



**Exclusion Indicators in
Refugee Determination
UNHCR Training –Belarus
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OBJECTIVE

To understand when to consider Article 1F of the 1951 Convention by identifying exclusion indicators

INCLUSION AND EXCLUSION CLAUSES

- **Inclusion - Does the applicant meet the elements of the refugee definition?**
- **Exclusion – Even though the applicant meets the refugee definition, he is excluded from protection because:**
 - **He does not need international protection
OR**
 - **He does not deserve international protection**

THE EXCLUSION PROVISIONS – NOT NEEDING/ DESERVING PROTECTION

Not needing protection:

Article D – Persons receiving protection from UN agencies other than UNHCR

Article E – Persons having the rights and obligations of another country

Not deserving protection:

Article 1F - Serious reasons for considering that the person has committed a crime against peace, a war crime, or a crime against humanity; has committed a serious non-political crime; has been guilty of acts contrary to the purposes and principles of the UN

AT WHAT STAGE SHOULD EXCLUSION BE CONSIDERED?

Generally – after inclusion. If applicant does not have a well-founded fear of persecution, there is no need to deal with exclusion

If considering exclusion under Articles D and E, more logical approach may be to consider exclusion first

WHO SHOULD MAKE EXCLUSION DECISIONS?

**UNHCR's Position – Specialized
units within the first instance RSD
procedure**

**Eligibility Officers (EOs) should be
well trained and experienced
caseworkers**

THE EXCLUSION PROVISIONS – NOT DESERVING PROTECTION

Article 1F – There are serious reasons for considering that the person:

- a) Has committed a crime against peace, a war crime, or a crime against humanity**
- b) Has committed a serious non-political crime**
- c) Has been guilty of acts contrary to the purposes and principles of the UN**

EXCLUSION CLAUSES RARELY USED

Art. 1F(a) – Crimes against Peace and

Art. 1F(c) - guilty of acts contrary to
the purposes and principles of the UN

CRIMES AGAINST PEACE

***London Charter* – Contains only definition of a crime against peace**

Crime against peace – arises from the “planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties”

Who can commit a crime against peace? State leaders or persons in high authority within the state

FRAMEWORK OF ANALYSIS FOR WAR CRIMES AND CRIMES AGAINST HUMANITY

- 1. Exclusion indicators**
- 2. Classification of the acts**
- 3. Determination of individually responsibility and consider defences**
- 4. Consideration of proportionality principle**

EXCLUSION INDICATORS

- Previous involvement in military or an armed group that is known to have committed war crimes or crimes against humanity
- Civilian applicants who were associated with organizations that are known to have committed war crimes or crimes against humanity

Need good knowledge of COI and international documents

CLASSIFY THE ACTS – ARE THEY INTERNATIONAL CRIMES?

Determine this from international instruments that make provision for such crimes:

- **1945 Charter of the International Military Tribunal (the London Charter)**
- **1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention)**
- **1949 Four Geneva Conventions for the Protections of Victims of War**
- **1973 International Convention on the Suppression and Punishment of the Crime of Apartheid**
- **1977 Two Additional Protocols to 1949 Geneva Conventions**
- **1984 Convention against Torture**
- **1993 Statute of the International Criminal Tribunal for the former Yugoslavia**
- **1994 Statute of the International Criminal Tribunal for Rwanda**
- **1998 Statute of the International Criminal Court**

WAR CRIMES

Grave breaches of international humanitarian law (the law of war or armed conflict).

Examples:

- **Wilful killing of protected persons such as civilians in the context of the four Geneva Conventions.**
- **Torture or other inhumane treatment**
- **Wilfully causing great suffering or serious injury**
- **Attacks on, or indiscriminate attacks affecting, the civilian population or those known to be *hors de combat***
- **Attacking demilitarized zones**
- **Taking civilians as hostages**
- **Extensive destruction of property not justified by military necessity**
- **Wilfully depriving a prisoner of war or a civilian the right of a fair trial**
- **Employing prohibited weapons such as poisonous gases**

WHO CAN COMMIT WAR CRIMES AND AGAINST WHOM?

- **Both military persons and civilians can commit war crimes.**
- **The victims of war crimes can be both military persons and civilians.**

UNDER WHAT CONDITIONS CAN WAR CRIMES BE COMMITTED?

- **War crimes can be committed during both international and internal armed conflicts.**
- **International armed conflict – a war between two states, either declared or undeclared**
- **Internal armed conflict –**
 - **Fighting between the state and armed groups**
 - **Fighting between or among different armed groups?**

CRIMES AGAINST HUMANITY

Inhumane treatment of a civilian population in the context of a widespread or systematic attack against it.

Examples:

- **Murder**
- **Extermination**
- **Enslavement**
- **Deportation or forcible transfer**
- **Torture**
- **Rape and other forms of sexual violence**
- **Enforced disappearance**
- **Apartheid**
- **Genocide**

WHO CAN COMMIT CRIMES AGAINST HUMANITY?

- **Both military persons and civilians can commit crimes against humanity**
- **The victim is a civilian population**

UNDER WHAT CONDITIONS CAN CRIMES AGAINST HUMANITY TAKE PLACE?

- **CAH can take place during times of peace and during times of war (international and internal armed conflict)**

ARTICLE 1F (b)

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee

FRAMEWORK OF ANALYSIS

- 1. Exclusion indicators**
- 2. Classification of the acts**
- 3. Determination of individually responsibility**
- 4. Consideration of proportionality principle**

EXCLUSION INDICATORS

- **There is evidence of a crime of some substance**
- **Note that it is not necessary that the applicant was convicted of a crime**
- **Note that the crime must be committed outside the country of refuge prior to the applicant's admission to the country as a refugee**

CLASSIFICATION OF THE ACTS

- **Must be “serious non-political crime”**
- **Serious – Not defined but would not be petty crimes. Rather would need to be grave offences such as murder, rape or armed robbery**
- **Non-political – Factors to consider:**
 - **The motivation for the act**
 - **The context in which the offence is committed**
 - **The methods used**
 - **The proportionality of the crime in relation of the objectives**

NON-POLITICAL CRIME (CONTINUED)

- **To be considered “political” in nature, the political objective should be consistent with human rights**
- **Where personal motives predominate over political considerations, the crime will be considered “non-political”**
- **Where there is no clear link between the alleged political objective and the crime OR where the act is disproportionate to the alleged objective, non-political motive predominate**
- **Acts of violence considered to be of a “terrorist” nature will almost always be considered non-political**

1. WHICH OF THE FOLLOWING ARE EXCLUSION INDICATORS?

- The applicant worked for KHAD, the secret police under Najabullah's government in Afghanistan.**
- An extradition warrant has been issued for the applicant.**
- The applicant has several convictions for shop lifting in his country of origin.**
- The applicant did mandatory military service in his country of origin.**
- The applicant worked on a farm owned by Osama Bin Laden.**

CONCLUSION

- **Given implications for applicants who otherwise meet the refugee definition, exclusion must be applied restrictively.**
- **Exclusion triggers indicate that you should explore the case carefully and thoroughly**