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GUIDELINES ON INTERNATIONAL PROTECTION NO. 12:

Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions

UNHCR issues these Guidelines on International Protection pursuant to its mandate, as contained in, inter alia, the *Statute of the Office of the United Nations High Commissioner for Refugees*, namely paragraph 8(a), in conjunction with Article 35 of the *1951 Convention relating to the Status of Refugees*, Article II of its *1967 Protocol*, Article VIII(1) of the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*, and Commitment II(e) of the *1984 Cartagena Declaration on Refugees*.

These Guidelines clarify paragraph 164 of the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention* and otherwise complement the Handbook. They are to be read in conjunction with UNHCR's other Guidelines on International Protection.

These Guidelines, having benefited from broad consultations, are intended to provide legal interpretative guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff carrying out refugee status determination.

UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention* and the *Guidelines on International Protection* are available at: http://www.refworld.org/docid/4f33c8d92.html.

Calls for public consultation on future Guidelines on International Protection will be posted online at: http://www.unhcr.org/544f59896.html.

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I. INTRODUCTION

A. Scope and terminology

1. Situations of armed conflict and violence are today the major causes of refugee movements. The majority of these situations engender political, religious, ethnic, social, or gender persecution. The 1951 Convention relating to the Status of Refugees[1] and/or its 1967 Protocol[2] (1951 Convention) is directly applicable to civilians displaced by situations of armed conflict and violence.

2. The purpose of these Guidelines is to provide substantive and procedural guidance for assessing claims for refugee status involving situations of armed conflict and violence, and to promote consistency in the application of the 1951 Convention and regional refugee definitions.[3]

3. These Guidelines provide guidance in relation to the inclusion aspects of the refugee definitions in:
- Article 1A(2) of the 1951 Convention and its 1967 Protocol (Part II of these Guidelines),
- Article I(2) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa[4] (1969 OAU Convention) (Part III of these Guidelines), and
- Conclusion III(3) of the 1984 Cartagena Declaration on Refugees (Cartagena Declaration) (Part IV of these Guidelines).[5]

The inclusion of the regional refugee definitions in these Guidelines concern their application to claims for refugee status related to situations of armed conflict and violence and is without prejudice to the application of these definitions to other situations.

4. These Guidelines do not address exclusion[6] or cessation,[7] issues related to the civilian and humanitarian character of asylum,[8] or claims related to military service,[9] for which other guidance is available. These Guidelines also do not deal with prima facie recognition of refugee status, which is covered by Guidelines on International Protection No. 11.[10] However, they do deal with the relationship between the 1951 Convention refugee definition and the regional refugee definitions, including which approaches can be used in applying the various definitions (paragraphs 86 to 88 of these Guidelines). The Guidelines focus on refugee status and do not address specifically subsidiary or complementary forms of international protection.[11]

5. For the purpose of these Guidelines, the phrase "situations of armed conflict and violence" refers to situations that are marked by a material level or spread of violence that affects the civilian population. Such situations may involve violence between state and non-state actors, including organized gangs,[12] and violence between different groups in society. Further, such situations may include violence between two or more states, between states and non-state armed groups, or between various non-state armed groups. Any particular classification of an armed group, for example as criminal or political, is not necessary or determinative for the purpose of refugee status determination. Further, while in some circumstances situations of armed conflict and violence referred to in these Guidelines may be categorized as an international (IAC)[13] or a non-international (NIAC)[14] armed conflict within the meaning of

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[1] *Convention Relating to the Status of Refugees* (28 July 1951) 189 UNTS 137 (1951 Convention), http://www.refworld.org/docid/3be01b964.html.
[2] *Protocol Relating to the Status of Refugees* (31 January 1967) 606 UNTS 267 (1967 Protocol), http://www.refworld.org/docid/3ae6b3ae4.html.
[3] For further information on the background to and reasons for developing these Guidelines, UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, ("UNHCR Cape Town Summary Conclusions"), http://www.refworld.org/docid/50d32e5e2.html.
[4] *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* (10 September 1969) 1001 UNTS 45 (1969 OAU Convention),http://www.refworld.org/docid/3ae6b36018.html.
[5] *Cartagena Declaration on Refugees*, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, (Cartagena Declaration), http://www.refworld.org/docid/3ae6b36ec.html. The 1984 Cartagena Declaration is not a treaty within the meaning of Article 1(a) of the *1969 Vienna Convention on the Law of Treaties* (23 May 1969) 1155 UNTS 331.
[6] UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, http://www.refworld.org/docid/3f5857684.html. See also, UNHCR, *Guidelines on the Application in Mass Influx Situations of the Exclusion Clauses of Article 1F of the 1951 Convention relating to the Status of Refugees*, 7 February 2006, http://www.refworld.org/docid/43f48c0b4.html.
[7] UNHCR, *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses)*, 10 February 2003, HCR/GIP/03/03, http://www.refworld.org/docid/3e50de6b4.html.
[8] EXCOM Conclusion No. 94 (LIII), 2002, para. (c)(viii). UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, http://www.refworld.org/docid/452b9bca2.html.
[9] UNHCR, *Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, 3 December 2013, HCR/GIP/13/10/Corr. 1, ("UNHCR Military Service Guidelines"), http://www.refworld.org/docid/529ee33b4.html.
[10] UNHCR, *Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status*, 24 June 2015, HCR/GIP/15/11, ("UNHCR Prima Facie Recognition Guidelines"), http://www.refworld.org/docid/555c335a4.html.
[11] Paragraph 9 of these Guidelines contains a reference to the relationship between the 1951 Convention and subsidiary protection status under European Union (EU) law.
[12] UNHCR, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 31 March 2010 ("UNHCR Gangs Guidance Note"), http://www.refworld.org/docid/4bb21fa02.html.
[13] Common Article 2(1) of the 1949 Geneva Conventions, including the *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, http://www.refworld.org/docid/3ae6b36d2.html and Article 1(4) of *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3, ("Protocol I to the Geneva Conventions"), http://www.refworld.org/docid/3ae6b36b4.html. See also, International Committee of the Red Cross (ICRC), *How is the Term "Armed Conflict" Defined in International Humanitarian Law?*, March 2008, pp 1 to 3, http://www.refworld.org/docid/47e24eda2.html and International Committee of the Red Cross (ICRC), *International humanitarian law and the challenges of contemporary armed conflicts*, October 2016, 32IC/15/11, http://www.refworld.org/docid/58047a764.html.
[14] Common Article 3 of the 1949 Geneva Conventions, including the Fourth Geneva Convention, note 13 above, and Article 1 of *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 UNTS

international humanitarian law (IHL), such categorization is not required for the purpose of refugee status determination.[15] Many situations of armed conflict and violence are not designated as an armed conflict for IHL purposes, yet the means employed and their consequences may be just as violent or harmful. Other labels – such as a situation of generalized[16] or indiscriminate[17] violence – have also been used by decision-makers to describe situations of armed conflict and violence. Regardless of such characterizations, the method of assessing the claim to refugee status is the same – a full and inclusive application of the refugee definition to the situation at hand is required, as is set out in these Guidelines.

