional Symposium on Maintaining the Civilian and Humanitarian

domestic level, an Inter-Agency Internment Task Force<sup>51</sup> which could facilitate the securing of international assistance (including funding, and valuable expertise) to governments could be helpful in such situations.

**Key pre-requisites for the disarmament, identification and separation<sup>52</sup> process:**

These include the following:

- 1) Effective early warning and rapid response mechanisms;
- 2) Political will on part of the host government and local authorities; and
- 3) Resources and capacity to undertake these activities/operations (or assistance in this regard).

Where the political will or the capacity of host governments is lacking, an effective international framework to assist and/or intervene in these situations should be developed, and should include: appropriate response mechanisms, mandates, designated agencies or institutional structures and coordination systems to enable the international community to play an effective support /or intervention role on this issue.<sup>53</sup>

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Character of Asylum, Refugee Status, and Camps and other Locations, 26 & 27 February 2001, Pretoria, South Africa, (hereinafter, Pretoria Summary Conclusions). It has also been demonstrated in practice, such as in the case of Zongo, see Yu, Lisa, “Separating ex-combatants and refugees in Zongo, DRC: peacekeepers and UNHCR’s ‘Ladder of options’”, in UNHCR, New Issues in Refugee Research, Working Paper no. 60, August 2002, (hereinafter, ‘Separating ex-combatants in Zongo’). Available online under ‘publications’ at: [www.unhcr.org](http://www.unhcr.org)

<sup>51</sup> Reference could be made for example, to the Internment Task Force established in Sierra Leone, as a possible model for inter-agency collaboration on this issue. Further details on this model are provide below in this paper.

<sup>52</sup> Another ‘pre-requisite’ has also been suggested by some scholars with regard to identification and separation operations, namely, what one may call the ‘**principle of demonstrated need**’:

This principle reflects the idea and the position that screening operations with a view to separation of combatants should only be undertaken during situations of large refugee influxes where it is “apparent from the conditions in the State of origin that the resulting out-flow will contain considerable numbers of armed elements”. In other words, the necessity to separate must exist. See, in particular, Beyani, “International Legal Criteria for the Separation”, *ibid*, at 257. This position is indeed in line with the principles of access to protection on the basis of entry and eligibility, and tries to ensure that such screening operations do not unnecessarily hinder entry by refugees during mass influx situations or lead to situations where the procedure is misused to effect *refoulement* of *bona fide* refugees. However, this principle of demonstrated need should only be applicable to situations where large scale screening (e.g. of a military nature) operations are being considered for mixed influxes, and it should not be used to detract from the necessity or desirability of the following:

(a) the need to integrate identification and neutralization measures for armed elements into the general protection and camp management systems, and into in all stages and sites of refugee operations;

(b) the duty of diligence of the state vis-à-vis single soldiers (combatants). The rules of neutrality imposes on the host state a duty of diligence vis-à-vis single soldiers, and while they are not expected to chase every single soldier, it must take the necessary measures to prevent him or her from taking part or resuming hostilities, which normally is internment.

<sup>53</sup> ExCom 94, para. (f), calls upon “relevant United Nations organs and regional organizations, in pursuance of their respective mandates, as well as the international community at large, to mobilize adequate resources to support and assist host states in maintaining the civilian and humanitarian character of asylum, in line with the principles of international solidarity, co-operation, burden and responsibility sharing.”



**Taking measures at the earliest possible moment,<sup>54</sup> and during all other phases (and sites) of operations:**

Measures for the disarmament of armed elements, and the identification and separation of combatants, should be taken at the earliest possible moment, and preferably at the point of entry or at the first reception/transit centers for new arrivals, or failing that at the earliest opportunity in transit camps or refugee camps/settlements (or surrounding areas). As importantly, however, considerations relating to identification and separation of combatants (and armed elements) should be integrated into the general refugee security, protection and management systems at all (other) phases of refugee operations.<sup>55</sup> Identification and separation could take place at the following possible sites and at different stages of refugee operations:

- 1) At border, upon entry
- 2) In transit centers or staging posts
- 3) In refugee settlements
- 4) In refugee camps
- 5) In local host communities (where possible)<sup>56</sup>
- 6) Around periphery of refugee settlements or camps
- 7) Upon return, repatriation

**Separation measures should not be undertaken inside the country of origin:**

Measures which have the aim of separation of combatants inside the territory of state of origin prior to entry of the host state should be avoided; they may be unlawful due to the principle that allows access to asylum territory through direct entry, and can be very risky.<sup>57</sup>

**Identification and separation measures only undertaken after assessment of security risks and implications:**

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<sup>54</sup> ExCom 94, para. (c)(ii).

<sup>55</sup> Certain types of identification and separation (or neutralization) activities should be regarded as intrinsically ongoing, take place on a simultaneous basis, and be integrated into the normal protection, security, and camp management systems and procedures. For example, considerations relating to the identification and neutralization of armed elements should be kept in mind and integrated into critical (programs) activities and phases of refugee operations such as: into the training provided to and agreements with local enforcement officials (especially those working near camps), border guards and camp security staff; it should be factored in during refugee relocation convoys to refugee camps; registration procedures; existing controls on movements in and outside camps; and routine protection screenings such as to identify vulnerable persons. Some such measures are further discussed in this section as well as in section 4 in this paper.

<sup>56</sup> Identification and separation of combatants in local host communities, in periphery areas around refugee camps/settlements, and during repatriation activities, is possible and encouraged but would tend to fall within general measures for the maintenance of security (rather than operations specific to mixed refugee situations) and should be supported by awareness campaigns and complementary measures –see for example, section 4 on camp security which refers to complementary measures to security packages.

<sup>57</sup> Possible exception might be where international force is mandated lawfully to provide protection to the displaced population (IDPs) prior to entry to a host state, and part of that protection involves separation of active combatants from ordinary IDPs. Nonetheless, the legal basis for the protection of persons displaced within states of origin remains controversial. Even more compelling however, are the catastrophic consequences and experiences in the use of this preventive protection/ country of origin containment strategy (e.g. Rwanda). In this regard, see, Beyani, “International Legal Criteria for the Separation”, *ibid*, at 256-257, including for a detailed discussion of the limits of this strategy, and examples of its disastrous consequences.

In light of the serious security risks which disarmament, screening and separation operations can potentially pose for refugees, the local population and other persons<sup>58</sup> a security assessment should be conducted prior to any such exercise, and an appropriate plan of action or strategy drawn up. In the event that the security assessment cannot be drawn up on time or at all, or security measures are inadequate to address the risk, no direct screening or separation measures should be undertaken.<sup>59</sup> The risks to civilians may be especially of concern in established camps or settlements for example. Integrating considerations regarding armed elements into overall camp security and management systems should proceed however, although increased levels of caution may be necessary.

**Each situation is unique and measures should be adapted accordingly:**

What measures and procedures are necessary or appropriate to effect separation in any given situation depends on the nature and composition of the mass influx, or the conditions in the existing camp or settlement. As early as possible, the host authorities and/or UNHCR should establish whether those arriving or infiltrated in the camps include active fighters, former ‘combatants’, child soldiers, and their level of armament for example.

**The location of refugee camps and humanitarian assistance impact on the necessity for separation operations:**

Locating refugee camps/settlements and providing humanitarian assistance at a safe and effective distance from border areas (or other areas of conflict) functions as one of the principal deterrents for combatants and will significantly decrease the risk of their presence among refugee populations. The further humanitarian assistance is from the border or other conflict areas, the less necessity there is likely to be for large scale border screening and separation operations. The additional resources necessary for the transportation of refugees (e.g., by truck convoys for example) to more distant humanitarian and refugee centers for example, may therefore be compensated in the long run by less costly security programmes and less need for interventions.<sup>60</sup>

**Beneficial impact of the presence of UN or other international organizations:**

Moreover, the presence of UN or other international organizations, as observers, in disarmament, identification and separation operations provides confidence to combatants that the process is transparent and neutral.

**UNHCR has an interest in observing the identification and separation procedure and can play a mobilizing role:**

UNHCR has an interest in observing the identification and separation procedure, and particularly if it occurs at the border, in order to ensure that refugees are admitted and protected. In certain operations in the past, UNHCR has also played a role in ensuring that child-soldiers are identified, separated from adult combatants and channeled to the

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<sup>58</sup> These could include humanitarian workers, military and police, border guards, whether at entry points or in refugee camps or settlements, and local communities.

<sup>59</sup> Further information on separation in camp situations, is provided in this section below.

<sup>60</sup> Locating humanitarian assistance centers too close to the border may mean that refugees effectively encamp or settle there. Where possible therefore, these should be located at a safe distance from the border and where the conditions of refugees does not allow them to reach that destination by foot, they should, when possible, be transported there in convoys. Please also see section 4 for more details regarding the location of refugee camps and settlements, and below in this section for a discussion regarding the possibility of achieving separation through ‘indirect’ methods such as the ‘relocation’ of refugee camps.

appropriate programmes or child services for this purpose.

In the wider context of mixed flow situations, it has also been recognized that UNHCR should play a mobilizing and coordination<sup>61</sup> role, including by: helping to mobilize international resources; alerting other UN organs<sup>62</sup>; and providing assistance, training and technical expertise to states to enable them to meet their legal and physical protection responsibilities to refugees.<sup>63</sup>

**Preventative measures to impede militarization of refugee camps also essential:**

While identification and separation measures for combatants may be required (including at entry points), preventative measures internal to the security and management of refugee camps/settlements, and which impede the militarization of refugee populations are also essential and should be established from the setup of the camp or settlement. See Section 4 for further details on this topic.

**Situations to be brought to the attention of the Secretary-General of the United Nations:**

Where the host State's inability or unwillingness to address security issues has the consequence of precluding UNHCR from exercising its functions, and, in particular, where refugees are rendered vulnerable to harassment or infiltration by armed elements or other elements posing a risk to refugee security<sup>64</sup>, this situation should be brought to the attention of the Secretary-General of the United Nations.<sup>65</sup> In situations where the

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<sup>61</sup> Security Council Resolution 1208, para. 9, for instance, mentions UNHCR amongst others (UN bodies, Member States, the OAU and sub regional organizations), and urges them to initiate coordinated programmes to assist African States to strengthen their capacity to implement their obligations vis-à-vis refugees, including locating refugees at a reasonable distance from the border with the country of origin, and the separation of refugees from other persons who do not qualify for international protection. In ExCom 94, UNHCR is also requested to enhance collaboration with DPKO on this matter, and to call this particular meeting of experts in order support the elaboration of relevant measures and standards on this issue.

<sup>62</sup> See for example, Security Council Resolution 1208, para. 5 where the primary responsibility of UNHCR (with the assistance of other relevant international bodies) is recognized with regard to supporting African states in the implementation of their responsibilities towards refugees, and where UNHCR is requested to "keep in close touch with the Secretary General, the OAU, sub regional organizations and the States concerned in this regard."

<sup>63</sup> In this regard, see: ExCom 94, para. (h), in which UNHCR is urged to explore how it may develop further its institutional capacity to address insecurity in refugee camps, including by assisting states to ensure the physical safety and dignity of refugees; Security Council Resolution 1208, para. 5 and 9 mentioned above; and ExCom Information Note 'The Security, and Civilian and Humanitarian Character of Refugee Camps and Settlements' (EC/49/SC/INF.2) of 14 January 1990, which describes in section III some of the contexts in which UNHCR role as a mobilizing agent as been recognized. This includes ExCom Conclusion no. 48 (XXXVII, A/AC.96/702) para. 206; and the report of the Regional Meeting on Refugee Issues in the Great Lakes, held in Kampala in May 1998, which states that where host states might not always have the capacity to establish and maintain the rule of law in refugee-populated areas, "UNHCR has a valuable role to play in mobilizing the international resources required to strengthen law enforcement capacity".

<sup>64</sup> Such as excludable persons for example. In this respect, please see the UNHCR, Draft Guidelines on the application of the exclusion clause of the 1951 Convention relating to the Status of Refugees in mass influx situations, version dated 23 April 2004, (hereinafter, 'Draft Guidelines on Exclusion in Mass Influx').

<sup>65</sup> See, for example, Security Council Resolution 1208 (1998), UN doc. S/RES/1208, 19 November 1998, at paragraph 5; as well as Security Council Resolution 1296 (2000), UN doc. S/RES/1296, of 19 April 2000, at para. 14., which refers to instances where such situations may constitute a threat to

complexity of the security situation (including the related political, and military aspects), and in particular, where concerns regarding the presence of armed elements, require the intervention of external expertise, UNHCR could also take the initiative to propose to the Secretary-General the creation of an independent assessment team.<sup>66</sup>

#### **IV. SPECIFIC OPERATIONAL ISSUES: WITH REGARD TO IDENTIFICATION AND SEPARATION**

##### **A. The Difficulties, and Some Principles and Strategies to Facilitate the Identification of Combatants**

Identification is very much related to the object and the scope of the separation exercise or policy –which determines the screening criteria. For this reason, and as noted earlier, it is important to set clear criteria and strict parameters for the separation exercise.

When conducting screening and separation operations in a refugee context, differences in the *interpretation* of agreed upon criteria or definitions may still occur however, even when strict parameters have been provided. For instance, while military authorities affecting the separation may not consider a deserter a combatant properly speaking, UNHCR would not be ready to assume the civilian status of that person and would request separation pending verification of his status. Similarly, there could be different interpretations of the concept of a child soldier, underlining the need to clearly spell out the fact that it could also include girls and that the relevant age for their separation in the refugee context should be 18.<sup>67</sup> Ordinarily, military authorities affecting separation and internment exercises would operate according to established military guidelines and practices. However, when such operations are effected in a refugee context, and particularly in a large mixed influx situation, particular caution is necessary to ensure that identification and separation principles and criteria are formally set out, clear to all actors involved in the process, and, where possible, that resolutions mechanisms be in place for when differences of opinion arise.<sup>68</sup>

As noted earlier, other practical challenges of identification or screening exercise are related to the fact that the nature of certain conflicts renders it increasingly difficult to distinguish combatants from ordinary civilians. Military elements may include women and child recruits in their midst, lack any type of uniform, and rely on small arms which they can

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international peace and security- in this situations the Secretary General will “consider such situations and, where necessary adopt appropriate steps to help create a secure environment for civilians endangered by conflicts, including by providing to States concerned in this regard [...]”

<sup>66</sup> This is proposed in, UNHCR, High Commissioner’s Information Note of 14 January 1999, *ibid*, at para. 77, as well as in ExCom Conclusion No. 94 (LIII) - 2002, at (g) which refers to the possible deployment of multi-disciplinary assessment teams. It is also reiterated in the Draft Guidelines on Exclusion in Mass Influx’, *ibid*, para. 77. The UNHCR, Inter-Office Memorandum (dated 7 April 2004), and *Information Note on Cooperation between UNHCR and DPKO* (dated 18 December 2003) refers as well as to the possibility that in certain situations DPKO could dispatch expert personnel to assess situations where the infiltration of armed elements to refugee populated areas could constitute a threat to international peace and security, and help advocate for any necessary response from the international community.

<sup>67</sup> On child-soldiers, see part VI, “The special situation of the child-soldier” in this section.

<sup>68</sup> Where other actors, such as an international organization, are present during identification and separation exercises, their roles and functions should also be clearly defined and agreed upon. This will help in resolving differences which may arise, and address the inevitable sensitivities related to any real or perceived ‘outside’ involvement in security issues.

conceal easily. Moreover, the often chaotic conditions associated with mass influx situations may only permit a rather cursory identification process based on evidence immediately on hand (and partly visual) rather than a more formal and rigorous screening process. In such conditions, civilians who may be bearing arms for example, and with regard to whom there are doubts regarding their status, may in practice be temporarily separated until a more careful screening process can be undertaken (which ideally should be before the identified combatants are transferred to an internment camp). In light of the above, the following are some further ‘practical’ strategies and suggestions, which in addition to the information gained from the early warning systems mentioned above, could also facilitate the identification process:

- **“One military recognizes another”**: this underlines the need for experienced persons who are familiar with and recognize signs of military hierarchy and behavior patterns which may reveal the presence of armed elements even when there are no physical or external signs;
- **Self-identification**: (a) in the context of a voluntary internment campaign: where the situation permits, selected reception areas (border areas) could be publicized in the early warning phase (i.e., as soon as asylum seekers arrive or before then), so that combatants arriving at these centers would be self-identified and interned on a voluntary basis; (b) on an individual basis: combatants self-identify during the screening procedures at the border;
- Straightforward identification based on evidence of **classical military signs**: such ‘signs’ may include, the bearing of arms, wearing of military uniforms or insignia, particular haircuts or tattoos, arrival in troop formation, evidence of military behavior and command pattern (e.g. hierarchical order and regime, obeying of command structure, marching, communication methods and style);
- **Denouncements, reports**, or demonstrated level of discomfort (e.g., fear or anger) by other refugees, especially witnesses and victims.
- Profiles and evidence clearly **different from the rest** of the (refugee) arrivals: this could include, for example: the wearing of boots and other types of clothes which other refugees do not have; absence of belongings and family members (traveling alone); relatively healthy in appearance as opposed to refugees arriving from situations of scarce food or urgent flight; and tribal affiliations (where this is a relevant factor).<sup>69</sup>
- Response to particular **questions**: answers to some questions may help in determining if person is a combatant or not.<sup>70</sup>

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<sup>69</sup> Information and intelligence provided as part of early warning mechanisms as well as assessment missions could also assist in further establishing differential profiles and provide training on identification methods.