B. The relationship between the 1951 Convention/1967 Protocol refugee definition and the regional definitions, and EU subsidiary protection

6. Regional refugee instruments, such as the 1969 OAU Convention and the Cartagena Declaration, complement the 1951 Convention/1967 Protocol, which remain the universal and primary legal protection instruments for refugees.[18] Each regional instrument incorporates the 1951 Convention definition of a refugee and also elaborates so-called broader refugee criteria (referred to as "regional definitions"). A principal purpose of both the 1969 OAU Convention and the Cartagena Declaration is to provide refugee protection in specific humanitarian situations, including large-scale arrivals of people fleeing specific situations or circumstances in their country of origin.[19]

7. Certain factual scenarios may suggest the relevance and applicability of both the 1951 Convention definition and one of the regional definitions to an individual claim for refugee status and raise questions concerning which definition to apply (see paragraphs 86 to 88 of these Guidelines). In other situations, an individual may be a refugee under one of the regional definitions but not under the 1951 Convention definition, including where no causal link can be established between her or his fear of being persecuted and a Convention ground. In such circumstances, the regional definitions expand the range of individuals eligible to benefit from refugee status.

8. While the two regional definitions differ slightly in wording, the types of situations or circumstances they refer to and are intended to cover can be largely assimilated. Further, although the regional definitions are detailed, neither of the regional instruments was intended to provide an all-encompassing definition for every situation in which persons are compelled to leave their countries of origin and cross an international border. As far as rights are concerned, the 1951 Convention and the regional instruments each recognize a person as a refugee and provide for 1951 Convention rights to be applied.[20] Therefore, in most cases, the particular definition pursuant to which the person is recognized as a refugee will not be of material consequence. For the purposes of legal certainty, however, a proper interpretation of each definition is necessary, with a sequential approach to adjudication being recommended (see paragraphs 86 to 88 of these Guidelines). Decision-makers also need to bear in mind that the regional protection systems are intended to be implemented in a manner that complements and strengthens the 1951 Convention regime.[21]

EU subsidiary protection

9. The EU Qualification Directive (recast) provides for subsidiary protection that is complementary to refugee protection envisaged by the 1951 Convention/1967 Protocol.[22] It applies to those who do not qualify as refugees but face a real risk of suffering serious harm, inter alia, when there is a 'serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict'.[23] Certain factual situations may give rise to an overlap between

609, ("Protocol II to the Geneva Conventions"), http://www.refworld.org/docid/3ae6b37f40.html. See also, International Committee of the Red Cross (ICRC) 2008, note 13 above, pp 3 to 5 and International Committee of the Red Cross (ICRC) 2016, note 13 above.

[15] By analogy, this is the position taken by the Court of Justice of the European Union (CJEU) with regard to the meaning of internal armed conflict in the EU Qualification Directive, in *Aboubacar Diakité v. Commissaire général aux réfugiés et aux apatrides*, C-285/12, European Union: Court of Justice of the European Union, 30 January 2014, para. 23, http://www.refworld.org/docid/52ea51f54.html. The CJEU considered that 'while [IHL] is designed, inter alia, to provide protection for civilian populations in a conflict zone by restricting the effects of wars on persons and property, it does not … provide for international protection to be granted to certain civilians who are outside both the conflict zone and the territory of the conflicting parties'.

[16] See paragraph 71 to 73 of these Guidelines.

[17] In the European Union, in the context of international protection, the term 'indiscriminate violence' is used in Article 15c of the EU Qualification Directive (recast). According to the CJEU indiscriminate violence 'implies that it may extend to people irrespective of their personal circumstances', in *Elgafaji v. Staatssecretaris van Justitie*, C-465/07, European Union: Court of Justice of the European Union, 17 February 2009, para. 34, http://www.refworld.org/docid/499aaee52.html.

[18] EXCOM Conclusion No. 87 (L) 1999, para. (f) and EXCOM Conclusion No. 89 (LI) 2000. See also, 1969 OAU Convention, note 4 above, ninth preambular paragraph, referring to the 1951 Convention and the 1967 Protocol as the basic and universal instrument for the protection of refugees.

[19] UNHCR Prima Facie Recognition Guidelines, note 10 above, para. 5.

[20] The 1969 OAU Convention accepts the rights in the 1951 Convention as applicable to refugees recognized under the 1969 OAU Convention, see 1969 OAU Convention, note 4 above, tenth preambular paragraph and Article VIII(2). See also, M Sharpe, "The 1969 African Refugee Convention: Innovations, Misconceptions, And Omissions", *McGill Law Journal* (2012) 58, p 126 to 145. The Cartagena Declaration also accepts the rights in the 1951 Convention as applicable to refugees recognized in accordance with Conclusion III(3) and also expressly calls upon countries in the region to apply the 1969 American Convention on Human Rights for the treatment of refugees and for countries to acknowledge that reunification of families constitutes a fundamental principle, see Cartagena Declaration, note 5 above, Conclusion III(1), III(8) and III(13).

[21] EXCOM Conclusion No. 89 (LI), 2000 and EXCOM Conclusion No. 103 (LVI), 2005, including para. (b).

[22] European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L 337; December 2011, pp 9-26, preamble, recital 33, http://www.refworld.org/docid/4f197df02.html ("EU Qualification Directive (recast)"). The CJEU acknowledged the two distinct systems of protection in *Salahadin Abdulla and Others v. Bundesrepublik Deutschland*, C-175/08; C-176/08; C-178/08 & C-179/08, European Union: Court of Justice of the European Union, 2 March 2010, para. 78, http://www.refworld.org/docid/4b8e6ea22.html. See also, EXCOM Conclusion No. 103 (LVI), 2005, paras. (b), (i) and (k).

[23] EU Qualification Directive (recast), note 22 above, Article 2(f), according to which a "person eligible for subsidiary protection" means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of

the criteria for refugee protection in accordance with the 1951 Convention and subsidiary protection. Because of the primacy of refugee protection and the limitation that subsidiary protection only applies to persons who do not qualify as refugees, claims related to situations of armed conflict and violence must first be assessed in accordance with the criteria for refugee protection. Only when the applicant does not qualify for refugee status, should the claim be assessed in accordance with the criteria for subsidiary protection.[24]

II. SUBSTANTIVE ANALYSIS OF ARTICLE 1A(2) OF THE 1951 CONVENTION

10. In accordance with the ordinary meaning to be given to the terms and in light of the context as well as the object and purpose of the 1951 Convention,[25] Article 1A(2) applies to persons fleeing situations of armed conflict and violence. In fact, the 1951 Convention definition of a refugee makes no distinction between refugees fleeing peacetime or "wartime" persecution. The analysis required under Article 1A(2) focusses on a well-founded fear of being persecuted for one or more of the Convention grounds. The phrase, 'persons compelled to leave their country of origin as a result of international or national armed conflicts are not normally considered refugees under the 1951 Convention or 1967 Protocol', contained in paragraph 164 of the UNHCR Handbook needs to be understood as limited to situations where there is no causal link between a person's well-founded fear of being persecuted and a 1951 Convention ground.

A. A well-founded fear of being persecuted

11. Threats to life or freedom and other serious human rights violations can constitute persecution for the purposes of the 1951 Convention refugee definition.[26] In addition, lesser forms of harm may cumulatively constitute persecution.[27] Discrimination will amount to persecution where the effect leads to a situation that is intolerable or substantially prejudicial to the person concerned.[28] Likewise, conduct amounting to serious violations of IHL can constitute persecution (see paragraphs 14 and 15 of these Guidelines).[29] What amounts to persecution will also depend on the circumstances of the individual, including the age, gender, opinions, health, feelings and psychological make-up of the applicant.[30]

12. The standards mentioned in paragraph 11 above should be applied no differently in the context of persons fleeing situations of armed conflict and violence. No higher level of severity or seriousness of the harm is required for the harm to amount to persecution in situations of armed conflict and violence compared to other situations, nor is it relevant or appropriate to assess whether applicants would be treated any worse than what may ordinarily be "expected" in situations of armed conflict and violence. The overall context of a situation of armed conflict and violence can compound the effect of harms on a person, giving rise in certain circumstances to harm that amounts to persecution. Protracted situations of armed conflict and violence, for example, can have serious deleterious effects on the physical and psychological health of applicants or their personal development, which would need to be evaluated, taking into account their character, background, position in society, age, gender, and other factors.[31]

13. Situations of armed conflict and violence frequently involve exposure to serious human rights violations or other serious harm amounting to persecution. Such persecution could include, but is not limited to, situations of genocide[32] and ethnic cleansing;[33] torture and other forms of inhuman or degrading treatment;[34] rape and other forms of sexual violence;[35] forced recruitment, including of children;[36] arbitrary arrest and detention; hostage taking and enforced or arbitrary disappearances; and a wide range of other forms of serious harm resulting from circumstances mentioned, for example, in paragraphs 18 and 19 of these Guidelines.

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suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country'. Serious harm as defined in Article 15 of the EU Qualification Directive (recast) consists of: '(a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.'

[24] *H. N. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-604/12, European Union: Court of Justice of the European Union, 8 May 2014, para. 35, http://www.refworld.org/docid/5375e84f4.html. It would be at variance with the Common European Asylum System, the Treaty of the European Union and the 1951 Convention when subsidiary protection criteria would be applied first, because, for example, of the comparatively or perceived easier task of establishing the existence of violence and conflict through generally-available country of origin information than a well-founded fear of being persecuted for one or more Convention grounds.

[25] EXCOM Conclusion No. 103 (LVI), 2005, para. (c).

[26] UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, para. 51, http://www.refworld.org/docid/4f33c8d92.html ("UNHCR Handbook").

[27] *Ibid.*, para. 53.

[28] *Ibid.*, para. 54.

[29] UNHCR, *Expert Meeting on Complementarities between International Refugee Law, International Criminal Law and International Human Rights Law: Summary Conclusions*, July 2011, paras. 13-21, ("UNHCR Arusha Summary Conclusions"), http://www.refworld.org/docid/4e1729d52.html.

[30] UNHCR Handbook, note 26 above, paras. 52 and 55.

[31] *Ibid.*, para. 43. UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, para. 10, http://www.refworld.org/docid/4b2f4f6d2.html.

[32] *Convention on the Prevention and Punishment of the Crime of Genocide* (9 December 1948) 78 UNTS 277, http://www.refworld.org/docid/3ae6b3ac0.html. Article 6, *Rome Statute of the International Criminal Court* (1 July 2002) 2187 UNTS 3, ("Rome Statute ICC"), http://www.refworld.org/docid/3ae6b3a84.html.

[33] Ethnic cleansing is defined as 'a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas', UN Security Council, *Report of the Commission of Experts Established Pursuant to United Nations Security Council Resolution 780 (1992)*, 27 May 1994, s/1994/674, http://www.refworld.org/docid/582060704.html.

[34] See, inter alia, Article 7, *International Covenant on Civil and Political Rights* (16 December 1966) 999 UNTS 171, (ICCPR), http://www.refworld.org/docid/3ae6b3aa0.html and *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (10 December 1984) 1465 UNTS 85, http://www.refworld.org/docid/3ae6b3a94.html.

[35] See paragraphs 26 and 27 of these Guidelines.

[36] UNHCR Military Service Guidelines, note 9 above, paras. 35 and 37 to 41 ("unlawful child recruitment").