<sup>70</sup> Questions could include: where are you coming from? what is your occupation/ for how long? where do you live? where is your family? how long did it take you to walk here? who do you know here from your village? who can vouch for you? what were the circumstances surrounding your flight ?

## **B. Effecting Disarmament, Separation and Alternative Neutralization Measures in Different Contexts**

Certain measures and approaches to the separation of combatants from refugee populations can significantly reduce the security risks of such operations as well as increase effectiveness. Strategies undertaken for effecting separation measures at entry points for example, may be fundamentally different than those employed when armed elements/combatants have already infiltrated refugee camps or settlements. In certain instances, forcible separation measures may pose an immediate risk to refugee security, are likely to result in unintended negative consequences or may simply require more resources and capacity than the government is able to provide. ‘Indirect’ methods to achieve separation and alternative neutralization measures may be best, or indeed, the only acceptable solution in such circumstances.

The following are some suggestions on mechanisms and strategies which can help improve the response to the presence of armed elements in different contexts and stages of refugee operations.

### *1. At entry points*

In situations of large mixed influxes where it is possible to implement separation operations at entry points into the country (i.e. at border areas), early warning mechanisms, preparation, and a sufficient as well as rapid operational response capacity will largely determine the effectiveness of these operations.

The information provided through **early warning mechanisms** will be critical to the elaboration of a response which takes into account both the humanitarian and the security aspects of the situation. Early warning systems should therefore provide information on the nature of the conflict, the composition of the exodus (percentage of women and children, armed elements), the volume and type of weapons being held, and the suspected numbers and descriptive profiles of armed elements (whether they are accompanied by family members, presence of child soldiers, and reasons why they might be mixed in refugee flows). The role of the military is usually considered essential with regard to information sharing and intelligence; a variety of sources of information are necessary though in order to ensure accuracy and objectivity. Disarmament, identification and separation strategies should then be elaborated as soon as possible, and should be in line with the information gained through the early warning systems, government capacity and readiness, and any other factors relevant to the situation.

Each situation will be unique and require a **tailored response**. For example, where mixed flows include very significant numbers of combatants which the government does not have the military capacity or willingness to confront in a separation process, they may decide to move humanitarian assistance centers further away from the border area. In this case, transportation may need to be provided to bring refugees to these centers. The additional distance from the zone of battle and the checks carried out during these convoys to humanitarian centers may be a significant deterrent for combatants in particular. In anticipation of the mixed influx, host governments may also decide to reinforce the visible presence of military and other law enforcement authorities around border areas in order to deter armed elements/combatants in advance. A campaign to disseminate information on internment camps in advance of and during arrivals to encourage voluntary self-identification and internment is another strategy; to facilitate this process specific entry

points could be designated for internment volunteers. The **presence** and participation (as a monitor or observer) of an **international organization** (e.g., ICRC, UNHCR) could lend confidence in the transparency and credibility of such a process.<sup>71</sup> Where combatants are arriving with their families, it is important to ensure that relevant information necessary to maintain family contact and to facilitate family reunification at the end of the internment period is recorded and provided to the family members.<sup>72</sup>

As indicated above, although host governments must take responsibility for addressing the issue of the separation of combatants from refugee populations, their capacity and resources may be limited and new strategies to assist them required. The establishment of a **Task Force on Internment**<sup>73</sup> may provide a useful model for inter-agency collaboration and a vehicle to mobilize the necessary resources and assistance for separation and internment operations, including from the international community. Such a Task Force would have the objective of fast tracking the design, set up and supervision of an internment camp for combatants. The availability of these internment facilities and the ability to provide the required basic necessities to combatants within that framework are indispensable elements to the separation process; the Task Force could assist in ensuring for this through the expertise of its members and by helping to mobilize the necessary resources, including funding.<sup>74</sup> The Task Force could be composed of relevant government authorities, and relevant international agencies which are operational in nature, such as, UNHCR, ICRC, WFP (for food responsibilities), and OHCHR (where they are operational in the host country).

The rapid deployment of **humanitarian security officers (HSOs)**, along the lines of those proposed in the concept paper on operationalising the 'ladder of options'<sup>75</sup>, could provide

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<sup>71</sup> This has been noted as facilitating the separation process, as for example in the case of Zongo. See, Lisa, Yu, 'Separating ex-combatants in Zongo', *ibid.*

<sup>72</sup> A mechanisms to address possible security concerns of the family members of combatants should also be set up, as they may fear stigmatisation as well as attacks by other refugees (based on family associations) once they are in the camp.

<sup>73</sup> The example of such a Task Force in Sierra Leone may be a useful model to consider. It is suggested however, that in order to remain effective such a task force should restrict itself to essential and operational actors present in the host country (e.g. government, UNHCR, ICRC and another relevant actors which can contribute expertise or resources in line with their mandate).

<sup>74</sup> After the initial set up of the internment facilities, procedures and administrative structures, the Task Force could continue to meet and assist the government through training and other capacity building initiatives, as well as in an advisory or supervision and monitoring role with regard to the running of the camp. **UNHCR's role** in such a Task Force could include providing guidance on refugee law and relevant human rights standards (and especially issues related to the responsibility of *non-refoulement*, and the eligibility for refugee status), ensuring that former child soldiers are granted *prima facie* refugee status and reintegration on an expedited basis with their families and the refugee community, and representing the interests of the internee's family members (if they have been granted refugee status). UNHCR also has an interest in the profiles of internees in order to ascertain who may later become of concern.

<sup>75</sup> UNHCR's 'ladder of options' is a framework which proposes different ways in which the international community may assist the host state in safeguarding the civilian and humanitarian character of refugee camps and settlements. Strategies to implement the ladder of options have also been developed. See in this respect, UNHCR, 'Note on Operationalising the Ladder of Options'. The *Information Note on Cooperation between UNHCR and DPKO* (dated 18 December 2003), also provides for the possibility, in certain circumstances, of the deployment by DPKO of expert personnel to conduct assessment missions.

valuable assistance in assessing the security situation in relation to armed elements - both in emergency stage border operations, as well as in assessing strategies for addressing problems of armed elements in established refugee camps or settlements. The HSO<sup>76</sup> could be internal to an organization, such as UNHCR, or be provided as part of a stand by arrangement with interested governments.<sup>77</sup> They would be deployed as an integral component of UNHCR's Emergency Response Teams during initial phases of refugee operations, and on a needs basis for other situations.

## 2. *Inside the host country: adopting a holistic approach*

Because operations to disarm armed elements and identify and separate combatants at border areas (entry points), are not always possible and rarely completely successful, **other 'catch' systems or deterrence measures** should also be set in place for when armed elements have already entered the country and are in or around refugee populated areas. These could include some of the following:

- The early involvement and effective presence of local law enforcement authorities in areas likely to be affected (i.e., near border areas and refugee encampments), as they are usually the first to detect the presence of armed elements;
- Awareness campaigns among local communities and refugee populations;
- The integration of identification or screening (and possibly, separation) mechanisms during the registration or encampment process.

Disarmament, as well as the separation of combatants before encampment is key to avoiding many problems including, the issue of distributing aid to a population that includes combatants, and the operational complications of having to later undertake physical separation measures within a refugee camp -a notoriously difficult and complex operational situation. Strengthening the screening element of the registration process<sup>78</sup> before or during encampment is one way to 'catch' combatants before they infiltrate refugee populations and refugee systems. Some measures to strengthen this aspect of the **registration process** could include:

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<sup>76</sup> As envisaged in the 'Note on Operationalising the Ladder of Options', Humanitarian Security Officers (HSOs) would be public security experts concerned with issues of law and order. They would be deployed as an integral component of UNHCR's Emergency Response Teams at the beginning of a refugee crisis and would work with concerned national and local public security institutions. These experts can also be used in on-going refugee situations and repatriation movements in which security is a concern, or could provide advice on good camp management. The primary responsibilities of the HSOs would be threefold: to assess the nature and sources of threats to the humanitarian and civilian character of refugee camps and settlements, as well as the threat of lawlessness; to assess the capacity and intent of local law enforcement services to provide security and, as required and appropriate, to identify ways of enhancing the capacity of such services; and to encourage refugee populations to assume some responsibility for maintaining acceptable standards of order and justice in camps in a manner that conforms to the principles of community policing. On the basis of the above, HSOs would advise the UNHCR team leader and concerned national and local officials of appropriate actions required to improve security.

<sup>77</sup> Concerted efforts must be made to render such government stand by arrangements fully operational and effective however, given the level of political and administrative clearance and negotiation usually required.

<sup>78</sup> With regard to early identification, ExCom 94, para. (c)(iii) recommends that in order to facilitate early identification and separation of combatants, "registration of new arrivals should be conducted by means of a careful screening process."



- Putting in place security measures, including the visible presence of security forces (to deter combatants<sup>79</sup> from attempting registration);
  - The development and use of additional questions to be asked during registration, when faced with suspicious cases; <sup>80</sup>and
  - Training of staff undertaking the registration process on how to deal with such cases.<sup>81</sup>
3. *Addressing the presence of armed elements and combatants in established refugee camps and settlements: ‘indirect’ strategies for effecting separation and the need for alternative neutralization measures*

Some alternatives to formal separation may, in certain instances, be as affective as separation without presenting some of the important difficulties and consequences presented by the separation process, which often must rely on force. For instance, location (and size)<sup>82</sup> or **relocation** of camps (or humanitarian assistance centers) further away from border areas may itself result in a *de facto* separation of those elements bent on cross border military operations. Relocation in particular<sup>83</sup>, while expensive, can be an effective strategy to address situations of highly militarized camps or settlements that are affected by the fact that they are too close to the border with the country of origin or because they happened to be in or around new conflict areas (including conflicts internal to the host country).

In other cases, **alternative neutralization** and **mitigating** measures, while not as effective as separation, may still be the best strategy in view of the risks and complex process of effecting forcible physical separation of dangerous elements in a camp context, for example. A refugee camp or settlement may have reached a level of lawlessness and militarization which would require an unacceptable degree of force being used in a place where civilians live side by side combatants. In other situations there may be suspicions or knowledge of the presence of armed elements but the general camp situation may otherwise be considered fairly stable –effecting direct physical separation measures against targeted persons in the camp could in some instances have a trigger or backlash effect and aggravate the situation considerably. As during the emergency phase, humanitarian security officers could provide valuable expertise and assistance in these situations, including by providing an assessment of the *level* of militarization and infiltration of armed elements/combatants, the *capacity* (or lack thereof) of the existing security and camp management systems to address the situation, the capacity and advisability of forced separation measures by military or other

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<sup>79</sup> This presence should also deter armed elements (i.e., civilians in this case) from registering before they have handed in their weapons.

<sup>80</sup> For some suggested questions during the registration process, see part B (iii) in this section and the corresponding footnote, which provides some questions which can also be used during the registration process (if an initial screening has not already taken place).

<sup>81</sup> One approach in such cases might be to ask the person to make an appointment with the relevant police authorities for a second interview, and to follow up on this later. Such cases should be marked as requiring future monitoring.

<sup>82</sup> For further details on factors to consider with regard to the location, size and layout of refugee camps and settlements, please refer to section 4 in this paper.

<sup>83</sup> This was demonstrated for example, in the case of the camp relocation exercise in Guinea in 2001. See, UNHCR, Refugee Camp Security in Guinea, ESS Mission Report - February 2001 (internal document). Successful relocation exercises were reported also with regard to operations in the northern part of the democratic Republic of the Congo, and in Sierra Leone, in *The Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict*, doc. S/2002/1300, dated 26 November 2002, at para. 32.

forces, and possible *alternative* neutralization and mitigation measures.

In such instances, as well as others where a containment strategy would be preferable to forcible or direct action, some of the alternative strategies outlined below could be useful (it is worth noting that many of these strategies rely on the prior existence of sound camp security and management systems, which are more thoroughly discussed in Section 4 of this paper):

- **Close monitoring** of specific suspected individuals within the camp or settlement: this can be done through communication and monitoring measures by security and management officials in the camp. Camp refugee leaders, refugee watch teams and others should also be trained to recognized signs of militarization.
- **Voluntary disarmament** exercise: where feasible and appropriate, a campaign including incentives for surrendering weapons and sanctions for those found to be armed, could be undertaken.
- **Awareness campaigns** relating to armed elements among refugee and local populations.<sup>84</sup>
- Information and **voluntary self-identification campaigns**: could include information about internment facilities, rules, status while there, family implications, and highlight increased protection as further from border.
- Information on **domestic and international law as well as camp rules**: to refugee population. This should include information relating to definition and prohibition of military activities; sanctions and consequences for undertaking military activities in a refugee –populated area (and the nature of internment); distinction between military and political activities and types of legitimate and illegitimate ‘political’ activities.
- **Rehabilitation activities and services which directly or indirectly target suspected armed elements in the refugee camp or settlement; these may be helpful in identifying, monitoring and neutralizing such persons.**
- **Neutralization through other control** measures on suspected armed elements (including some arrived at through mutual agreement): this could include having to obtain permission to move in an out of the camp.<sup>85</sup>
- Monitoring that suspected combatants do **not assume positions of leadership**, management or decision making in camp structures.
- Periodic review of identification and **registration** to keep abreast of new persons in the camp, including possible infiltrators.<sup>86</sup>

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<sup>84</sup> Such campaigns should provide information on some of the following: what are ‘combatants’ vs refugees; why they cannot cohabitate; dangers related to militarization; what status and rights are offered to combatants and why; how to report and avoid recruitment and abduction; and crimes related to presence of combatants.

<sup>85</sup> Other measures could include some of the following: requesting that the person present themselves at regular appointments with those responsible for monitoring them; and that they sign up or report to police or camp management. The above measures will generally only work and be accepted after dialogue and trust has been gained with suspected persons.

<sup>86</sup> This is an important strategy, which was also highlighted in ExCom 94, para. (c ) (iii): “To facilitate early identification and separation of combatants, registration of new arrivals should be conducted by means of a careful screening process.”

- Increased and effective **presence of security and international staff** in camps/settlement, thereby sending the message that there are controls in place.<sup>87</sup>
- Increased effective presence and monitoring by local law enforcement authorities (and refugee watch teams) in **areas around border** and camp: this will help neutralize combatants (and armed elements) within the camp by cutting them off from operatives and commanders on the outside.
- The construction of **police posts** in and around refugee camps and full provision of equipment for security wardens and police deployed in and around camps

## V. OTHER CATEGORIES OF ‘SEPARATED’ PERSONS: THE NEED TO DISTINGUISH FROM THE SEPARATION PROCESS OF COMBATANTS

The discussion regarding separation in this paper, and the development of relevant operational guidelines in this area, has been restricted to ‘combatants’ as defined in the beginning of this paper. However, it should be mentioned that various forms of ‘separation’ or confinement measures have also been proposed and practiced<sup>88</sup> in relation to a range of other groups such as: refugees accused of committing common crimes; or who are perceived as presenting a national security threat (i.e., for reasons other than any ‘military’ activities *per se*, for example article 9 of the 1951 Convention); refugee political activists or ‘intimidators’;<sup>89</sup> those screened for exclusion proceedings, or who have already been found to be excludable; and voluntary separatees.<sup>90</sup> While there may indeed be a need in certain circumstances to ensure refugee or national security through the ‘separation’ of these other categories of persons, such separation measures also raise some important concerns.<sup>91</sup> In particular, caution should be exercised with regard to the object and scope of any such proposals or measures in order to prevent ‘separation’ from being used over broadly or/and to unlawfully restrict the enjoyment of refugee and human rights.<sup>92</sup>

Other general recommendations and considerations applicable to the separation of other

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<sup>87</sup> In addition to deterring armed elements/combatants, this may also serve to provide refugees confidence in their own security and thus enhance their reporting of military activities.

<sup>88</sup> See, for example the discussion of the various categories of ‘separated’ persons in Lawyers Committee for Human Rights (LCHR), *Refugee, Rebels and the Quest for Justice*, Lawyers Committee for Human Rights, NY, USA, 2002, at 98-100, (hereinafter, LCHR, ‘Refugees, Rebels’).

<sup>89</sup> For example, in 1996 in Tanzania, the Mwisu camp in Kagera was set up specifically to house alleged political activists and ‘intimidators’ as per article III of the OAU Convention.

<sup>90</sup> For instance, in Tanzania, self-proclaimed combatants actually sought separation (‘voluntary separatees’) and were housed in the Ndotu camp; and in the case of Guinea, separation primarily operated as a protection measure for Sierra Leoneans suspected of being rebels by compatriots. See, also LCHR, ‘Refugees, Rebels’, *ibid*, at 99. It should be noted in this respect that the internment of civilians in times of armed conflicts, is possible according to the Fourth Geneva Convention (articles 41, 42, 68 and 78,) where, *inter alia*, the foreigners request voluntary internment. The internment regime for civilians referred to above is and must remain distinct from that applicable to combatants, however. See, Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, *ibid*, at 202.

<sup>91</sup> Such concerns include the stigmatization of those separated, the restriction of basic rights and the need to provide minimum legal guarantees and procedures, and the complication of repatriation efforts and finding other long term solutions for this group.

<sup>92</sup> NGO Statement on the Civilian Character of Asylum, including Separation of Armed Elements and Screening in Mass Influx Situations, as well as Status and Treatment of Ex-Combatants, Global Consultations on International Protection, (8-9 March 2001), in *Refugee Survey Quarterly*, vol. 22, No.2/3, 2003, at 361, (hereinafter, ‘NGO statement on civilian character of asylum’).

categories of persons (i.e., non combatants) in a refugee context are provided below. As with the general principles and operational considerations highlighted above, the recommendations below have been largely drawn from lessons learnt from past operations (i.e., state practices), and the perspectives of a variety of actors in this area. Amongst other things, we note the need to clearly distinguish between the regime and measures applicable to combatants and those governing other categories of persons.

General recommendations and considerations applicable to other categories of persons:

- **The need for guidelines to govern ‘separation’ for other categories of persons in refugee contexts**

The need for such guidelines has been expressed, in particular with regard to the following issues:<sup>93</sup>

- the legal basis for lawful ‘separation’ activities;<sup>94</sup>
- the folder of rights enjoyed by the various categories of separated persons;
- the procedural safeguards attached to each type of separation exercise;
- identification of the actors responsible for carrying out and monitoring such activities; and
- the conditions for termination of the state of separation (tied clearly to the particular purpose for which the separation was affected);
- ensuring special protection and assistance measures for children.

As discussed in the next section on internment, not only has the object and scope of separation operations sometimes been too wide, but when the separation of these other categories of persons and of combatants is done at the same time, they may wrongly all be subjected to the same regime of internment or to the same internment facility; when, in fact, other category of persons should be governed by distinct rules. In all cases of separation and with regard to all confinement measures, due regard must be given to the special needs and protections to be afforded to women and children.<sup>95</sup>

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<sup>93</sup> The following issues have been highlighted in the ‘NGO statement on civilian character of asylum’, *ibid*, 361.

<sup>94</sup> Appropriate domestic legal and administrative provisions, as well as camp regulations should be adopted in order to provide a sound legal framework for situations and categories of persons with respect to which ‘separation’, or other confinement measures could be adopted. In particular, legitimate and illegitimate activities in refugee camps and settlements (particularly activities labeled ‘subversive’) should be explicitly mentioned in the refugee law and in camp regulations, be consistent with refugee and human rights standards, and refugees should be made aware of these as well as situations leading to possible separation. At the same time, government and judicial structures and procedures should be reviewed to ensure that they are effective, and that undue delays for example, do not place local police and refugees authorities, as well as ‘separated’ persons in an untenable position. Effective legal and procedural mechanisms to deal with refugees accused of criminal activities, as well as applicable sanctions in case of violations of administrative camp rules should also be made clear and be in place.

<sup>95</sup> In this regard, with respect to children please see the UN Resolution on the *Standard Minimum Rules for the Administration of Juvenile Justice*, (GA Resolution 40/33 of November 29, 1985), and the relevant provisions in IHL (for example, in the Fourth Geneva Convention), the CRC, and other international human rights instruments. With regard to women, relevant international human rights instruments and IHL should also be referred to; these are well summarized in ICRC, *Addressing the Needs of Women Affected by Armed Conflict: an ICRC Guidance Document*, ICRC, Geneva, March 2004, and in particular in part II: Women Deprived of Their Freedom, at 115-160.

▪ **The particular case of excludable persons: and the application of confinement measures**<sup>96</sup>

With regard to excludable persons, and the screening process or confinement measures applicable in such cases, reference should be made to the Draft *UNHCR Guidelines on the Application of the Exclusion Clause of the 1951 Convention relating to the Status of Refugees in Mass Influx Situations*<sup>97</sup>, which have been developed by UNHCR for this purpose in response to the recommendation in ExCom 94. These draft guidelines propose that in situations where excludable persons are likely to take shelter among refugees (such as where a large-scale inflow is caused by an armed conflict and/or political developments marked by serious human rights violations), host States and UNHCR should be prepared to address the issue as soon as possible.<sup>98</sup> Excludable persons, such as high profile and notorious political figures, while not combatants, can nonetheless represent a security risk for refugee populations and become a national security concern for the host state, such that host governments may wish to separate and confine such persons immediately upon entry in the country.

However, the *concept and process of exclusion screening should be distinguished from the screening for the purpose of identifying combatants, either on arrival of a mass influx or at a later stage in refugee camps or settlements.*<sup>99</sup> It is important that these procedures are not confused, and that separation operations distinguish and manage these categories of persons appropriately. Where the screening is to identify *combatants*, these should be identified according to the relevant definition and interned according to the Law of Neutrality (i.e., the Fifth Hague Convention) and IHL. On the other hand, persons undergoing an exclusion screening or procedure who are *not* combatants should not necessarily be confined. Indeed, for the detention of asylum seekers or refugees to be lawful, it must be in conformity with relevant provisions in international refugee and human rights law;<sup>100</sup> reference should once again be made to the Draft UNHCR Guidelines on Exclusion in Mass Influx Situations, mentioned above.

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<sup>96</sup> During screening for exclusion, or during refugee status determination procedures.

<sup>97</sup> UNHCR, 'Draft Guidelines on Exclusion in Mass Influx', *ibid*,

<sup>98</sup> Draft Guidelines on exclusion in mass influx, *ibid*, at para. 52.

<sup>99</sup> See, Draft Guidelines on exclusion in mass influx, *ibid*, which also asserts this principle, at footnote 19, at 6. Indeed it is useful to be reminded that neutral third states have a duty to separate and intern 'combatants' under the laws of neutrality. This is quite a separate and independent obligation to any issue of exclusion, which may or may not at a latter date be determined to be applicable to 'combatants' who have been interned.

<sup>100</sup> For more details on relevant provisions in international and refugee law permitting the detention of asylum seekers and refugees, as well as on general human rights standards relating to the legality of detentions and the right not to be deprived of one's liberty, please see the Draft Guidelines on Exclusion in Mass Influx', para. 35-37. The control of the legality of the detention by a court for example, should be available. Moreover, even if it is determined that these other persons may in fact be lawfully confined or detained, it should be according to other specific provisions for this purpose, which entail their own set of rights (including procedural rights) – and not under the regime of internment of IHL. Independently from the above discussion, it should also be highlighted that the separation and internment of *combatants* should not establish a presumption of responsibility for excludable acts, should that person renounce military activities and have his or her request for asylum examined. See the Draft Guidelines on Exclusion in Mass Influx', para. 28.

- **Availability of proper separation and confinement facilities for different categories of persons**

Where the host state's resources and capacities are scarce, a potential problem is likely to arise regarding the lack of appropriate separation facilities for different categories of persons. Internment facilities should be used exclusively for combatants and not be used out of convenience to detain or confine other categories of persons such as, common criminals, excludable cases (that are not tied to combatant status or a military agenda), political activists or intimidators, persons who violated administrative camp rules, and especially youth offenders. A mixing of these categories of persons within the same facility would quickly create a confused legal and perhaps even volatile situation, where the nature of 'internment' under IHL is compromised, as well as the civil rights and physical security of other categories of persons effectively detained there.<sup>101</sup> Moreover, the general lack of detention and other separation facilities in remote and under-resourced situations, may in itself pose a risk to the general security situation in the camp or settlement.<sup>102</sup>

- **The connection between security threats posed by combatants and other categories of persons**

Ensuring law and order and the proper management of refugee camps/ settlements and surrounding areas is important to ensure that an uncontrolled or lawless environment in refugee areas does not lead to possible militarization of the refugee camp, either from the inside or from the outside, by providing a conducive environment for operations by combatants. Effective preventive and response mechanisms must therefore be in place in the camp/settlement in order to deal with common crimes (e.g. drug trafficking, gang activity and violence), other prohibited activities (e.g., incitement to imminent violence) and security threats posed by other categories of persons (besides combatants).<sup>103</sup> Refugee-populated areas that are allowed to descend into lawlessness (and/or attract armed elements) will be at increased risk of *refoulement*, attacks, and place the institution of asylum as such in jeopardy in that host country.

## **VI. THE SPECIAL SITUATION OF THE CHILD SOLDIER**

### **A. Applicable Standards**

The two Additional Protocols to the 1949 Geneva Conventions and the Convention on the Rights of the Child<sup>104</sup> set 15 as the minimum age for recruitment and participation in

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<sup>101</sup> Reference should also be made to the UNHCR, *Guidelines on the Detention of Asylum-Seekers*, (Revised), February 1999.

<sup>102</sup> When holding facilities are not available, authorities may be inclined to dismiss the importance of certain crimes (for instance SGBV) or fail to follow up, or simply release the person back into the camp after an interview and warning. In other situations, refugees may take the law into their own hands and create their own 'secret' detention or holding facilities.

<sup>103</sup> While police and security packages such as that used in Tanzania may be sufficient in some circumstances, this is not always the case, and military force or international presence may sometimes be necessary.

<sup>104</sup> See, article 77(2) of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977; article 4 (3)(c) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977; and article 38(1)(2) and (3) of the Convention on the Rights of the Child.

hostilities. Additional Protocol I to the 1949 Convention also provides that “if arrested, detained or interned for reasons related to the armed conflict, children<sup>105</sup> shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units [...].<sup>106</sup> In this connection, it should be noted however that international law has been developing rapidly towards the position that no one under 18 years of age should take direct part in hostilities, or be recruited. In particular, the Optional Protocol to the Convention on their Rights of the Child on the involvement of children in armed conflicts, adopted by the UN General Assembly on 25 May 2000, raises the age at which participation in armed conflicts is permitted from 15 to 18 years of age, and establishes a ban on compulsory recruitment below 18 years of age.

Thus, while it is not contrary to international humanitarian law to separate and intern a child soldier of under 18 years of age, **UNHCR recommends** that child soldiers under this age should, in principle, not be interned but rather “benefit from special protection and assistance measures, in particular, as regards their demobilization and rehabilitation.”<sup>107</sup> States are urged to put these ‘special measures’ in place outside of an internment facility and to reintegrate the child into civilian life on an expedited basis. **Exceptionally**, it may be necessary to intern child soldiers over 15 who pose a serious security threat, such as to the refugee population, but this decision should be made on an **individual basis** and in view of grave circumstances or concerns particular to that specific child. In such cases, family tracing activities should be undertaken, the child should be promptly registered in the internment camp, be given separate quarters<sup>108</sup> (and preferably also live as separately as possible during the day from adult combatants), and be accorded priority with regard to rehabilitation programmes available during internment - some form of schooling and psycho-social activities are especially necessary in such cases.

## **B. Definition of a ‘Child Soldier’**

The definition of a ‘child soldier’ provided below (recalled from section 1), is proposed for the purposes of future operational guidelines on maintaining the civilian and humanitarian character of asylum, and in particular, for use during identification and separation operations. The definition should also be used for the purposes of ensuring that these children benefit from related social and rehabilitative programmes<sup>109</sup>, and as importantly, that their particular security, social and other concerns be included in the general protection activities of UNHCR, host states and other relevant actors.<sup>110</sup>

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<sup>105</sup> The Convention on the Rights of a Child (CRC) defines a “child” as anyone “below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier” (article 1).

<sup>106</sup> Art. 77(4) of Protocol I to the 1949 Geneva Conventions.

<sup>107</sup> Security Council Resolution 1296 (2000) also mentions the particular situation of child soldiers in the context of its activities related to disarmament, demobilization and reintegration of ex-combatants.

<sup>108</sup> If arrested, detained or interned for reasons related to the armed conflict, children are to be held in quarters separate from those of adults, except where families are accommodated together (art.77.4 of Protocol I to the Geneva Conventions of 1949).

<sup>109</sup> Including for example, any eventual DDR programme in the context of a peace agreement and voluntary repatriation.

<sup>110</sup> For example, child soldiers who are identified as such may face particular security or protection concerns upon being ‘reintegrated’ into refugee camps or settlements. For example, these concerns may be due to stigmatization, past activities, or past affiliations which may trigger retaliation or attacks on them; they may be more vulnerable to renewed recruitment within or around the refugee camp; they will frequently be unaccompanied and therefore not benefit from the critical protection

*'Child Soldier'*

...any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and those accompanying such groups, other than purely as family members. It includes girls recruited for sexual purposes and forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms.<sup>111</sup>

**Priority** should be given to **identifying and demobilization children** during any identification and separation operation<sup>112</sup>, and future actions or programmes in relation to these children should be guided by the principle of the best interests of the child (except, where security concerns with regard to a particular child must take precedence, as mentioned above). In addition to **other immediate measures** which should be taken to ensure their safety and well being, and rehabilitative and reintegration programs, all children must undergo an assessment of their physical health, as well as necessary treatment as quickly as possible<sup>113</sup> and family tracing and reunification should be established as early as possible.<sup>114</sup>

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of their families; and for girls these factors may place them at increased risk of SGBV. Moreover, upon eventual repatriation, they will also likely face security and other important concerns which must be carefully considered and addressed in advance by relevant authorities in their repatriation or DDR programmes. In this respect, see: UNICEF, *Cape Town Principles and Best Practices*, Adopted at the Symposium on the Prevention of Recruitment of Children into the Armed Forces and on Demobilisation and Social Reintegration of Child Soldiers in Africa, 27-30 April 1997, Cape Town, South Africa. References in this paper are to the summary version of these principles produced by UNICEF (hereinafter, 'Cape Town Principles'); Nathalie De Watteville, Africa Region Working Paper Series, *Addressing Gender Issues in Demobilizing and Reintegration Programs*, Africa Region- the World Bank, May 2002; Mackay and D. Mazurana, *Where are the Girls: Girls in Fighting Forces in Northern Uganda, Sierra Leone and Mozambique: Their Lives During and After War*, International Centre for Human Rights and Democratic Development), Montreal, Canada, 2004; and ICRC, *Addressing the Needs of Women Affected by Armed Conflict: an ICRC Guidance Document*, ICRC, Geneva, March 2004.

<sup>111</sup> This definition was adopted by: UNHCR, OHCHR, UNICEF and Save the Children in the Action for the Rights (ARC) of the Child Resource Pack, see in particular, Critical Issues: Child Soldiers, of September 2002, at 6; as well as in the Cape Town Principles, *ibid*. Although this definition and some of the recommendations provided in both the Cape Town Principles, and ARC, may, in parts, be specific to a demobilization and reintegration process in the context of a peace settlement, we believe that they are nonetheless largely applicable and / or adaptable to identification and separation operations in a refugee context.

<sup>112</sup> Cape Town Principles, *ibid*, at 4, and 5.

<sup>113</sup> Appropriate response should also be available for the specific needs of girls, and other categories of child soldiers with special needs such as: children with disabilities; those with children of their own; and those suffering from substance abuse, or sexually transmitted diseases such as HIV/AIDS.

<sup>114</sup> The reestablishment of family bonds, as well as the physical protection afforded by the family is a critical factor in the rehabilitation of the child and important in order to prevent repeated recruitment. Where family reunification is not possible, other strategies are available and discussed in some of the sources referenced below. Where child soldiers *are* interned, it is particularly important that the interning states **register** the identity of children under their control (they have a general obligation to register their internees), as they are the ones most likely to lose contact and the most vulnerable when they cannot be promptly reunited with their families.