Relevance of international humanitarian and criminal law

14. Many of the aforementioned human rights violations and other serious harm may also constitute war crimes when committed in the context of and associated with an armed conflict within the meaning of IHL, and/or, crimes against humanity when part of a widespread or systematic attack against a civilian population.[37] Deportations and forcible transfer or displacement, sometimes in the form of ethnic cleansing or genocide, can also amount to war crimes when committed in the context of and associated with an armed conflict within the meaning of IHL, and, crimes against humanity when part of a widespread or systematic attack against a civilian population.[38]

15. For the purposes of determining refugee status, the existence of violations of IHL can be informative but not determinative of whether conduct amounts to persecution within the meaning of the 1951 Convention. An applicant cannot be expected to establish that there has been the commission of either an IHL violation or an international crime in order for a decision-maker to reach a finding that a particular kind of harm constitutes persecution.[39] Nor are the criteria for the crime against humanity of persecution, as defined in international criminal law,[40] applicable to refugee status determination. International criminal courts and tribunals are primarily concerned with harm committed in the past for the purposes of criminal prosecution; their mandate does not cover the broader humanitarian purpose of providing international protection to civilians. Relying on IHL or international criminal law in their strictest sense to determine refugee status could undermine the international protection objectives of the 1951 Convention, and leave outside its protection persons who face serious threats to their life or freedom.[41] Moreover, even if certain conduct is not prohibited under IHL or international criminal law, it does not change the fact that for international refugee law purposes, such conduct may constitute persecution.[42]

Relevance of derogations under international human rights law

16. States parties to relevant human rights treaties may derogate from a limited number of human rights in times of public emergency threatening the life of the nation.[43] Where a lawful state of emergency exists, non-securement of derogable rights may not necessarily constitute persecution if the adopted measures are strictly required by the exigencies of the situation.[44] However, to determine a claim to refugee status by an applicant who has fled such a situation, the overall circumstances of the case need to be assessed. A state of emergency may be unlawful or involve measures that are not strictly required by the exigencies of the situation or involve measures affecting non-derogable rights.

Individual and group-based risks

17. In situations of armed conflict and violence, an applicant may be at risk of being singled out or targeted for persecution. Equally, in such situations, entire groups or populations may be at risk of persecution, leaving each member of the group at risk.[45] The fact that many or all members of particular communities are at risk does not undermine the validity of any particular individual's claim.[46] The test is whether an individual's fear of being persecuted is well-founded. At times, the impact of a situation of armed conflict and violence on an entire community, or on civilians more generally, strengthens rather than weakens the well-founded nature of the fear of being persecuted of a particular individual.[47]

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[37] Rome Statute ICC, note 32 above, Articles 7 and 8.

[38] UNHCR Arusha Summary Conclusions, note 29 above, paras. 9 and 10. Please note that in the context of an international armed conflict within the meaning of IHL, evacuations may take place for security or imperative military reasons in accordance with Article 49 of *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)*, 12 August 1949, 75 UNTS 31, http://www.refworld.org/docid/3ae6b3694.html. In the context of a non-international armed conflict, see Article 17 of Protocol II to the Geneva Conventions, note 14 above.

[39] For example, the requirements of discriminatory intent and that the crime be part of a widespread or systematic attack against a civilian population in international criminal law are not required by international refugee law, see UNHCR Arusha Summary Conclusions, note 29 above, para. 15.

[40] Rome Statute ICC, note 32 above, Article 7(1)(h).

[41] UNHCR Arusha Summary Conclusions, note 29 above, para. 15.

[42] Such conduct may, for example, amount to serious human rights violations. International human rights law does not cease to apply during situations of armed conflict, save in part through the effect of provisions for derogation of the kind to be found, for example, in Article 4 ICCPR, note 34 above. See, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, International Court of Justice (ICJ), 8 July 1996, para. 15, http://www.refworld.org/docid/4b2913d62.html; *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 9 July 2004, para. 106, http://www.refworld.org/docid/414ad9a719.html; and UN Human Rights Committee (HRC), *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 11, http://www.refworld.org/docid/478b26ae2.html. See also, *AF (Syria)*, [2012] NZIPT 800388, New Zealand: Immigration and Protection Tribunal, 20 December 2012, paras. 45 to 49, http://www.refworld.org/docid/54c127434.html.

[43] ICCPR, note 34 above, Article 4. Also, UN Human Rights Committee (HRC), *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001, CCPR/C/21/Rev.1/Add.11, ("HRC General Comment 29"), http://www.refworld.org/docid/453883fd1f.html, states may only derogate against specifically identified rights, and can only do so to the extent strictly required by the exigencies of the situation, must be consistent with other obligations under international law and may not be based on or result in discrimination. The measures adopted must be proportionate and of temporary duration, and the relevant human rights body needs to be notified of the derogation. At the regional level, derogation clauses are provided for in Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, Article 15, (ECHR), http://www.refworld.org/docid/3ae6b3b04.html and the Organization of American States (OAS), *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969, Article 27, (American Convention on Human Rights), http://www.refworld.org/docid/3ae6b36510.html.

[44] *MS (Coptic Christians) Egypt CG v Secretary of State for the Home Department*, [2013] UKUT 00611 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 3 December 2013, para. 120, http://www.refworld.org/docid/52a5b86e4.html.

[45] The risk of harm as a result of exceptionally high levels of violence to the general population was addressed by the European Court of Human Rights in, inter alia, *Sufi and Elmi v. United Kingdom*; Applications nos. 8319/07 and 11449/07, Council of Europe: European Court of Human Rights, 28 June 2011, http://www.refworld.org/docid/4e09d29d2.html and *L.M. and Others v. Russia*, Applications nos. 40081/14, 40088/14 and 40127/14, Council of Europe: European Court of Human Rights, 15 October 2015, http://www.refworld.org/docid/561f770f4.html.

[46] UNHCR, *Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees*, April 2001, para. 21, http://www.refworld.org/docid/3b20a3914.html.

[47] According to the European Court of Human Rights: 'in relation to asylum claims based on a well-known general risk, when information about such a risk is freely ascertainable from a wide number of sources, the obligations incumbent on the States under Articles 2 and 3 of the Convention in expulsion cases entail

18. In situations of armed conflict and violence, whole communities may be affected by, and be at risk from, aerial bombardments, the use of cluster munitions, barrel bombs or chemical weapons, artillery or sniper fire, improvised explosive devices, landmines, car bombs or suicide bombers, or siege tactics, for example. The systematic denial of food and medical supplies, the cutting of water supplies and electricity, the destruction of property or the militarization or closure of hospitals and schools may also constitute serious human rights or IHL violations that affect whole communities.[48] Exposure to such actions can amount to persecution within the meaning of Article 1A(2) of the 1951 Convention, either independently or cumulatively.

19. Both the direct and indirect consequences of situations of armed conflict and violence may also constitute persecution, including long-term consequences of these situations, such as demolition of vital infrastructure, insecurity and abject poverty. More specifically, situations of armed conflict and violence may seriously affect the rule of law as well as state and societal structures and support systems. Situations of armed conflict and violence may lead to a full or partial collapse of government institutions and services, political institutions and the police and justice system. Vital services such as water, electricity and sanitation may be disrupted. Increased crime levels; looting and corruption; food insecurity, malnourishment or famine; constraints on access to education and health care; serious economic decline, destruction of livelihoods and poverty may also ensue. These consequences of situations of armed conflict and violence may be sufficiently serious, either independently or cumulatively, to constitute persecution and create a well-founded fear of being persecuted. This is also relevant where the risk of persecution emanates from non-state actors (see paragraphs 28 to 30 of these Guidelines).

20. Other factors to take into account include propaganda that may create or contribute to an oppressive atmosphere of intolerance vis-à-vis one or more groups, and promote or lead to a risk of persecution.[49]

Degree of risk

21. A person's fear of persecution is well-founded if it can be established, to a reasonable degree, that her or his continued stay in the country of origin has become, or would become, intolerable.[50] This does not require a probability calculus,[51] based, for example, on the number of people killed, injured or displaced, but requires an analysis of both quantitative and qualitative information assessed against the applicant's circumstances (see paragraphs 89 to 92 of these Guidelines on establishing the facts).

No differential risk

22. As mentioned in paragraph 17 of these Guidelines, a person may have a well-founded fear of persecution that is shared by many others, and of a similar or same degree.[52] An applicant fleeing a situation of armed conflict and violence is not required to establish a risk of harm over and above that of others similarly situated (sometimes called a "differential test").[53] No higher level of risk is required to establish a well-founded fear of persecution in situations of armed conflict and violence compared to other situations.

23. Further, some courts have referred to a "differential risk" in order to emphasize the requirement for a causal link between the risk (i.e. well-founded fear of persecution) and the reasons for persecution (i.e. one or more Convention grounds). However, such phrasing can lead to conflation of the risk element with the causal link requirement – addressed in paragraphs 32 and 33 of these Guidelines – and is not in keeping with a proper application of the 1951 Convention definition of a refugee.[54]

Forward-looking assessment of risk

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that the authorities carry out an assessment of that risk of their own motion', see: *F.G. v. Sweden*, Application no. 43611/11, Council of Europe: European Court of Human Rights, 23 March 2016, para. 126, http://www.refworld.org/docid/56fd485a4.html.

[48] Relevant criteria to assess the intensity of a conflict were formulated by the United Kingdom, Asylum and Immigration Tribunal / Immigration Appellate Authority, in: *AM & AM (Armed Conflict: Risk Categories) Somalia v. Secretary of State for the Home Department*, [2008] UKAIT 00091, United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, 27 January 2009, http://www.refworld.org/docid/4934f7542.html and repeated by the European Court of Human Rights in *Sufi and Elmi v. United Kingdom*, note 45 above, para. 241 and *L.M. and Others v. Russia*, note 45 above, para. 121.

[49] For example, in Rwanda in 1994, Tutsi women were portrayed in Hutu controlled media outlets as 'seductive agents of the enemy', thereby 'articulat[ing] a framework that made the sexual attack of Tutsi women a foreseeable consequence of the role attributed to them', see *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze (Judgement and Sentence)*, ICTR-99-52-T, International Criminal Tribunal for Rwanda (ICTR), 3 December 2003, para. 1079, http://www.refworld.org/docid/404468bc2.html.

[50] UNHCR Handbook, note 26 above, para. 42.

[51] *Immigration and Naturalization Service v. Cardoza-Fonseca*, 480 U.S. 421; 107 S. Ct. 1207; 94 L. Ed. 2d 434; 55 U.S.L.W. 4313, United States Supreme Court, 9 March 1987, http://www.refworld.org/docid/3ae6b68d10.html, in dismissing a calculus Stevens J. considered: 'The High Commissioner's analysis of the United Nations' standard is consistent with our own examination of the origins of the Protocol's definition, as well as the conclusions of many scholars who have studied the matter. There is simply no room in the United Nations' definition for concluding that because an applicant only has a 10% chance of being shot, tortured, or otherwise persecuted, that he or she has no "well-founded fear" of the event happening.'

[52] *Surajnarain and Others v. Minister of Citizenship and Immigration*, 2008 FC 1165, Canada: Federal Court, 16 October 2008, para. 17, http://www.refworld.org/docid/497f3bdc2.html.

[53] *Minister for Immigration and Multicultural Affairs v. Haji Ibrahim*, [2000] HCA 55, Australia: High Court, 26 October 2000, http://www.refworld.org/docid/3deb737f7.html, paras. 66 and 70. The 'differential test' test was considered by Lord Lloyd of Berwick in *R v. Secretary of State for the Home Department, Ex parte Adan*, CO/872/98, United Kingdom: House of Lords (Judicial Committee), 2 April 1998, http://www.refworld.org/docid/3ae6b6c914.html. See also *AM & AM (Armed Conflict: Risk Categories) Somalia v. Secretary of State for the Home Department*, note 48 above, para. 72.

[54] *Refugee Appeal No. 71462/99, Tamil and a Citizen of the Democratic Socialist Republic of Sri Lanka v. Refugee Status Branch of the New Zealand Immigration Service*, 71462/99, New Zealand: Refugee Status Appeals Authority, 27 September 1999, http://www.refworld.org/docid/3ae6b73cc.html.