### C. Practical Issues

- (i) An operational definition and **policy on the child soldier should be agreed upon and adopted by host government** authorities responsible for effecting identification and separation operations in a refugee context. It is recommended that this definition and any policies relating to their treatment and special needs after separation from adult combatants be arrived at in conjunction with or with the involvement of the relevant national refugee agency and camp authorities, UNHCR, and other actors specialized in the issue of children and child soldiers, more specifically. Such policies and programs should be based on the best interests of the child and relevant recommendations (adapted as necessary)<sup>115</sup> contained in the Cape Town Principles and ARC. See below.
  
- (ii) Identification and separation activities in a refugee context should have as a **priority to identify child soldiers** in order to: (1) provide them with the necessary assistance, and (2) break the cycle of demobilization and remobilization that these young persons may otherwise be destined to – **an important contribution to the overall problem of militarization**, particularly where this is a regional problem.<sup>116</sup> As such, it would be important to develop **appropriate identification methods and strategies** which could be employed during such operations. In particular, strategies to encourage child soldiers to come forward and to *self-identify* should be developed and used during separation operations.<sup>117</sup> Programs to support these self-identification efforts must then be available of course, otherwise child soldiers may be exposed to significant immediate risks. Moreover, when developing and providing training on these identification methods, it is important to try to address issues where cultural interpretations could lead to different practices. For instance, it should be stressed that child soldiers can be girls, including girls used exclusively as sexual slaves or who are referred to as military ‘wives’ (or indeed who may even refer to themselves as ‘wives’).<sup>118</sup> Without a policy and proper understanding of

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<sup>115</sup> These recommendations should be adapted to the situation of separation in a host state, as the Cape Town Principles for example, are principally in relation to DDR processes.

<sup>116</sup> Many factors may render child soldiers vulnerable to renewed recruitment, volunteer and otherwise, such as the lack of alternatives to secure another form of livelihood, and the fact that many cannot return to families or their original communities since they are often forced to commit atrocities against their own families or communities.

<sup>117</sup> Broad based information dissemination during a mixed influx should include information which will facilitate and provide confidence to child soldiers to self-identify. This information should ensure that children understand that even if they were not used for combat, they still are considered children affected by armed conflict and will be assisted. These strategies must give consideration to issues of stigmatization, fear and mistrust which may impede them from coming forward, and find ways to provide conditions and methods which are sufficiently reassuring.

<sup>118</sup> Whether children or adult women, the issue of effecting the separation of girls or women who are used for sexual purposes (often as a result of abduction, but also as a form of abuse inflicted on them on account of their gender when girls are recruited) raises important issues which should also be further clarified. For example: it must be determined whether these ‘wives’ are in fact victims (of abuse, abduction, rape, sexual slavery) or whether they are spouses or partners in the ordinary sense of the term; whether they were involved in violence and hostilities or used exclusively in a ‘passive function’ to do menial jobs or perform sexual services- or in the event, they had to do both, what their status then becomes (civil or combatant?). In the case of adult women, these questions will be relevant in order to decide whether they should be considered as family members and be accorded

some of these issues, girl abductees may, for example, be improperly interned with their ‘husbands’/abusers since in many cultures a ‘married’ girl or a girl with a child is considered an adult. Alternatively, they may not even be viewed as a target for identification purposes - which would mean that the girl soldier would not have the benefit of programmes in place to assist her.<sup>119</sup>

- (iii) A **specific programme** which includes both interim care services, further demobilization issues (where necessary), as well as the **social reintegration** of child soldiers (for example into refugee camps or communities), must be set in place. It is important that those responsible for these programmes receive training *specific* to the situation of child soldiers, (including the particularly sensitive issues of their stigmatization, trauma, and acceptance into their communities), that such programmes be designed and implemented in order to facilitate the child soldier’s return to normal life, and that a lead agency be identified in order to ensure that there is a coordinated response from the various organizations /and government ministries that may be involved.<sup>120</sup> As mentioned above, such programmes should include and be consistent with the

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refugee status and placed in the refugee camp, or alternatively, whether they should be separated and interned along with the rest of the combatants. Even if it is determined that they can be considered a combatant (due to some of their activities), many of these women may be survivors of grave sexual and gender based violence inflicted during their time amongst military units so that special care may have to be taken to ensure that this abuse does not continue during internment, and ideally, that these victims live entirely separated from their abusers so that they can regain their dignity and commence the healing and rehabilitative process. Where women ‘combatants’ themselves claim to be the ‘wife’ of another combatant and are interned, caution must be taken in assuming that this is actually the case – it is important that women be provided with and know that they have alternatives and do not feel that the ‘protection’ of a ‘husband’ (ex., against gang rape) continues to be necessary. In the case of the girl child these lines may even be more blurred, including in the psyche of the child. For example: a girl may have become dependant on her abductor and rapist during her time of capture (forced recruitment), as she may have had to rely on his status as her ‘husband’ to protect her from general abuse and gang rape by other combatants; or she may have fallen pregnant and rely on him to help provide for a child; or she may experience the ‘Stockholm’ syndrome (i.e., the phenomenon whereby the abused bond or become attached to their captors as a means to endure violence). In such situations, she may even try to lie about her age in order to not be separated from her ‘husband’/abuser, or out of fear that she will be stigmatized and subject to reprisals if she is placed in the refugee camp. These issues raise questions therefore, not only about how to determine whether such persons are combatants or civilians (in case of adult women), but also about the measures and programs which could be put in place to help these persons regain their dignity and independence, as well to questions about how to minimize possible stigmatization and guard them against future abuse.

<sup>119</sup> Indeed, because many programmes addressing child soldiers (for example, DDR programmes) do not sufficiently target or address the phenomena of the girl soldier, these girls often simply return to civilian life without receiving any assistance. Frequently they do not go back to their home communities or families but rather move to urban centers, where they can remain anonymous; without assistance, however, many are forced into prostitution or live on the margins of society.

<sup>120</sup> An integrated community development model (also applicable in situations where the child soldier is integrated into a refugee camp/settlement, rather than the original community), can imply a range of partners, such as local agencies and government ministries, local NGOs and international organizations and NGOs). Ideally, there should be agreement amongst the various actors regarding what is the most appropriate approach in any given situation, and all concerned should have their own clear roles and responsibilities. For further details on the potential role of various actors, see, ARC Child Soldiers, *ibid*.

recommendations (adapted as necessary) provided in the Cape Town Principles, ARC and other guidelines provided by authoritative international agencies on this topic, such as UNICEF.<sup>121</sup>

- (iv) As a general and separate note, **should child soldiers or refugee children be arrested, detained, interned or otherwise ‘separated’** (under a different regime than internment according to the rules of neutrality and the Third Geneva Convention), they must benefit from **special guarantees** due to their age, their specific psychological and physiological needs, and principles relating to the criminal responsibility of children under general criminal law.<sup>122</sup>

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<sup>121</sup> Some of the recommendations relative to programmes to help child soldiers return to normal life were highlighted in ARC and include the following, *inter alia*:

- The involvement of government departments and local partners in programme planning and implementation;
- Capacity building activities aimed at strengthening human resources and expertise on this issue;
- The establishment of criteria for the protection and well-being of children in care within the community /refugee camp or settlement;
- The active participation of children, by involving them in planning and decision making- thus enabling them to take responsibility for their own actions and future development;
- Creating an open, safe and accepting environment (including ‘preparing’ that environment before integrating them into the refugee camp/settlement), and let the child set the pace, rather than focus on ‘trauma’ and its consequences;
- Re-establishment of the normal routines of daily life as quickly as possible, while also paying attention to the social and emotional concerns they may have;
- Family reunification (where possible) and the re-establishment of emotional bonds are the foundation for a successful return to normal life.

For more specific details on issues relating to child soldiers and their return to normal life, see for example: ARC, child soldiers, *ibid*, at 40-46, as well as the *Cape Town Principles*, *ibid*.

<sup>122</sup> Depending on the situation, and applicable legal regime, the following should be considered:

- a. **In situations where they are detained, arrested, interned or otherwise confined in the context of or for reasons relating to an armed conflict (but not according to the Third Geneva Convention, and not as combatants):** They will have special guarantees, such as those offered in the Fourth Geneva Convention (articles, 23, 50, 68, 76) and Protocol I to the Geneva Conventions (articles 70, 77.4, 77..5); **In situations of internal armed conflict**, article 3 common to the Four Geneva Conventions provides for a set of minimum rights for children, including **fundamental guarantees** (rendering certain acts prohibited at any time or place), such as those protecting persons from violence to life and person, cruel treatment and torture, outrages on personal dignity). Protocol II provides specific guarantees to children as well (see, article 4.3 providing special protection to children under 15 who may have taken part in hostilities, and articles 4.3 (d), 6.4);
- b. Where more specific (and more generous) provisions are not provided, guidance can be drawn from the above guarantees in IHL (international and internal armed conflicts), for situations where children are under the responsibility of **a neutral state**
- c. **In other situations**, such as when refugee children are arrested, detained, so called ‘interned’ or otherwise confined, such as for the commission of common crimes, or the application of relevant articles under the 1951 Convention or the OAU Convention ( to which there should be a corresponding domestic provision):
  - Children must benefit from the general standards in refugee law and international human rights, as well as the more specific guarantees in the CRC (e.g., arts. 6, 19, 22, 38, 37, 40, 41- the last three provisions cited here referring specifically to the rights of children deprived of their liberty and other due process and judicial guarantees);

### SECTION 3: INTERNMENT

#### CHALLENGES, CONDITIONS AND PROCEDURES OF INTERNMENT IN A REFUGEE CONTEXT

#### I. NATURE AND CONDITIONS OF INTERNMENT

##### A. Nature and Regime of Internment

The scope of this paper is limited to the threat posed to refugee and national security by the presence of **combatants** within refugee populations. As such, this section on internment will address exclusively the situation of internment facilities which are established for combatants in accordance with the rules on neutrality and IHL, and more specifically the Third Geneva Convention. One may recall that the term '*internees*'<sup>123</sup> was defined in section 1 and refers to persons deemed combatants who have crossed the border in the context of a state experiencing either an international or internal armed conflict, and who are interned by a third neutral state whose territory they have entered. As discussed in the previous section, other categories of persons may also pose security threats and other types of separation or confinement procedures may be applicable to them. However, these categories of persons and relevant confinement measures are not addressed within this discussion of internment.<sup>124</sup>

The Fifth Hague Convention only specifically addresses the internment of combatants by neutral states in situations of international armed conflicts. However, as argued in section 1, article 11 of this Convention can be considered to have attained customary status, and can be argued to apply by analogy also to situations of non-international conflicts. While the Fifth Hague Convention contains provisions stipulating the general obligations and treatment to be granted to internees by a neutral state, these are only *broadly* outlined as including the obligation to intern at a distance from the theatre of war, the right to confine internees in camps, and to provide them with "the food, clothing and relief required by humanity."<sup>125</sup> For more specific guidelines on the applicable **standards of treatment** accorded internees, reference should be made to the Third Geneva Convention<sup>126</sup>, which is also expressly applicable to combatants interned by neutral states.<sup>127</sup> The resulting

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- The principles and standards concerning the administration of justice for children elaborated in the **Standard Minimum Rules for the Administration of Juvenile Justice** (known as the 'Beijing rules', General Assembly Resolution 40/33 of November 29, 1985), and the **UN Rules for the Protection of Juveniles Deprived of their Liberty** (adopted by the General Assembly Resolution 45/113 on December 14, 1990). These standard minimum rules establish the principles that must be respected with regard to the criminal responsibility of children, the measures for sanctioning them, as well as standards for their education and other guarantees for children in conflict with the law.

<sup>123</sup> It should be noted that the term 'internees' is in fact also used as a term of art in the Fourth Geneva Convention (relative to the protection of civilian persons in time of war), in Section IV, to refer not to combatants (as we do here), but rather to protected persons who have been interned in accordance with articles 41, 42, 43, 68 and 78. This is a separate regime of internment and these two categories of 'internees' should never be interned together.

<sup>124</sup> See section 2 for further details on these other categories of persons.

<sup>125</sup> Fifth Hague Convention, articles 11 and 12.

<sup>126</sup> Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

<sup>127</sup> The internment regime laid down in the Third Geneva Convention applies to prisoners of war

framework for internment discussed in this paper is thus based on the premise that all internees, (whether in the context of international or non-international armed conflicts) identified as such in a neutral State benefit from the same general standards of treatment (i.e., as outlined in the Third Geneva Convention) and are subject to the same internment regime. In this regard, it should be noted that article 4(B)(2) of the Third Geneva Convention also provides for the possibility that neutral States may grant more favorable treatment to internees than the standards contained under that Convention.<sup>128</sup>

## B. General Conditions and Length of Internment

The Third Geneva Convention regulates the status and protection of combatants and establishes their minimum rights and conditions during internment. Some of these basic standards of treatment are highlighted below:

- They must **be treated humanely** at all times and are entitled in all circumstances to respect for their person (art.3); all combatants must also be treated alike (i.e., not subject to discrimination), (art. 16);
- **Women** must be treated with due regard to their specific needs and must benefit from treatment as favorable as that granted to men (art. 14);
- They must be provided, free of charge, with the **necessary maintenance** and medical attention required by their state of health (art. 15);
- No physical or mental **torture**, or any other form of coercion, may be inflicted on them to secure information of any kind; they must be provided with an identity card (art. 17);
- They must be evacuated as soon as possible (once separated), to **camps situated away** from the combat zones, and such evacuations must be carried out humanely (i.e., they must be given sufficient food, drinking water and other necessary clothing and medical attention), (art. 19, 20);
- **Premises of internment** must provide hygienic and health related guarantees (taking into account the climate); combatant's quarters must be protected from dampness and adequately heated and lighted (conditions must not be prejudicial to their health); necessary **sanitary** measures must be taken to ensure the cleanliness and healthfulness of camps and to prevent epidemics; and where **female combatants** are accommodated (in the same internment facility as men), separate conveniences, including separate dormitories and hygienic conveniences, are to be provided for them (articles, 22, 25 and 29)<sup>129</sup>;
- The basic **daily food rations** must be sufficient in quantity, quality and variety to keep combatants in good health and prevent weight loss or the development of

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(POW) captured by an enemy state in an international armed conflict. Article 4(B) (2) however, expressly extends its protection to combatants interned by neutral states. This provision effectively imports the regime of the Third Geneva Convention into the Fifth Hague Convention.

<sup>128</sup> Article 4(B)(2) of the Third Geneva Convention states:

4(B): “The following shall likewise be treated as prisoners of war under the present Convention: [...]” (2) “The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favorable treatment than which these Powers may choose to give [...]”

<sup>129</sup> Although not specifically mentioned in the Convention, it has also been noted in practice that where women and men are in the same internment facility, there is a need to provide to provide means of contraception, even if they do not share dormitories.

nutritional deficiencies; and the habitual diet of internees must also be taken into account (art. 26);

- They are to enjoy complete latitude in the exercise of their **religion**, and in the practice of sports and intellectual activities (art. 34-38);
- With regard to their relations with the **exterior**, these are regulated by articles 69-77 and include: the obligation of the interning state to notify the authorities on which the combatant depends of the internment; allowing internees to receive and send letters, as well as receive individual parcels or collective shipments (e.g., with foodstuffs, clothing);
- Additional provisions regulate other aspects of their internment including: **medical assistance and inspections**; their **belongings** and the management of their financial resources; **working conditions** (art.49-57); permissible penal and **disciplinary sanctions** during internment (art. 82-108); and their right to **make requests** to the military authorities interning them regarding their conditions of captivity (art. 78).