24. The 1951 Convention protects those who – at the time of the decision – are at risk of persecution in their country of origin, regardless of whether they have already suffered persecution. A decision on whether a person has a well-founded fear of being persecuted requires a forward-looking assessment of all relevant facts of the case (see paragraphs 89 to 92 of these Guidelines). Absent a relevant change of circumstances, persons having suffered persecution in the past would be assumed to be at continued risk of persecution.[55]

25. When assessing the risk, it is important to take into account the fluctuating character of many contemporary situations of armed conflict and violence. Changing levels of violence or control over territories and populations are common in situations of armed conflict and violence. For example, even if the level of violence at the time of decision-making is relatively low, over time the situation of armed conflict and violence may change, increasing the degree of risk establishing a well-founded fear. There may be reasons for the lower level of violence at a particular moment in time, such as when the parties are regrouping or re-strategizing, or a temporary ceasefire has been agreed. Similarly, even if violence has not yet broken out in a particular part of the country, it may be foreseeable that the violence will spread there, taking into account the overall context and history of the situation of armed conflict and violence, the trajectory and mapping of the violence, the power dynamics at play and other conditions in the applicant's country of origin. The effects of past violence may also still rise to the level of persecution, despite a temporary suspension of hostilities, and need to be assessed carefully. In addition, the implementation of peace and demobilization agreements may lead to new armed actors filling vacuums of power, or to the consolidation of groups composed of former members who have not disarmed and reintegrated into society. This also requires a detailed analysis that constantly evolves in response to local developments in the country of origin.

Sexual and gender-related persecution

26. Sexual and gender-based violence, including rape, human trafficking, sexual slavery and conjugal slavery/forced marriage, are common forms of persecution in many situations of armed conflict and violence.[56] Sexual and gender-based violence may be used as an unlawful and criminal tactic, strategy or policy during situations of armed conflict and violence, in order to overwhelm and weaken the adversary directly or indirectly, by victimizing women and girls and/or men and boys.[57] Irrespective of the motivation of the individual perpetrator, sexual and gender-based violence may form part of a deliberate military or political strategy to debase, humiliate, terrorize or destroy civilian populations in pursuit of broader goals, or rooted in gender-related and other forms of discrimination, thus linking it to one or more of the Convention grounds.[58]

27. For many victims of sexual and gender-based violence, torture and other acts of bodily harm and psychological trauma, the harm may continue long after the initial violent act was committed and the situation of armed conflict and violence has ended. They may be at risk of repeated harm[59] and/or the psychological consequences of their experiences may themselves amount to persecution,[60] in particular when people have suffered from particular egregious harm that makes return to the country of origin intolerable even if there is no future risk of further harm.[61]

Agents of persecution

28. In a situation of armed conflict and violence, persecution may emanate from state or non-state actors, and from one or more sides involved in the situation of armed conflict and violence.[62] Refugee status can be warranted in the case of persons at risk of harm from actors on both or all sides of these situations. Agents of persecution may include the state's armed forces, its law enforcement agents or security forces

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[55] UNHCR Handbook, note 26 above, para. 45.

[56] UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, para. 9, ("UNHCR Gender-Persecution Guidelines"), http://www.refworld.org/docid/3d36f1c64.html. UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, para. 20, ("UNHCR Sexual-Orientation and/or Gender Identity Guidelines"), http://www.refworld.org/docid/50348afc2.html. Rape, for example, was considered a serious human rights violation constituting persecution in: *SS (Adan - Sexual Violence - UNHCR Letter) Burundi v. Secretary of State for the Home Department*, CG [2004] UKIAT 00290, United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, 29 October 2004, para. 16, http://www.refworld.org/docid/46836b180.html. UN Secretary-General (UNSG), *Sexual violence in conflict: report of the Secretary-General*, 14 March 2013, A/67/792-S/2013/149, ("UNSG Report sexual violence in conflict"), http://www.refworld.org/docid/5167bd0f4.html.

[57] See, for example, *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao (the RUF accused) (Trial judgment)*, Case No. SCSL-04-15-T, Special Court for Sierra Leone, 2 March 2009, para. 1347, http://www.refworld.org/docid/49b102762.html. *In re B (FC) (Appellant) (2002). Regina v. Special Adjudicator, Ex parte Hoxha (FC)*, [2005] UKHL 19, United Kingdom: House of Lords (Judicial Committee), 10 March 2005, para. 30, http://www.refworld.org/docid/423ec7784.html. Security Council, *Security Council resolution 2106 (2013) [on sexual violence in armed conflict]*, 24 June 2013, S/RES/2106 (2013), para. 1, http://www.refworld.org/docid/51d6b5e64.html.

[58] UNHCR Cape Town Summary Conclusions, note 3 above, paras. 25 and 26. UNSG Report sexual violence in conflict, note 56 above, para. 5.

[59] *Matter of A-T-*, 25 I&N Dec. 4 (BIA 2009), United States Board of Immigration Appeals, 4 June 2009, http://www.refworld.org/docid/4a293b4a2.html. *Bah v. Y-, Diallo v. Department of Homeland Security, Diallo v. Department of Homeland Security*, 529 F.3d 99, 103 (2d Cir. 2008), United States Court of Appeals for the Second Circuit, 11 June 2008, http://www.refworld.org/docid/48d8a32c2.html.

[60] *In re B (FC) (Appellant) (2002). Regina v. Special Adjudicator, Ex parte Hoxha (FC)*, note 57 above, para. 36, in which Baroness Hale of Richmond considered: '[t]o suffer the insult and indignity of being regarded by one's own community as 'dirty like contaminated' because one has suffered the gross ill-treatment of a particularly brutal and dehumanising rape … is the sort of cumulative denial of human dignity which … is quite capable of amounting to persecution.'

[61] *In re Y-T-L-*, 23 I&N Dec. 601 (BIA 2003), United States Board of Immigration Appeals, 22 May 2003, p 607, http://www.refworld.org/docid/40449fa94.html. *Khadija Mohammed v. Alberto R. Gonzales, Attorney General; Khadija Ahmed Mohamed v. Alberto R. Gonzales, Attorney General*, A79-257-632; 03-72265; 03-70803, United States Court of Appeals for the Ninth Circuit, 10 March 2005, pp 3085 to 3086, http://www.refworld.org/docid/423811c04.html. UNHCR, *UNHCR intervention before the House of Lords in the case of Zainab Esther Fornah (Appellant) v. Secretary of State for the Home Department (Respondent)*, 14 June 2006, para. 24(2), http://www.refworld.org/docid/45631a0f4.html.

[62] UNHCR Handbook, note 26 above, para. 65.

or other state organs or groups, and individuals for whom the state is responsible or whose conduct can be attributed to the state.[63] The state may empower, direct, control, support or tolerate the activities of so-called non-state actors, such that their actions can in some instances be attributable to the state.[64] Agents of persecution also include non-state actors such as paramilitary groups, militias, insurgents, bandits, pirates, criminal gangs or organizations,[65] terrorist organizations, private military or security companies, or other groups or individuals engaging in situations of armed conflict and violence. An analysis of these actors should take into account that their character may shift from one of these categories to another or defy categorization altogether. Non-state actors may also include neighbours, family members and other individuals.

29. In many situations of armed conflict and violence, the division between state and non-state actors is not always clear, especially as power shifts, situations overlap and alliances change, or where non-state actors penetrate or corrupt state institutions and/or law enforcement agencies or the state's armed forces.[66] The uncertainty during an attempted, ongoing or successful *coup d'état*, for example, can also blur such distinctions. However, it is not crucial to determine precisely from whom the feared harm may emanate; as long as a threat is established, it will be sufficient for determining a well-founded fear of persecution.

30. In cases involving non-state actors or unidentified actors, it is necessary to review the extent to which the state is able and/or willing to provide protection against persecution.[67] The particularities of the situation of armed conflict and violence will be relevant, since the state may be prevented from extending protection to affected populations, for example in cases where it has lost control over its territory and population or where such control is fluid or uncertain. In such situations, the state may also be unwilling to extend protection.

Refugees sur place

31. A well-founded fear of persecution may arise after an applicant has left her or his country of origin, owing to circumstances arising in the country of origin during the applicant's absence, and/or as a result of her or his own actions after s/he has left the country of origin, making the applicant a refugee *sur place*.[68] In the context of claims for refugee status related to situations of armed conflict and violence, a person may become a refugee *sur place* owing, for example, to the outbreak of a situation of armed conflict and violence, the intensification of a pre-existing but latent situation of armed conflict and violence in her or his country of origin,[69] or because she or he has expressed objections or taken a stance against the situation of armed conflict and violence.

B. 'For reasons of' one or more Convention grounds

'For reasons of' (causal link)

32. The intent or motive of the persecutor can be a relevant factor in establishing the causal link between the fear of persecution and a 1951 Convention ground. However, the intent or motive of the persecutor is not necessary or decisive, not least because it is often difficult to establish,[70] in particular in situations of armed conflict and violence. A causal link may also be established by the strategies, tactics or means and methods of warfare of the persecutor, by the inability or unwillingness of the state to provide protection, or by the effect(s) of the situation of armed conflict and violence. The question to guide decision-makers is: do the reasons for the person's feared predicament, within the overall context of the country, relate to a Convention ground?[71]

33. Situations of armed conflict and violence may be rooted in, motivated or driven by, and/or conducted along lines of race, ethnicity, religion, politics, gender or social group divides, or may impact people based on these factors. In fact, what may appear to be indiscriminate conduct (i.e. conduct whereby the persecutor is not seeking to target particular individuals),[72] may in reality be aimed at whole communities or areas whose inhabitants are actual or perceived supporters of one of the sides in the situation of armed conflict and violence. Rarely are modern-day situations of armed conflict and violence characterised by violence that is not in one way or another aimed at particular populations, or which does not have a

[63] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, Articles 4 to 7 and 11, http://www.refworld.org/docid/3ddb8f804.html. In accordance with Article 10 of the aforementioned Draft Articles, the conduct of an insurrectional movement or other movement shall be considered an act of state under international law, when the movement becomes the new government or when it succeeds in establishing a new state in part of the territory of a pre-existing state or in a territory under its administration.
[64] *Ibid.*, Articles 8 and 9. UNHCR Military Service Guidelines, note 9 above, para. 42.
[65] UNHCR Gangs Guidance Note, note 12 above, para. 4.
[66] See, for example, UNHCR, *Country of Origin Series: Guatemala: Background Paper*, October 2013, RBA/COI/GUA/13/01, p. 11, http://www.refworld.org/docid/53832fe84.html.
[67] UNHCR Military Service Guidelines, note 9 above, para. 43.
[68] UNHCR Handbook, note 26 above, para. 94 to 96.
[69] For example, Mozambicans finding themselves in South Africa between 1980 and 1985 could be considered as refugees *sur place*, see *South Africa: Passport Control Instruction No. 20 of 1994 - Guidelines for Refugees Status Determination of Mozambicans in South Africa*, 1994, para. 5 [of the Guidelines] http://www.refworld.org/docid/3ae6b5082c.html.
[70] UNHCR Handbook, note 26 above, para. 66. UNHCR Military Service Guidelines, note 9 above, para. 48.
[71] *Refugee Appeal No. 72635/01*, 72635/01, New Zealand: Refugee Status Appeals Authority, 6 September 2002, para. 168, http://www.refworld.org/docid/402a6ae14.html. J C Hathaway and M Foster, *The Law of Refugee Status* (Cambridge University Press, 2014), p. 376 to 379.
[72] *Elgafaji v. Staatssecretaris van Justitie*, note 17 above, para. 34.

disproportionate effect on a particular population, establishing a causal link with one or more of the Convention grounds. Who belongs to or is considered or perceived to be affiliated with, a particular side in a situation of armed conflict and violence, is often interpreted broadly by actors during such situations – and may include a range of people, including family members of fighters as well as all those who belong to the same religious or ethnic groups or reside in particular neighbourhoods, villages or towns. A Convention ground is regularly imputed to groups of people based on their family, community, geographic or other links.[73]

Convention grounds

34. The reasons for fearing persecution may be multiple. One or more Convention grounds may be relevant. The grounds are not mutually exclusive and frequently overlap.[74] A Convention ground need only be a contributing factor; it need not be the dominant or the sole cause of the fear of persecution.

35. Situations of armed conflict and violence are regularly rooted in, or driven by, a variety of motives, or have consequences that affect various groups. Situations of armed conflict and violence regularly involve a mix of ethnic, religious, societal and political dimensions, with the parties involved operating along ethnic, religious or social lines and pursuing – or perceived to be pursuing – political and/or religious goals.