With regard to the protection of combatants, and their rights and conditions of internment, the principal supervisory mechanism or body is the **ICRC**.<sup>130</sup> The ICRC has permission to go to all places where combatants may be, such as places of internment, imprisonment, and labor, and is allowed to interview combatants (internees) without witnesses, according to article 126 of the Third Geneva Convention. The ICRC also manages a system of exchanging written messages between detainees and their families, and conducts tracing activities for individuals who have disappeared.<sup>131</sup>

As concerns the **length of internment**, neutral states, may, in principal, intern combatants until the end of hostilities.<sup>132</sup> The neutral state has the obligation to ensure that combatants will no longer take part in any military activities, particularly from within its territory. From this position of neutrality interning combatants thus demonstrates that it is not assisting any party to the conflict. However, it is not inconsistent for a neutral state to release former combatants who have regained their civilian status and been granted refugee status. Indeed, where in the context of an asylum request, combatants have been determined to have genuinely and permanently renounced military activities, they should be released from internment.<sup>133</sup>

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<sup>130</sup> The Geneva Conventions of 1949 and the Additional Protocols of 1977 authorize the ICRC to visit combatants and other persons deprived of their freedom as a result of armed conflicts. In the specific case of combatants interned by neutral states, the ICRC remains the body responsible for supervising internment conditions of combatants since the Third Geneva Convention has been ‘imported’ into the Fifth Hague Convention regulating the conduct of neutral states. The ICRC acts effectively as the Protecting Power (see articles 8-10 and 126 of the Third Geneva Convention). Moreover, by virtue of its statute (art. 4.2) and right of humanitarian initiative, the ICRC can also make agreements with governments to visit persons deprived of their liberty (such as detainees for security reasons) because of ethnic, political or other internal conflict situations to which the Geneva Conventions and Protocols **do not** specifically apply. See, also OHCHR, *Training Manual on Human Rights Monitoring: Professional training series no. 7*, UN, NY, 2001, at 146, (hereinafter, ‘Manual on Human Rights Monitoring’).

<sup>131</sup> It is the Central Tracing Agency which conducts such tracing activities.

<sup>132</sup> This is by virtue of the ‘importation’ of article 118 of the Third Geneva Convention into the Fifth Hague Convention which regulates the conduct of neutral states.

<sup>133</sup> In principle, combatants who have been determined to have genuinely and permanently renounced military activities should be promptly released from internment, unless there are other legitimate reasons (based in law) exist for keeping them in internment or otherwise confined.

Also of relevance to internment and the length of internment are questions of **procedural rights** (and in particular with regard to controls/review of the legality of detention by a court)<sup>134</sup>, which are not addressed as such by the Laws of Neutrality or IHL.<sup>135</sup> This makes it necessary to refer to relevant international human rights standards and domestic legislation pertaining to the rights of persons deprived of their liberty. However, this is still an undeveloped area in international law and further work continues to be necessary in order to clarify the folder of rights (and procedural rights in particular) applicable to situations where human rights and IHL (and where relevant, refugee law) intersect. While this is beyond the scope of the present paper,<sup>136</sup> a preliminary **practical** framework is suggested for addressing some of the more immediate operational and refugee-related issues during internment. It is not a framework developed from a legal *purist* perspective but rather one which takes into account conditions on the ground,<sup>137</sup> and the often limited capacity and resources available in the countries of relevance; it also attempts to build on lessons learnt from past experiences with managing internment facilities in a refugee context. Naturally, particular attention is given to those areas of intersection between IHL and refugee law, and more especially situations where combatants may have regained their civilian status, and claim asylum.

## II. CONTINUING CHALLENGES

The **lack of sufficient** international and/or domestic **legal standards**, as well as effective legal mechanisms related to procedural rights<sup>138</sup> often creates, as noted above, a situation of confusion whereby internees who may be wrongly interned or whose status has changed, are often denied all measures of due process for long periods of time –remaining in a limbo situation until a political solution is reached, or there is a cessation of hostilities. For **internees claiming asylum, the absence of guidelines** in relation to the determination of their civilian/military status (i.e., the assessment of whether they are still combatants, or whether they have effectively regained their civilian status), and their subsequent refugee status determination procedure has also been a major challenge for UNHCR and host governments who have undertaken separation and internment measures in a refugee context.

Such attempts at separation during mixed influx situations have also revealed other equally difficult challenges in **implementing internment** measures. Insufficient resources to set up and maintain internment facilities on a sustainable basis are a frequent problem, as is the lack of capacity and expertise to manage these facilities adequately (for example, ensuring proper registration of internees). Without the facilities to intern them, host governments are often unable to even effect separation. Alternatively (as mentioned above), where

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<sup>134</sup> For example, the need for such controls is particularly manifest with regard to persons who may have been incorrectly identified as combatants, and to former combatants who have been determined to have genuinely and permanently renounced military activities and been granted asylum; in these two cases these persons should in principal be released from the internment facility but the lack of procedural rights and safeguards/mechanisms within the internment regime and camp may mean that they are effectively unable to take advantage of ordinary legal recourses in such situations.

<sup>135</sup> In the Third Geneva Convention, the only procedural rights provided are in relation to disciplinary regulations in the internment camp.

<sup>136</sup> It should be underlined however, that while it is indeed beyond the parameters of this paper, the task of elaborating and rooting these procedures in human rights law is of primary importance.

<sup>137</sup> For example, situations where identification and separation operations are conducted during mass influx situations.

<sup>138</sup> Especially procedural rights related to the rights of persons deprived of their liberty (such as controls of detention through the courts), and related judicial guarantees of due process.

internment camps have been set up, they have often been used to hold or **detain other categories of persons** (non-combatants) deemed to pose a risk to refugee security, such as refugees accused of criminal activities in the camp, excludable persons and intimidators. Some **further challenges** include the following: the lack of clear monitoring requirements; the lack of awareness and implementation of standards in relation to the internment (or rule of non-internment) of children and women; inadequate funding for effective programs to facilitate the demobilization and rehabilitation of internees (e.g. peace education, programs to provide viable socio-economic alternatives to ‘fighting for a living’) and difficulty in breaking the military structures within internment camps. Moreover, even in situations where clear political will exists on the part of the host (neutral) state, the absence of effective international coordination mechanisms and a lead or responsible international organization with a clear mandate and operational capacity to assist host states in these situations has seriously affected the ability of the international community to respond reliably and effectively to these situations and provide the necessary assistance.

### III. THE WAY FORWARD: BUILDING ON WORKING PRINCIPLES AND LESSONS LEARNT

The following are some standards and principles applicable to internment facilities, as well as preliminary conclusions and lessons learnt from past initiatives related to separation and internment measures undertaken in a refugee context:

Responsibility for the protection and assistance of interned combatants rests with the **host state**. From the beginning, the focus should be on the host **government taking ownership** of the problem and the solution, with support from the international community. Political consideration as well as the lack of capacity however, often **deter States** from carrying out these tasks effectively, thus leaving armed elements in refugee camps or within easy reach of them.

**Governments may need support** to set up and maintain internment facilities. Without these facilities, governments may be effectively deterred from or unable to effect separation: preparatory activities such as securing the necessary financial resources and capacity building initiatives should ideally be undertaken in advance of an influx. The establishment of an **international lead or principal agency** mandated to assist governments with issues of separation and internment of combatants or, at the **domestic level**, the establishment of an Inter-agency Internment Task Force (with the objective of fast tracking and assisting the host government in setting up and addressing the different aspects of the internment facility) could be useful in this regard. Such institutions or structures could provide valuable assistance in, *inter alia*: identifying and securing the necessary resources and donor support; addressing management, logistical and monitoring concerns - including through the development of an Internment Protocol for example; and advocating for and coordinating solutions to end internment.

Once combatants are disarmed<sup>139</sup>, identified, and separated from the refugee population,

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<sup>139</sup> All armed elements, including *bona fide* refugees carrying arms must be disarmed, and not only combatants. However, if determined that they are indeed civilians, refugees bearing arms should not be separated and interned. In situations where their status is unclear, they should undergo a more rigorous screening process, preferably immediately, but where this is not possible, the person may have to be temporarily separated in order to make a final determination on their civilian status.



they should be interned at a **safe location from the border**<sup>140</sup> and any refugee camps or settlements.

The management of internment camps must pay particular attention to **internal security**, since it is very likely that such camps will host combatants from various and opposing sides of the conflict.<sup>141</sup>

Internees have a right to the *standards of treatment* and conditions of internment provided in International Humanitarian Law, and more specifically the Fifth Hague Convention and the Third Geneva Convention (see above). The former provides the following general standard: “In the absence of a special convention to the contrary, the neutral Power shall supply the interned with the food, clothing and relief required by humanity.”<sup>142</sup> Internment facilities must provide appropriate conditions for female internees, and child internees (should this ever be applicable).

At the domestic level, host governments should be encouraged and assisted where necessary, to enact suitable **legislation** governing the grounds for separation activities, certain management and rights issues during internment, and defining the legitimate use of internment facilities. Internment facilities for combatants should adhere to strictly established **parameters regarding, inter alia, the function of the facility**, the category of persons it may legitimately hold, and the specific criteria used to screen and effect the actual physical separation.<sup>143</sup> Such legislation and procedures should be in conformity with standards in humanitarian law, as well as international human rights and refugee law (where relevant).

It is essential to work with a **variety of other agencies** (besides UNHCR and government, such as, ICRC, UNICEF, WFP, and the OHCHR)<sup>144</sup> in advocacy demarches, implementation and monitoring. As much as possible though, these agencies should be present in the country, have directly relevant expertise and/or mandates and be operational in nature. They could be part of the inter-agency task force, where one has been established.

Regular **monitoring** of separation facilities is crucial to ensure, *inter alia*, that the conditions in the facility are adequate, the rights of internees are respected (including the right to *non-refoulement*), to keep abreast of the identification of those separated, and to

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<sup>140</sup> See article 11 of the Fifth Hague Convention, and ExCom 94 ( c ) ( v ).

<sup>141</sup> The internment camp may also hold both combatants and *deserters* and/or draft evaders. See also, ICRC Official Statement, *ibid*, at 2.

<sup>142</sup> Article 11, of the Fifth Hague Convention.

<sup>143</sup> As noted above, the absence of clear parameters regarding the purpose and targets for the separation facility may result in a situation where the facility is ‘misused’ (often for lack of other available and separate detention facilities), to confine a variety of categories of persons, including refugees suspected of criminal or political activities considered illegitimate by the host state. Particular caution must be exercised in this respect, especially in light of the fact that many internment facilities for combatants established in a refugee context in the past have presented important deficiencies, including with regard to: monitoring systems; accurate registration records; and effective access to procedural and judicial safeguards and mechanisms. Persons incorrectly placed in such facilities may thus be more likely to have their rights to due process ignored or overlooked.

<sup>144</sup> For example, the OHCHR could assist governments in developing further certain rights and legal mechanisms related to internment (e.g., ensuring that persons incorrectly interned for example, have an effective and accessible legal recourse), and drafting relevant legal provisions.

ensure transparency with respect to the separation process.<sup>145</sup> Such monitoring activities are all the more necessary in view of the practice in some states of using internment facilities to ‘hold’ other categories of separated persons, or of using wide criteria for separation operations.

There is a need to put in place **mechanisms for accurate registration**, and systematic collection and **provision of information** from internment facilities to relevant agencies.<sup>146</sup> For example, profiles of internees to be provided to UNHCR *via* a specially designed questionnaire in order to facilitate any eventual RSD procedures.

In principal, **child soldiers** (i.e., as defined in Section 2) should not be interned, but should benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation. Once identified, child soldiers should be transferred as soon as possible to appropriate facilities in refugee camps (e.g. reunited with family, or placed in group living programs for adolescents, with supervision by a "big brother"), after a period of transition in a child protection agency's interim care centre. Reintegration may need to be preceded by confidence building measures with the family, refugee community (i.e., in refugee camp or settlement situations), and where relevant, the origin community in order to ensure the acceptance and security of the child.<sup>147</sup> Further details regarding the treatment to be accorded to child soldiers are provided in Section 2 of this paper.

Internment camps should, whenever possible, provide **demobilization and rehabilitation programmes** (especially skills training to provide hope for an income in the future and to combat idleness among internees), as well as peace education. Providing former fighters with skills will reduce incidents of remobilization as well as facilitate acceptance by origin communities, if and when they return. This has become particularly important in view of the growing phenomena of the privatization of wars (private soldiers are increasingly employed, sometimes even in return for mere subsistence payments), and the **regional character of certain conflicts**, so that these private soldiers can be employed to fight in a succession of armed conflicts across different borders in that region. The formation of support groups, peace dialogue forums, as well as traditional or symbolic cleansing and ‘transformative’ rituals may also support efforts to regain a civilian self-identity and way of life.<sup>148</sup> In some countries, identifying NGOs willing to implement such programmes may

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<sup>145</sup> This applies to both internment facilities for combatants as well as other type of separation facilities which may be lawfully established for other categories of separated persons in refugee situations.

<sup>146</sup> This raises the issue of the need for guidelines regarding **confidentiality rules and exchange of information**, especially with regard to information sharing with the military, the management staff of the facility, the justice system, the country of origin, UN agencies (such as with UNHCR, including with respect to information generated for and used during RSD and exclusion procedures) and other potentially relevant actors such as NGOs, ICRC, IOM, and international criminal courts.

<sup>147</sup> This is especially important given that child soldiers are often forced to attack their own relatives and neighbors (which acts as a guarantee to their commanders that they can no longer desert and return home). Similarly, girl soldiers may have changed so fundamentally as a result of their experience that they may no longer identify with or be able to adopt traditional gender roles expected of them. They may also have born children during their time away, which they feel their families might reject.

<sup>148</sup> Such traditional and transformative rituals are documents for example, in the context of national reconciliation processes, but may also be applicable, in certain circumstances, to the situation of combatants trying to regain a civilian identity during their internment. See, D. Bloomfield, and T. Barnes, *Reconciliation after Violent Conflict: A Handbook*, International Institute for Democracy

require extra effort. Consideration should be given at the level of international and regional organizations to increase and designate specific funding for such activities, particularly education (e.g. literacy) and vocational training programs.

Finding solutions to **mitigate the hardship of the separation from families** during the internment period should be a priority. The presence family members and involvement in family life has the capacity to revitalize the internee's self-identification as a civilian, and has high positive psycho-social and rehabilitative impact (at a relatively low financial cost). Moreover, voluntary separation and internment strategies may be more effective if the hardship resulting from long term separation from families is minimized. Internees may also be less likely to resist separation or escape internment facilities if they are able to maintain some form of family life and know that their families are taken care of and safe from retribution. Regular family visits should therefore be facilitated. Where these are not practicable,<sup>149</sup> however, the possibility of providing separate but adjacent facilities (in the form of a refugee camp with all essential services, such as, access to schools for children, and provided their protection can be ensured) to the internment facilities for dependents could also be explored.

The **potential roles and contributions of different actors** such as ICRC, UNHCR, OHCHR and others, with respect to internment facilities should be more clearly articulated and formalized in line with their respective mandates and areas of competence.

#### **IV. A PROPOSED FRAMEWORK FOR ADDRESSING REFUGEE RELATED ISSUES IN AN INTERNMENT CONTEXT**

##### **A. Special Considerations for the Management of Internment Facilities set up in a Refugee Context**

Internment facilities set up in a refugee context may contain some or all of the following **types of cases**:

- Persons incorrectly identified or interned as combatants;
- Deserters, and those having renounced military activities after having entered the host country, who seek asylum;
- Those having renounced military activities but who do not seek asylum;
- Those who have not renounced military activities;<sup>150</sup>
- Those not found to be a refugee (i.e. who did not pass inclusion during RSD procedures);
- Former combatants found in need of international protection (after regaining their civilian status) but who are excluded from obtaining refugee status.

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and Electoral Assistance, 2003. Available at [http://www.grc-exchange.org/info\\_data](http://www.grc-exchange.org/info_data)

<sup>149</sup> Since internment facilities should be at an effective distance from the border as well as from refugee camps /and settlements (due to security risks), family visits can be very difficult to implement. In practice, in some cases such visits have only been possible once a year for only a few hours. The proposal of an adjacent family camp (which families agree to live in on a purely voluntary basis) to the internment facility is therefore proposed as an alternative, especially in cases where great distances would otherwise render regular family visits impractical.

<sup>150</sup> Or who have been determined by relevant authorities not to have genuinely and durable renounced military activities.

In a refugee context, internment facilities need therefore to include mechanisms and processes to address such cases. Capacity building initiatives, the set up of appropriate procedures and structures in the internment camp, and the joint establishment of a *modus operandi* (including coordination) between UNHCR and government authorities will be necessary.<sup>151</sup>

## **B. A Framework<sup>152</sup> for Procedures and Processes related to Refugee Aspects**

The broad framework suggested below proposes some ‘high priority’ measures, suggested time frames, and a process whereby certain types of cases can be processed and addressed. As mentioned above, it is a framework which has been elaborated from a mostly practical perspective, and which (even if beyond the scope of this particular paper), should be further strengthened and articulated from a human rights perspective which takes into account the areas of intersection between IHL, human rights and refugee law.

### *1. General profiling activities and screening for persons incorrectly interned Highest Priority : 0-3 months*

#### *a. General observations and profiling activities*

During the first three months, general observation and profiling activities should be undertaken. Amongst other things, this stage should include a process of recording observations with regard to the military and other power structures being reproduced, and other significant behavioral patterns by relevant actors in the internment camp. Individual interviews could also be conducted during this period. The above activities will enable

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<sup>151</sup> This is illustrated for example in the case of persons claiming to be deserters or former combatants who request asylum during the internment period. While broadly persons of concern to UNHCR in some respects (such as ensuring *non-refoulement*), they do not yet benefit from the full protection of UNHCR or the rights accorded to asylum seekers. Their status remains that of an internee until such time as relevant authorities have definitively determined their civilian or military status (a verification process is suggested below). If and when they have been determined to have regained their civilian status however, they are no longer to be considered internees under the law of neutrality but rather as asylum seekers under international refugee law. Accordingly, the person’s rights as well as the host government’s and UNHCR responsibilities with regard to that person also change. Managing such changes in status and applicable legal regimes will inevitably require a joint elaboration between governments and UNHCR of relevant standards, operational responsibilities and procedures within the context of the internment facility.

<sup>152</sup> An internment framework or concept appropriate to such situations might include some of the following characteristics:

- a dynamic and rolling system whereby internees are systematically profiled, and assessed and different categories of internees are channeled into the relevant processes and procedures;
- an observation and verification process, enabling the determination of a definitive status and facilitating refugee-status related procedures;
- a prioritization process whereby different categories of internees are identified (e.g., persons who were incorrectly interned or who claim to have regained civilian status) and certain cases are prioritized for a solution. Consideration is given to their specific vulnerability in certain cases;
- transparency and monitoring processes;
- Commitment to and involvement in rehabilitation and peace processes or related initiatives: this ensures that internees benefit from and are involved in these activities from the start, thus increasing the chances at a more rapid resolution to the internment.

authorities in the internment facility to establish tentative conclusions on rank and profile of internees as well as identify ‘at risk’ categories of internees, so that necessary security measures may be put in place. The latter is especially urgent when internees include deserters and combatants from opposite sides of the conflict, for example.

b. In-depth screening process

During the first three months an in-depth screening process should also be completed amongst the internees to ensure that persons incorrectly interned are released or redirected to the appropriate procedures and authorities. **Persons deemed to be incorrectly interned** could potentially include some of the following:

- **child soldiers** who fell through the net and were not identified as such during the separation exercise;
- persons, and in particular, young women and girls suspected of having been abducted and **abused** by military elements (includes forced labor and sexual slavery) and who are not believed to have engaged in direct military activities;<sup>153</sup>
- **civilians** who were bearing arms or wearing military-like clothes or paraphernalia, and interned on the suspicion of being combatants. This category may include refugees who were carrying weapons only for personal protection or survival needs, but it may also include civilians who are criminals or bandits and were mistaken for combatants;
- **mercenaries**, and in some cases **other** persons holding the nationality of countries not party to the conflict;<sup>154</sup>

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<sup>153</sup> In the Global consultations on civilian character of asylum, *ibid*, para. 21, it is noted that “separation is **not appropriate however**, where the civilian status of an individual is evident”. This category of persons is likely to generate important issues and questions as to the appropriate standard of treatment to be adopted, (including whether they should be separated and interned at all, and if they are interned –what special protection measures should be accorded them) and is proposed as a topic for further discussion.

<sup>154</sup> Mercenaries do not have the right to the status of combatants (or POW), see Protocol I, art. 47. This provision defines a mercenary as “as any person who:

- a. is specially recruited locally or abroad in order to fight in an armed conflict;
- b. does, in fact, take a direct part in hostilities;
- c. is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid combatants of similar ranks and functions in the armed forces of that Party;
- d. is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
- e. is not a member of the armed forces of a Party to the conflict; and
- f. has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

With regard to persons holding a nationality other than that of parties to the conflict, it may be that in some cases, neutral countries will have to verify their nationality, and may subsequently prosecute these persons under domestic law or extradite or deport them back to their country of origin (as long as there is no request for asylum). The internment of combatants of various nationalities has in fact occurred in many past operations known to UNHCR, and appears to be an increasingly frequent phenomena, given the protracted and regional character of many armed conflicts, and the lack of

- and persons who were separated and interned on **criteria other than that established for the separation exercise** and/or who do not fit the definition of a ‘combatant’ (e.g. political activists, or persons excludable on grounds unrelated to military activities).

The above categories of persons should be screened and processed with highest **priority** granted to young persons suspected of being under the age of 18 and women (and men) suspected of having been subjected to sexual and other forms of torture. Moreover, given the importance of releasing the above categories of persons from the internment facility as soon as possible, the screening process should be undertaken in a **targeted manner** (i.e., specifically at persons for whom there are reasons to believe may belong to the above categories), rather than at random or according to a different order (such as alphabetical). Upon completion of the screening, persons should then be redirected to the appropriate channels, authorities,<sup>155</sup> services or refugee camps/settlements as soon as possible.<sup>156</sup>

2. *Processing cases of internees claiming to have renounced military activities, and requesting asylum - High Priority – Suggested time lines: 1-12 months for the verification process*

- a. Internees having renounced and requested asylum: the process of regaining civilian status and seeking asylum

Government authorities effecting separation as well as UNHCR are likely to be confronted with persons identified as combatants and claiming to be deserters or **former** fighters, who insist on being granted refugee status on the same basis as other refugees. As noted in section 2 however, questions regarding their credibility and whether they have indeed regained their civilian status are **not** determinations to be made during the identification and separation phase, but must be considered during internment. Former combatants should **not automatically benefit from refugee status** through group determination on a *prima facie* basis.<sup>157</sup> Furthermore, they **should not be considered as asylum seekers** until it has been clearly established that they have genuinely and permanently given up armed activities.<sup>158</sup> As a result, they should be held separately (i.e., interned) from the refugee population until their status has been resolved positively.<sup>159</sup>

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other viable alternatives, such as education or other means of earning a livelihood.

<sup>155</sup> For example, law enforcement authorities for prosecution, or deportation or extradition in the case of fighters who are not of the nationality of any of the parties to the conflict (and in the case of the latter, where no asylum claim is made).

<sup>156</sup> If the transfer cannot be affected immediately, vulnerable persons in particular, should be held in separate facilities or quarters, where their dignity and physical protection can be ensured.

<sup>157</sup> It is recommended that as a precautionary measure, host states include a provision in their Decree or Law on *prima facie* refugee status, explicitly excluding combatants from automatically being granted that status.

<sup>158</sup> ExCom 94, para. (c )(viii) , states: “Combatants should not be considered as asylum seekers until the authorities have established within a reasonable timeframe that they have genuinely and permanently renounced military activities, once this has been established, special procedures should be put in place for individual refugee status determination, to ensure that those seeking asylum fulfill the criteria for the recognition of refugee status, during the refugee status determination process, utmost attention should be paid to article 1F of the 1951 Convention, in order to avoid abuse of the asylum system by those who do not deserve international protection.”

<sup>159</sup> ExCom 94, para. (c ) (ii), and also see, Global consultations on civilian character of asylum, *ibid*, para (j).

As soon as a person has made an explicit statement of renunciation of military activities or declared him or herself as a deserter, *a process of verification* relating to their (civilian/military) status and eligibility to seek asylum, as well as subsequent refugee status determination (RSD) procedures should be initiated immediately or as soon as possible. For those who self-identify as deserters or former combatants for example, the process of verification should ideally commence immediately upon being admitted into the internment facility. However, in other cases, internees may only renounce military activities after a period of time in internment, in which case the observation or verification period should only commence once they have clearly expressed their renunciation. These categories of persons should be granted access on a priority basis to any existing rehabilitative programs or interim regimes for persons in the process of regaining their civilian status.

b. Determining an appropriate period for verification of civilian status:<sup>160</sup> for internees having renounced military activities and requested asylum

A period of between **1-12 months** is proposed for the duration of the observation and **verification process**, which should commence upon the person's individual and explicit expression or statement of renunciation. At the end of the verification period a recommendation should be prepared by the relevant authorities, and the entire case submitted for a determination on the genuineness of the renunciation (i.e., to determine the civilian or military status of the person, and whether they can be considered an asylum seeker) and where the result is positive, to subsequent refugee status determination procedures.

The length of the verification process should be determined on an **individual rather than on a group basis**. This strategy holds several advantages, including:

- the benefit of tailoring verification periods to each person's situation and profile;
- the impact it may have on breaking down military power structures in the internment camp: it is possible that an individualized process of verification for which different periods are granted may in fact contribute to breaking down the military culture and hierarchy, as it highlights each person's individual self-interests;
- the fact that it may minimize the risks of remobilization: internees who are given individual verification periods are more likely to eventually be released individually or in small groups at a time from the internment facility - a factor which will likely also minimize the danger to refugee camps/settlement or local communities into which they are released, and reduce the risk that they will simply remobilize due to group pressure or coercive tactics.

**Relevant factors in determining the appropriate duration** of the verification/observation

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<sup>160</sup> This observation or verification process has also been commonly referred to as the 'cooling off period'. However, it should be noted that, in fact, these processes differ fundamentally in nature. The verification process has the objective of observing and/or confirming whether the person has indeed genuinely and permanently renounced military activities. If this determination is positive, they will be deemed to have regained their civilian status. However, the so called 'cooling off period' is the process of rehabilitation while in internment - and should, therefore, have taken place prior to an express renunciation. Naturally, rehabilitative programs and processes can also be undertaken during the verification period - these are not mutually exclusive. Moreover, deserters and former fighters, while not necessarily requiring a 'cooling off period' properly speaking will nonetheless be required to undergo the verification process.

period for each person could include some of the following:

- Rank and position;
- Length of service and nature of their functions and activities;
- Length of time since demobilization;
- Type of recruitment - forced or voluntary;
- Whether the person self-identified as a deserter or former fighter upon separation or before internment;
- If the person was separated after a period of time in the refugee camp/settlement, the circumstances regarding their identification, separation and internment may be relevant (e.g. Did the person live as a 'civilian' for a significant amount of time while in the refugee camp? Was the person separated after being caught undertaking military type activities?);
- Considerations relating to the internees circumstances, including their family situation and the hardship arising from the separation of the family; 161
- The general nature of the conflict and characteristics of the parties to the conflict (e.g. is the conflict deeply ideological, ethnically based, or protracted, and have atrocities committed during the conflict 'hardened' the resolve of each of the parties? Are some parties to this conflict driven by the need to fight for lack of any other means of subsistence (i.e., poverty)? ;
- The use of 'brainwashing' techniques and the prevalence of addictions which may prolong the verification process.

A **longer verification** period may often be necessary or advisable for persons who held a high level position in the military hierarchy, <sup>162</sup>who have a long period of service, or who are suspected of being excludable.<sup>163</sup> On the other hand, persons doing menial services (porters, cooks), forced recruits (especially if recently recruited), persons not believed to have been involved in direct acts of violence, and persons who had been demobilized for a significant amount of time before separation, may be accorded a **minimal verification** period.

In some **exceptional circumstances**, the genuineness of renunciation or verification of the person's civilian status may be self-evident by the facts, or circumstances at hand. For example, this may apply to persons claiming to be draft evaders, or who fled due to fears of forced recruitment by rebel forces. It may also be the case for persons whom it is discovered were abducted and subjected to sexual torture by having to serve as sexual slaves to the military. In some of these cases, it may become quickly apparent from their behavior, the dynamic within the internment camp or other evidence (including the evidence of security risks, medical evidence etc) that these persons should be properly categorized as civilians

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<sup>161</sup> Global consultations on civilian character of asylum, *ibid*, at 5, para. 21.

<sup>162</sup> They are more likely to have adopted or to view their military activities as a career, profession or entrenched way of life/culture, thereby making it more difficult to detach themselves from it.

<sup>163</sup> In the case of persons suspected of being excludable, a longer verification period may be necessary or desirable for several reasons: it may take longer to establish genuineness; processing lower ranking and fellow combatants may reveal information about those suspected of excludable acts; and where resources are limited for conducting genuineness and RSD procedures, processing less complicated cases first will result in a more effective prioritization process (i.e., persons who have fairly straightforward cases will be processed more quickly, whereas cases involving exclusion considerations will require significant resources in both staff and time- and if processed first would effectively create a back log and prolong the duration of internment unnecessarily for a significant number of persons).



and released. They will generally be persons who should have been released during the initial screening for persons incorrectly interned, but who somehow fell through the cracks.

c. Activities during the verification process

Ideally, some or all of the following types of activities or programs would be undertaken during the verification period:

- Active observation, interviews or other opportunities for **interaction** with the internee: especially by relevant authorities responsible for drawing up observations and the recommendation upon completion of the verification period;
- **Rehabilitative programs** or services including: skills training; peace education and other educational opportunities (e.g. literacy courses); counseling; group support or group therapy; traditional and other symbolic cleansing and transformative rites (i.e., symbolic rites of passage from fighter to civilian status);
- **Transitional regimes or camps**, which would offer persons wishing to regain their civilian status more opportunities to do so away from the pressures of the military culture, and the dangers and coercive tactics that may continue to exist in the internment facility. For example, an adjacent internment camp could be set up for this purpose. Another proposal is that an adjacent **refugee** camp (composed of the families of internees) could be set up near to the internment facility in order to enable internees to have regular contact with their family members. Internees undergoing a verification process (especially those deemed to pose no security risk and for whom short periods have been established) could then be transferred to the adjacent refugee camp. This approach might also have the benefit of facilitating voluntary separation, expediting or supporting the rehabilitative process, and acting as an incentive towards renunciation.

d. Assessing genuineness and the refugee status determination procedure

### **Assessing Genuineness**

Given the inherent difficulties in determining whether a person has genuinely and durably renounced military activities, a concerted effort and appropriate mechanisms should be set in place from the moment of identification and separation to facilitate this assessment process. Below are some such recommendations, possible indicators and mechanisms which could help in the determination:

- The (substantiated) individual **recommendation** provided at the end of the verification period;
- The conclusions resulting from the current **genuineness interview** (conducted before the RSD interview);
- **Records** resulting from any **initial screening**, profiling or registration exercises,<sup>164</sup> which could be useful to determine credibility, the person's past activities, and

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<sup>164</sup> During the initial identification and separation exercises, or during the subsequent registration of internees for example, a set of questions relating to their military background could be asked. These questions would be in addition to essential biodata, and where possible, could be provided and completed as part of a personal identification form during an in depth screening or a registration exercise (with a view also to assisting in any eventual genuineness or RSD procedures):

- When and under what circumstances did you join your particular military elements or forces?
- What was your occupation, place of residence and family situation before recruitment?
- What is your rank, position, or function within the military structure of fighting forces?

how the person was first identified. Statements of self-declared status of combatant, deserter, former fighter etc. and details regarding rank and function are especially helpful;

- Internment **profile records** or general (internment) camp reports containing observations or conclusions relating to the **person's behavior**, as well as their apparent position, rapport, and influence (profile, and exercise of authority) among the internees, during the time at the internment facility in general, and in particular, during the verification/observation period following their renunciation. Amongst other things, any differences in behavior during the period of internment should be noted, as should behavior consistently indicating the **predominance** of a **civil** rather than military **identity**. Constraints, such as pressure to conform to a military hierarchy, and possible fears regarding one's security which would likely impact on personal freedom of expression and behavior, should also be noted and taken into consideration;
- The **results of any interviews or exchanges** that may have been conducted during the observation period – the results or notes of which may be used;
- Where directly relevant, consideration may also have to be given to **outside factors or circumstances** which may impact on the person's military identity, role, or their desire and capacity to continue their military activities. These could include, *inter alia*: fundamental changes in the political situation (without amounting to an end of hostilities); their family circumstance; physical condition (e.g., invalidity, disease, etc); and the great distance between the internment camp and areas where they might likely resume fighting, as the fact that they were willing to remain outside the theater of war may reflect their desire to return to a civilian status;
- **Other indications** of a desire to resume a civilian identity and life could include: resumption of family ties and involvement in family life; vocational training; undertaking of symbolic rituals or other events or activities marking their renouncement of military identity.

e. Refugee status determination procedures

Where the determination with regard to whether the person has genuinely and permanently renounced military activities is positive, this has the effect of establishing that person as a civilian and a legitimate **asylum seeker** for the purposes of refugee law. A refugee status determination procedure can now be undertaken. Cases involving former combatants are likely to bring up very **particular concerns** with regard to the issue of exclusion, including, *inter alia*: the need for caution against applying a presumption of excludability to persons

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- Do you have any experiences or feelings you would like to express regarding your time in the military forces or with other military elements? If so, please express these here- all information provided in this form will remain confidential;

Moreover, the form could also include portions to be completed by other relevant authorities which would provide information, such as the following:

- When, where and under what circumstances, was the person identified and separated (e.g., was violence necessary, where they identified at the point of entry, while in the refugee camp?, etc);
- Was the person denounced, caught undertaking any military activities, carrying a weapon etc?
- How did the person categorize themselves when they were identified? Did they self-identify as combatants, civilian, victim, minor, deserters, former combatants, forced recruit, 'wife', cook, other?

who have been interned; and the need on the other hand, to exercise the “utmost attention” to the applicability of the exclusion clause to combatants (in order to avoid abuse of the asylum system by those undeserving of international attention).<sup>165</sup> Issues related to the **operationalisation of exclusion proceedings** in situations of mass influx, and in particular, ensuring for the necessary **resources** (staffing capacity and expertise) and **other conditions** (such as safety, available information) for undertaking these procedures, present significant challenges as well. In this connection, reference should be made to the UNHCR, *Draft Guidelines on the application of the exclusion clauses of the 1951 Convention relating to the status of refugees in mass influx situations*.

One **strategy** which has been suggested which might address some of the concerns with regard to the **limited capacity** and resources of many states to **undertake RSD** and full exclusion procedures, has been to do a **combined genuineness and exclusion screening** where a positive result on both would **lead to prima facie refugee status**. This might be considered a type of expedited RSD process. In order to ensure that this expedited procedure is as effective as possible, a profiling exercise could be undertaken in advance among the internees in order to determine which persons might be most suitable for such an expedited procedure (in effect, this would mean that persons given a short verification period and persons not considered likely to be excludable would be given priority).

### 3. *Addressing cases of internees who have not renounced military activities*

Internees who have not renounced military activities, or who having renounced do not seek asylum, do not fall within the mandate or protection activities of UNHCR. They remain under the responsibility of the neutral state interned them, who may in principle, according to the rules of neutrality, intern them until the cessation of hostilities. In practice, however, given the burden of holding internees for such a potentially significant duration, most neutral states are likely to favor undertaking other strategies, usually in the form of a suitable political solution, to end internment. They may not, however, forcibly return them to their country of origin if this would amount to a violation of the principle of *non-refoulement*.

Internees in the above categories should also benefit from any available rehabilitative and skills training programs, as well as any programs related to peace education and peace dialogue initiatives within the internment facility. Moreover, they should be included as early as possible in any DDR programmes and initiatives.

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<sup>165</sup> See, ExCom 94 (c) (vii).

## SECTION 4: CAMP SECURITY

### MAINTAINING GOOD CAMP SECURITY AND MANAGEMENT AS A PRIORITY

The dangers related to the presence of armed elements<sup>166</sup> in refugee camps and settlements has been widely acknowledged, as has the difficulty of demilitarizing a refugee camp once it has already been infiltrated. Moreover, in some situations, separating combatants from refugees at border areas during mass influx situations may not always be possible or entirely successful. Other measures to prevent the militarization of camps and the infiltration of armed elements are therefore vital to ensuring refugee security. In view of this, the establishment of sound security and management systems in refugee camps and settlements should remain the focus of attention and concerted action. Indeed, preventive and security mechanisms within and around refugee camps/ settlements should be undertaken **simultaneously** and in conjunction with separation operations at entry points. Drawing on lessons learnt in the field and the progress being made in this area, the aim of this section is to show the link between general camp security and management systems and strategies to address the issue of militarization, as well as to provide some recommendations specific to this issue.

#### I. BROAD CONSIDERATIONS AND STRATEGIES

##### A. A Holistic Strategy vis-à-vis the Threat of Militarization

Security and management systems in refugee camps or settlements should be based on an integrated and holistic strategy. Such a strategy should have three broad objectives vis-à-vis the threat of militarization:

- 1) a preventative effect in the form of continued **deterrence** against the infiltration of armed elements (or the militarization of the camp from the inside);
- 2) fostering and **maintaining** the healthiest and safest environment possible for the refugee population; and
- 3) Controlling or **mitigating** (neutralizing) the effect of armed elements (including combatants) in and around the camp or settlement.<sup>167</sup>

Measures that will directly or indirectly impact on the security conditions in refugee-populated areas are varied but may be broadly related to: (1) mechanisms for the **enforcement of law and order**, and for ensuring the physical security of refugees (e.g., security and policing, legal redress mechanisms, and physical aspects of the camp such as layout); (2) **camp governance and management systems** (including refugee participatory systems); and (3) **community services and/or socio-economic conditions** (such as educational opportunities, the capacity to engage in some form of work or trade, basic social services, and community infrastructures among the refugee population). These types of measures are of course not particular to addressing the issue of militarization and should be in place in any refugee setting. However, the threat of militarization underlines the

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<sup>166</sup> As described in Section 1, 'armed elements' also includes combatants. The term armed elements is used in this instance however, and frequently throughout this section, in order to stress the importance of preventing the flow of arms into refugee camps or settlements, as well as the infiltration of criminals, bandits and other armed elements (who are not combatants).

<sup>167</sup> Using security and management systems in refugee camps/settlements to mitigate or neutralize armed elements is especially important when it is either impossible or not advisable to use forceful separation measures. Please see section 2 in this paper for further details.

importance of putting these systems in place and highlights the critical role that they can play in strategies to combat or control militarization. As pointed out in Section 2 (Part IV, iii), many of these security and camp management systems are also the foundation which make possible identification, as well containment and neutralization strategies when forcible separation measures are not feasible in an established camp setting.

## **B. Other Sources of Insecurity in Refugee Camps may Lead to a Climate Conducive to Military Activity or General Violence**

Moreover, insecurity in refugee camps does not emanate solely from the presence of armed elements or combatants in camps. Refugee camps or settlements may come under attack by the country of origin (even without the presence of combatants), become engulfed in armed **conflicts** taking place **within the host country**, or come into conflict with the local population. Conflicts between refugees, lack of sufficient humanitarian assistance, common crime and banditry, and undisciplined police or security forces can also be sources of insecurity.<sup>168</sup> Moreover, some refugee camps, and especially **larger camps** (like other densely-populated human settlements) can have an inherent propensity to insecurity, especially when their inhabitants are deprived of educational, agricultural or income-generating opportunities and have little prospect of finding an early solution to their plight.<sup>169</sup> While sources of insecurity may originally emanate elsewhere, a climate of impunity, and a general lack of security mechanisms and law and order, will likely increase the chances of **militarization** of the camp **from the inside** as well as provide fertile ground for **infiltration** of armed elements **from the outside**. It may also increase the presence of weapons in the camp, the number of military recruits—especially among the young, and can foster a climate of general lawlessness and feeling of general insecurity among refugees and host communities. Furthermore, should this situation impact on local communities near the camp it may bring about violent conflict or attacks on refugees. Hence, while armed elements (and combatants) may not be the original or immediate source of insecurity in some situations, general security and management systems are vital to ensuring that the situation does not deteriorate into or lend itself to general lawlessness or militarization.

## **II. PREVENTIVE MEASURES EARLY ON**

*Preventive measures should be taken from the earliest phase of a refugee movement in order to ensure the security and civilian and humanitarian character of any refugee camps that are established.*<sup>170</sup>

As stressed in ExCom Conclusion No. 94, safety and security concerns should be integrated into refugee camp management in a holistic manner from the outset of a refugee emergency. The following are some considerations and measures which may be taken early on. Other suggestions are also provided in Section 2.

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<sup>168</sup> UNHCR, *Ensuring the Civilian and Neutral Character of Refugee-Populated Areas: a Ladder of Operations*, July 1998, at 2.

<sup>169</sup> UNHCR, *The Security, civilian and Humanitarian Character of Refugee Camps and settlements: Operationalising the 'Ladder of Options'*, 27 June 2000, at 1. In this regard also see, J. Crisp, *A State of insecurity: the political economy of violence in refugee-populated areas of Kenya*, New Issues in Refugee Research, No. 16, UNHCR, Geneva, 1999.

<sup>170</sup> This is the approach recommended also in the '*Ladder of Options*', see in particular, UNHCR, High Commissioner's Information Note of 14 January 1999 (EC/49/SC/INF.4), 'The Security, and Civilian and Humanitarian Character of Refugee Camps and Settlements', at para. 11.

- **An effective early warning system**

As discussed in Section 2, information gathered through an effective early warning system is invaluable in preparedness and responsiveness to emergency operations, including ensuring that the appropriate security and humanitarian assistance measures are in place. In addition to providing information useful to disarmament, and the identification and separation of combatants at entry points, early information on the composition, condition and needs of refugee populations is also vital for putting in place a variety of other protection measures, and deciding on the location of humanitarian assistance centers or refugee settlements, for example.

- **The disarmament of armed elements, and identification and separation of combatants from amongst refugees is a prerequisite for ensuring the civilian nature of refugee camps, and should be undertaken at as early as possible, and preferably, at the point of entry.**<sup>171</sup>

Although host states are responsible for undertaking these operations and ensuring the physical security of refugees as well as the civilian character of refugee camps, additional consideration may have to be given to ways in which the international community can assist host states in their efforts, especially during situations of large mixed influxes. See Section 2 for further details.

- **An early and effective presence**

Government authorities and UNHCR should have an effective presence in and around refugee populated areas during the early phase of an emergency; this presence can provide an important deterrent to combatants (and armed elements) attempting to infiltrate refugee areas as well as confidence to refugees.

- **Location of refugee camps and settlements (and emergency assistance)**

Refugee camps should be located a safe distance away from:

- border areas, especially of the country of origin;<sup>172</sup>
- other armed conflicts (e.g., in the country of asylum);
- regions known to be inherently unstable or suffering from endemic violence/banditry; and internment camps.

This should be a **priority** from the beginning of refugee influxes and emergencies; it is more efficient and cost effective than having to relocate camps later. The following points should also be taken **into account** when determining a potential camp location:

- Providing **assistance** too close to borders should be avoided as it may serve as a pull factor for refugees to settle in unsafe areas;
- Situating refugee camps at a sufficient distance from the border and the area of conflict creates a **disincentive** to use them as a base for military activities;

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<sup>171</sup> ExCom 94, para. (c ) (ii).

<sup>172</sup> This is an obligation specifically articulated in article II (6) of the OAU Convention: “For reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin.”

- Certain situations, such as refugee situations arising out of protracted and/or politically polarized conflicts may require **greater distances** from the border,<sup>173</sup> such that a series of considerations must be taken into account when determining what is a 'safe' distance from the border. Examples of such considerations include: determining the nature and areas of conflict; the existence of certain affiliations; and even road infrastructure (i.e., whether roads exist and their condition) and access to easy transportation (for combatants);
  - In addition to the above, the decision regarding the location of refugee camp or settlements will also require **consideration of other issues**, most notably, its impact (in the short term) on regenerating the coping capacity of refugees, and in the longer term, how it will enable (or not) self-sufficiency and long term solutions.<sup>174</sup> Locating camps in areas where a sense of community can be fostered will also be beneficial to both local and refugee populations;
  - Where necessary, host governments can be assisted with refugee **sensitization** and **relocation** efforts through mass information and relocation logistics support.<sup>175</sup>
- **The size and physical layout of refugee camps should be conducive to the maintenance of security.**<sup>176</sup>

The size, organization, and layout of camps or settlements, usually determined at the beginning of emergency operations, are decisions which should be made with due consideration to facilitating the maintenance of security in general, and to ensuring the security of particularly vulnerable groups of persons, such as certain categories of women and children (e.g., single female headed households, single women, and unaccompanied children).<sup>177</sup> Ideally, refugee camps should not exceed 20, 000 refugees.

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<sup>173</sup> This particular point was made in the UNHCR *Summary Pretoria Conclusion, ibid* (at paragraph 70) where distances of between 200 to 300 kilometers were considered necessary for these type of situations.

<sup>174</sup> The availability of sufficient and viable land for agricultural activities, access to social and community services as well as to centers of trade and commerce are of course other important considerations for the location of a camp or refugee community. Locating camps in hostile or marginal environments increases the likelihood that refugees will be drawn or manipulated into subversive activities. UNHCR, *Summary Pretoria Conclusions, ibid*, at paragraph 76.

<sup>175</sup> Some of these recommendations were identified during the West Africa working group, XXXmaya 2003

<sup>176</sup> This is one of the preventative measures suggested (under option one) in *A Ladder of Options, ibid*. It is also further elaborated in UNHCR, *The location and size of refugee camps: Follow-up to the Secretary-general's report on the causes of conflict and promotion of durable peace and sustainable development in Africa*, by Jeff Crisp, 19 August 1998.

<sup>177</sup> In this regard, see, for example: UNHCR, *Handbook for Emergencies*, UNHCR Geneva, Second Edition, 1998; UNHCR, *Prevention and Response to Sexual and Gender-Based Violence in Refugee Situation: Inter-Agency Lessons Learned Conference Proceedings*, 27-29 March 2001, Geneva; and UNHCR, *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, UNHCR Geneva, May 2003.

- **Incorporating a screening process in the registration exercise**

As suggested in ExCom Conclusion No. 94, the registration exercise should also include a screening process to facilitate the early identification and separation of combatants. This is a useful preventative measure to take before or during the encampment process, and particularly in situations where separation operations at the border were not entirely successful or not undertaken at all (due to relatively low numbers of suspected armed elements for example). **Training** of registration personnel and the development of a set of **questions** for this purpose would be useful to make this recommendation fully operational.<sup>178</sup>

- **Technical assessment missions during the initial emergency response phase and the setup of refugee camps or settlements**

Technical assessment missions can be valuable at the start of an emergency or during the encampment process in order to provide a general understanding of the overall security situation, determine the extent of infiltration by armed elements, and help put in place adequate security measures. In addition to a government security expert, such missions could also include a humanitarian security officer (HSO)<sup>179</sup> which could be specialized staff within a UN organization such as UNHCR, or (if sufficiently rapid) pre-selected experts provided by governments with whom there are established stand by arrangements for this purpose.<sup>180</sup>

### III. SOME PRINCIPLES AND SUGGESTIONS FOR GOOD SECURITY AND MANAGEMENT PRACTICES

- **Refugees themselves should have a role in ensuring their security, and the peaceful and humanitarian character of refugee camps and settlements.**<sup>181</sup>

Refugees should be involved in contributing to their personal safety and that of refugee-populated areas. “They should not be viewed as passive victims of a situation that they neither have control over or input into.”<sup>182</sup> They should be actively involved in the dialogue on problems and take an active part in arrangements such as monitoring and the overall management of the camps or refugee-populated areas. Refugee communities can also be empowered to maintain the civilian character of camps through other measures such as sensitizing refugees to the issue, and giving them confidence in their own security to be able to support identification and separation of combatants where necessary. Also see *Refugee Watch Systems* below.

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<sup>178</sup> UNHCR’s project ‘Profile’ and the new registration database currently under development, should be mentioned in this regard, as also potentially helpful for this purpose.

<sup>179</sup> Alternatively, also called ‘refugee security liaison officers’ (RSLOs).

<sup>180</sup> In order for such security experts to be effective, preparedness would be key (i.e., have sufficient early warning to determine that such experts would be necessary, and staff and arrangements in place to provide such experts) as would rapid deployment capacity in order that they be present at the beginning of emergency operations.

<sup>181</sup> ExCom 94, *ibid*.

<sup>182</sup> UNHCR, *Pretoria Summary Conclusions*, *ibid*, paragraph 51.



- **Refugee leaders and representatives**

These should be elected among candidates that are committed to promoting the civilian and humanitarian character of their camp and should include a fair gender distribution. Furthermore, they should be elected or appointed through a transparent and open process ensuring the full participation by all sections of the refugee community.

- **Establishing camp rules or by-laws**

Whenever possible, refugees should be involved in the development of camp rules or by-laws. Such camp rules should help preserve harmony amongst residents in the camp, as well as with local communities, and respect both domestic law as well as human rights principles. Camp rules could also promote the civilian and peaceful character of the camp, including by prohibiting specific activities which place this in jeopardy such as: a) propaganda for war; b) incitement to imminent violence; c) and military activities or activities directly supporting military and violent purposes.<sup>183</sup> Refugees in breach of such prohibitions should be dealt with under clear administrative procedures for this purpose or national law. Refugees should be informed of their obligations under camp rules, and refugee and national law, and should be engaged in an active dialogue about peace and in peace education.

- **Securing and protecting the legal rights of refugees**

Recognizing refugees as having clear legal rights in the country of asylum is fundamental to their protection, while the absence of such rights increases their vulnerability. Measures which can improve their legal protection and rights include:

- Providing refugees with individualized and proper legal documentation;<sup>184</sup>
- Ensuring access to prompt and effective legal remedies, should their rights be infringed;
- Providing protection from arbitrary arrest or detention;
- Ensuring that the right to freedom of movement is respected;
- Implementing mass information programmes to inform refugees (as well as local populations) about their rights and obligations, including the obligation to conform to the laws of the country of asylum and abstain from any activity that would detract from the security and neutrality of their camp or settlement;
- *Administration of justice systems* in the camp or settlement should include programmes to facilitate access to legal information and to the domestic legal system, but should also stress effective reporting, complaint, and follow-up mechanisms (including for monitoring purposes, and for provision of the necessary social services, such as to victims for example) as well as procedures for the documentation and statistical recording of crimes. Without these reporting mechanisms and records, it will be difficult to accurately assess the security situation (including with regard to possible militarization, suggestive

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<sup>183</sup> Legitimate activities should also be broadly provided for in camp rules and be generally in compliance with human rights standards, the refugee Convention and domestic provisions in this regard. Denunciation of concrete and demonstrable abuses of human rights should not be considered as subversive.

<sup>184</sup> Women and men, even if part of the same household, should be provided with individual registration or identification cards, as should adolescent children over the age of 15, where this is deemed to enhance their security.

patterns of violence or crime, and particular concerns of specific groups such as women, children and the elderly) and to take appropriate remedial measures, or improve preventive strategies;

- Building, where appropriate, on traditional dispute-resolution mechanisms to resolve intra-group conflicts in the camps.<sup>185</sup>

- **Ensuring that a culture of impunity does not take hold in general or with regard to particular categories of persons** (e.g., camp leaders, security staff, young men or adolescents with regard to certain kinds of crimes, such as SGBV) in refugee-populated areas.

A culture of impunity will result in a culture of fear and mistrust on the part of the general refugee population, and especially vulnerable groups, and lead to a silence and resulting inaction. Such a climate is conducive to abuse and infiltration of military elements.

- **Effective, objective, and safe information channels, as well as reporting and complaint mechanisms** should be part of camp management.
- **Establishing a camp administration system that is participatory and representative**, particularly of women and other vulnerable groups, and which is least likely to be exploited by political factions and armed elements. Dispute resolution strategies and mechanisms should be an integral part of the administration of refugee camps and settlements.
- **Establishing an effective relief distribution system that guarantees the delivery of assistance to refugees** and minimizes the risk of diversion to armed elements. Refugee leaders for example, should never be the conduit for distribution.
- **Constant dialogue and cooperation with local populations and authorities.** In order to ensure effective security around refugee areas, both local authorities and local populations should be engaged in a process of dialogue, awareness raising and sensitization. Trust-building measures between refugees and local populations should also be promoted, and appropriate mediation mechanisms should be in place, should conflicts arise. In addition to increasing security of areas around refugee camps, it is also important to actively promote harmonious relations with local populations, and prevent escalation of conflicts, or potential attacks on refugee camps.
- **Providing a visible and effective government and international presence (e.g. UNHCR protection staff) in and around refugee camps and settlements on an ongoing basis.** This is essential as both a confidence building and security measure for refugees and local populations alike. This presence is an integral aspect of maintaining law and order, and important in order to deter refugees, local criminals or armed elements from undertaking military or other illegal activities (supporting military objectives) inside or close to refugee populated areas. The closer refugee areas are to the border or to localized conflict spots (e.g. conflicts internal to the host country), the more

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<sup>185</sup> However caution should be exercised with regard to such mechanisms, and particularly with respect to practices which are not consistent with general human rights principles (often negatively affecting women and children).

vigilant authorities must remain to these types of activities. UNHCR staff, in particular protection staff, should be located as close as possible to the residences of refugees. Refugees and UNHCR should have easy access to each other.

- **The family provides a fundamental protection function with regard to its individual members**, particularly in situations of displacement. It plays a critical role in protecting children from recruitment, and in many cultures, in protecting young girls and women from sexual abuse. The integrity of refugee families must therefore be protected and everything should be done to restore the unity of the family should it be broken.
- **Expansion of educational opportunities and programmes.** UNHCR and the international community should expand refugee education programmes, particularly at the secondary and tertiary level, so that refugees, especially the youth, are engaged positively and are not manipulated into subversive activities.<sup>186</sup>
- **A Partnership Approach: A strategy of cooperation programmes with national law enforcement authorities.** When the resources of a host state are overwhelmed by security problems in refugee populated areas, cooperation programmes with national law police forces may be necessary.<sup>187</sup> In some situations, supporting government efforts to enhance security in refugee camps and settlements through the use of such cooperative programmes, and more specifically, **security packages**<sup>188</sup> can significantly improve the security situation.

Such security packages generally include both capacity-building (e.g., training), and financial assistance to increase policing in and around refugee camps or settlements. However, these packages are not suitable to all situations or for all purposes, and they

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<sup>186</sup> This was one of the recommendations in the *Summary Pretoria Conclusion, ibid.*

<sup>187</sup> Such special efforts should remain the exception however, as host states have the primary responsibility to ensure the civilian and humanitarian character of refugee camps/settlements, and should only be implemented after a careful assessment of the situation. Such cooperation programmes have already been implemented by UNHCR and the host governments of Kenya and Tanzania. See, UNHCR, High Commissioner's Information Note of 14 January 1999 (EC/49/SC/INF.4), 'The Security, and Civilian and Humanitarian Character of Refugee Camps and Settlements', at para. 13.

<sup>188</sup> The following discussion and concept of the 'security package is based on an initiative in Tanzania to enhance security in refugee camps. The purpose of the package was principally to ensure that the civilian and humanitarian character of refugee camps was maintained, and also to address other issues of law and order in and around the camps. There were allegations that the camps were being used as basis for recruitment and training for Burundian rebel groups, and this threatened the peace process, relations between Tanzania and Burundi, and jeopardized the institution of asylum, as well as placing refugees at risk. Under MOU, UNHCR met the costs of police officers in and around the camps of western Tanzania –prior to this no police officers were present in the camps. UNHCR also provided them with special allowances, equipment, vehicles, accommodation and fuel. Three international field security advisors with policing experience provided training to police and support and monitored their activities. Outside this formal package, an additional security measure was then also established in the form of the appointment of refugee watchmen and women, known as *sungu sungus* –they patrolled the camps, report incidents to the police, and generally assisted in the maintenance of law and order. More background information on this model is provided in: UNHCR, 'Lessons learned from the implementation of the Tanzania security package', by Jeff Crisp, (Evaluation and Policy Unit) May 2001.

should **not be regarded as a stand alone** activity which can solve all the security problems in the refugee camp/settlement. They should be supported by and integrated with the whole range of protection, programme and community services activities.

Another lesson learnt from past security packages is that operational effectiveness consistent with humanitarian principles requires attention to both the *quantity and the quality* of policing, including training in community policing methods, encouraging the deployment of adequate numbers of female police officers, and introducing a code of conduct and corresponding disciplinary action.<sup>189</sup> A **monitoring role** (with the full consent of the authorities) of the basic policing and humanitarian standards being enforced, is also important to the success of these programmes.<sup>190</sup> One must, in addition, have realistic expectations of what can be achieved by means of a security package. Unless the root causes of crime, violence, or the involvement of refugees in military activities are examined and addressed, the problems which the security package is designed to address are certain to persist.<sup>191</sup> Moreover, a security package cannot focus exclusively on control and repression of political activities or it is likely to fail. Repression and control alone cannot enforce neutrality among the refugees. Instead one must seize every opportunity to involve refugees in a constructive dialogue on peace, and provide them with socio-economic and educational alternatives.<sup>192</sup>

In some cases, while security packages improved the operational effectiveness of police, the preservation of law and order, and limited overt politization and militarization of refugee camps and their immediate vicinity, covert military activities in other border areas continued to take place regularly and attempts at separating armed elements/combatants were not very successful. When determining the capacity of security packages to separate or limit the presence of or neutralise armed elements/combatants, many aspects need to be assessed including, legal, practical and political ones, to ensure that serious impediments to their effectiveness do not exist at those levels. For example, as has been demonstrated in past security packages, the lack of a proper legal framework (provisions) and effective administrative and procedural legal measures<sup>193</sup> may mean that combatants or armed /dangerous elements are separated, but then shortly released or simply permitted to 'escape'.

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<sup>189</sup>For more detailed recommendations, see, UNHCR, *Lessons learned from the implementation of the Tanzania security package, ibid.*

<sup>190</sup> UNHCR, High Commissioner's Information Note of 14 January 1999 (EC/49/SC/INF.4), 'The Security, and Civilian and Humanitarian Character of Refugee Camps and Settlements', at para.14. .

<sup>191</sup> In Tanzania it was result of many factors including: poverty of the area, the nature of the conflict in Burundi, hardship and uncertainty of life for refugees in Tanzania, absence of employment or educational opportunities for refugees and the location of the camps in close proximity to the border.

<sup>192</sup> Other observations and lessons learnt with regard to the implementation of security packages are provided in, UNHCR, *Lessons learned from the implementation of the Tanzania security package, ibid.*, as well as in other evaluations by UNHCR.

<sup>193</sup> For example: it may be unclear under what legal provisions persons should be detained or interned; adequate legal provisions may not exist; or authorities in charge of issuing detention orders for instance, may not have the capacity to act effectively in regard to refugee situations, locations, or administrative structures. For instance, where the length of time it takes (weeks or months) to issue a detention order is considered too long by local law enforcement authorities, they may feel compelled to release the person.

## ▪ Establishment of Refugee Watch Systems

Refugee watch systems can provide very **invaluable assistance** to host authorities to help maintain security in the refugee camps or settlements,<sup>194</sup> and are often used to complement security packages. However, their functions and activities should be clearly delimited, and **not** extended to formal law enforcement activities such as making arrests. It is important that refugee watch systems not become a form of unregulated and unmonitored vigilante justice. Refugee watch systems should include **women** (in relevant numbers), and participating refugees should receive basic **training**.<sup>195</sup> In many instances, they may need distinguishing T-shirts or an identity badge, certain equipment (e.g. communication equipment, bicycles etc.) and may receive a symbolic stipend as an incentive. Refugee watch systems also have limitations<sup>196</sup>, which one must remain aware of and try to compensate through other checks and balances.

## IV. SPECIFIC MEASURES RELATED TO RECRUITMENT, AND IN PARTICULAR, CHILD RECRUITMENT

In the context of maintaining the civilian and humanitarian character of asylum, and refugee camps and settlements more specifically, ExCom Conclusion 94 (para. (e)) also calls upon states to ensure that “measures are taken to prevent the recruitment of refugees by government armed forces or organized armed groups, in particular of children, taking into account also that unaccompanied and separated children are even more vulnerable to recruitment than other children.” The following are some factors affecting recruitment in refugee camps or settlements, as well some measures<sup>197</sup> which could be taken:

- In refugee situations, preventing the infiltration of armed elements, providing adequate physical security within and around refugee populated areas, and ensuring that camps/settlements are not located near international borders or areas of internal strife or instability in the host country are **key prevention measures** to avoid the risk of recruitment.
- **Host states** should be reminded that the recruitment of refugees and particularly the enlistment of children for armed and military activities are unlawful, and that they have responsibility to take adequate measures which curb such activities.<sup>198</sup> Where national authorities are unable or unwilling to intervene, the UNHCR mandate

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<sup>194</sup> For instance, refugee watch systems have yielded positive results in Tanzania, Liberia and Ghana, amongst others.

<sup>195</sup> For example, with regard to their permissible areas of activity, relevant procedures for handling or referring cases, basic human rights standards, community ‘policing’ methods, SGBV, militarization issues, and domestic law as well as any camp by laws.

<sup>196</sup> For instances, as members of the general refugee population, they have their own political allegiances and may not always be willing to report on activities of their compatriots. On occasion, they may also report false information in order to incriminate members of rival factions, or be misused by police to make arrests and other functions which they are neither entitled nor trained to carry out. See, UNHCR, *Lessons learned from the implementation of the Tanzania security package, ibid*, at 6.

<sup>197</sup> See also some measures detailed in section 2 of this paper.

<sup>198</sup> In particular, ExCom 94, para. (e) “calls upon states to ensure that measures are taken to prevent the recruitment of refugees by government armed forces or organized armed groups, in particular children, taking into account also that unaccompanied and separated children are even more vulnerable to recruitment than other children”,

requires affirmative action by the agency. It may be necessary for UNHCR to undertake alternative measures to enhance refugee security, such as moving the population to a more secure location, or making an appeal to the international community for assistance to protect refugees from involvement in armed and military conflict.

- **Armed elements** must be **prohibited** from residence in, transit through, or visits to refugee camps or settlements.
- Detailed and accurate **age documentation (and registration)** of the refugee caseload should be maintained to facilitate the identification of children at particular risk of recruitment. **Monitoring** mechanisms should also be put in place, especially for these at risk categories.
- **Children and** adolescents should be kept as close as possible to their families <sup>199</sup>or other care givers, to minimize their exposure to recruitment for armed activities.
- Families, youth, camp leaders and other **persons in regular contact** or in **positions of influence with children** (teachers, sports organizers, clergy) should be **empowered to combat** or prevent any **recruitment** through awareness raising activities /meetings<sup>200</sup> promoting measures to prevent recruitment, and the provision of adequate security in and around the camp/settlement (both to deter recruiters but also to provide immediate assistance to those in fear of recruitment). It should be recognized that under-age recruitment affects girls as well as boys. Preventive strategies should be planned accordingly.
- All military activities, including recruitment, training, and providing other support or aid to combatants should be **explicitly prohibited**. In particular, there should be an absolute prohibition against the recruitment of children for participation in military activities. These prohibitions should be mentioned in camp by laws and refugees should be made aware of their obligation to refrain from involvement in such activities, as well as the risks of militarization to their general and personal security situation. Campaigns to promote awareness and advocate demobilization should target all refugees, and particularly, community and opinion leaders, youth and women (as they often head households, and may be more effective in protecting children from recruitment).
- The holding, trading and bringing of **arms** and weapons into the refugee camp or settlement by unauthorized persons (e.g. refugees, civilians generally, combatants) should also be explicitly prohibited. The existence and tolerance of weapons in the camp /settlement will be used to support forced recruitment, and can in themselves attract young persons to military activities (especially where there is a sense of insecurity in the camp and refugees already feel vulnerable). On disarmament, see also Section 2 above.

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<sup>199</sup> Actions should be taken to prevent family separation. When families are separated, family tracing activities should be undertaken as quickly as possible. When children must be institutionalized for any reason, even temporarily, steps must be taken to safeguard them against recruitment. Foster care may in some situations be a better option than short-term institutionalization. See, ARC, *Child Soldiers*, at 23.

<sup>200</sup> These meetings should be attended by families together with their children, camp authorities and others persons who have regular contact with children and at risk groups. The advice of experts may be necessary but the active involvement of ordinary refugees and refugee leaders is critical to assessing the scope of the problem and effective preventive strategies.

- Care should be taken to prevent places of education from becoming **recruiting grounds**. Also, easy access to adequate food, housing and security should be ensured for children and adolescents to prevent them seeking these resources from armed groups.
- As mentioned above, productive and recreational and productive activities (e.g. education, sports, crafts, vocational skills training, income generation) should be provided for all **sections** of the refugee community. However, it is particularly important to ensure that **at-risk groups**<sup>201</sup> (unaccompanied minors, adolescents, young adults, ex-combatants) have access to positive and *structured activities*. This is especially important in **emergency situations** or where educational facilities do not exist or have been destroyed.<sup>202</sup>
- Where certain **camps** or refugee settlements are **already affected** or likely to be impacted by recruitment, these should be identified (“risk mapping”) and closely monitored, and factors which influence recruitment activities should be determined.
- **Rehabilitation programmes** for child soldiers<sup>203</sup> should be undertaken in co-operation with UNICEF and other agencies with expertise in this field.

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<sup>201</sup> ExCom 94, para. (e).

<sup>202</sup> See ARC, *Child Soldiers*, *ibid*, at 23. As pointed out in ARC, these activities should be community based with responsible adults supervising or involved in the activities. Such activities can help restore a sense of normality and purpose in an otherwise uncertain situation, and also provide the child access to an ‘independent’ adult whom he or she can turn to in time of need. The adult can also play an important role in terms of monitoring the child’s overall situation.

<sup>203</sup> See ExCom 94, para. (c)(viii).