36. Even where the motives and drivers behind violent or otherwise harmful conduct resulting from, or prevalent in, situations of armed conflict and violence may, at first sight, appear to be criminal or profit-driven, they are regularly interconnected with Convention grounds.[75] For instance, armed groups may set up criminal enterprises to finance an ethnic, religious or political conflict, or the violence of gangs or other armed groups, including for example drug cartels, which is primarily profit-driven, may also have the aim of consolidating or expanding the group's powerbase in society, potentially characterizing the violence as politically motivated.[76] The targeting of individuals, as well as whole areas and populations, often has ethnic, religious and/or political purposes or links.

37. Expressing objections or taking a neutral or indifferent stance to the strategies, tactics or conduct of parties in situations of armed conflict and violence, or refusing to join, support, financially contribute to, take sides or otherwise conform to the norms and customs of the parties involved in the situation may – in the eyes of the persecutor – be considered critical of the political goals of the persecutor, or as deviating from the persecutor's religious or societal norms or practices.[77] Such objections, stances or behaviours may indicate or create the perception in the eyes of the persecutor that the person holds a political opinion or religious (or non-)belief, having an affiliation with or belonging to an ethnic or social group.

38. Persons pursuing certain trades, professions or occupations may be at risk for reasons of, for example, their real or perceived political opinion or religious (or non-)belief.[78] Their activities, role or status within society that follows from, or is associated with, their trade, profession or occupation, may be regarded as a real or perceived opinion on a matter in which the machinery of state, government, society or policy may be engaged,[79] in particular, in a country in conflict. For instance, journalists and other media professionals, and human rights and rule of law defenders, may report factually or critically on the conduct of certain actors, medical professionals treating opposition fighters may be seen as supporting the opposition, humanitarian workers continuing with their humanitarian work may be perceived as assisting the "enemy",[80] and religious leaders may side, or be seen to be siding, with one of the parties.

39. Claims involving gender-related persecution may be analysed under any of the Convention grounds, i.e. in relation to real or perceived political opinion, ethnicity[81] and/or religion or social group (gender).[82]

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[73] UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update IV*, November 2015, para. 17, http://www.refworld.org/docid/5641ef894.html. *Arrest nr. 122 129, 122 129, Belgium Conseil du Contentieux des Etrangers*, 4 April 2014, (in Dutch; cover sheet in English available), http://www.refworld.org/docid/582068524.html.

[74] UNHCR Handbook, note 26 above, para. 67.

[75] *Refugee Appeal No. 76289*, No. 76289, New Zealand: Refugee Status Appeals Authority, 8 May 2009, para. 43, http://www.refworld.org/docid/4a2e2a5e2.html. *Emilia Del Socorro Gutierrez Gomez v. Secretary of State for the Home Department*, 00/TH/02257, United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, 24 November 2000, paras. 43, 44, 50, 51 and 73(XI), http://www.refworld.org/docid/40487df64.html. *Osorio v. Immigration and Naturalization Service*, 18 F.3d 1017: 1994 U.S. App. LEXIS 4170, United States Court of Appeals for the Second Circuit, 7 March 1994, http://www.refworld.org/docid/3ae6b70e7.html.

[76] See, for example, *NS (Social Group - Women - Forced Marriage) Afghanistan v. Secretary of State for the Home Department*, CG [2004] UKIAT 00328, United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, 30 December 2004, para. 69, http://www.refworld.org/docid/42c928984.html; and *Emilia Del Socorro Gutierrez Gomez v. Secretary of State for the Home Department*, note 75 above, para. 40.

[77] *RT (Zimbabwe) and others v Secretary of State for the Home Department*, [2012] UKSC 38, United Kingdom: Supreme Court, 25 July 2012, para. 42, http://www.refworld.org/docid/500fdacb2.html. UNHCR, *Secretary of State for the Home Department (Appellant) v. RT (Zimbabwe), SM (Zimbabwe) and AM (Zimbabwe) (Respondents) and the United Nations High Commissioner for Refugees (Intervener) - Case for the Intervener*, 25 May 2012, 2011/0011, para. 10, http://www.refworld.org/docid/4fc369022.html. *Souad Noune v Secretary of State for the Home Department,* C 2000/2669, United Kingdom: Court of Appeal (England and Wales), 6 December 2000, Schiemann LJ, paras. 8(5) and 28(5), http://www.refworld.org/docid/558bcbad4.html.

[78] M Foster, *The 'Ground with the Least Clarity': A Comparative Study of Jurisprudential Developments relating to 'Membership of a Particular Social Group'*, August 2012, UNHCR PPLA/2012/02, chapter 5.7.3, http://www.refworld.org/docid/4f7d94722.html. *Emilia Del Socorro Gutierrez Gomez v. Secretary of State for the Home Department*, note 75 above, para. 46.

[79] G S Goodwin-Gill and J McAdam, *The Refugee in International Law* (Oxford: Oxford University Press, 2007), p. 87. *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, Canada: Supreme Court, 30 June 1993, http://www.refworld.org/docid/3ae6b673c.html.

[80] UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, HCR/EG/IRQ/12/03, page 20 and 31, http://www.refworld.org/docid/4fc77d522.html.

[81] Real or perceived ethnicity is covered by the Convention grounds race and/or nationality, see, for example, UNHCR Handbook, note 26 above, paras. 68 and 74 and UNHCR Gender-Persecution Guidelines, note 56 above, paras. 24 (race) and 27 (nationality).

[82] UNHCR Gender-Persecution Guidelines, note 56 above, paras. 25 (religion), 28 to 31 (membership of a particular social group), and 32 to 34 (political opinion). UNHCR Sexual Orientation and/or Gender Identity Guidelines, note 56 above, paras. 42 and 43 (religion), 44 to 49 (membership of a particular social group), and 50 (political opinion).

C. Internal flight or relocation alternative

40. The relevance of an internal flight or relocation alternative in situations of armed conflict and violence needs to be carefully assessed. Situations of armed conflict and violence are often characterized by widespread fighting, are frequently fluid, with changing frontlines and/or escalations in violence, and often involve a variety of state and non-state actors, who may not be easily identifiable, operating in diverse geographical areas. Further, such situations often seriously affect state and societal structures and support systems (see paragraph 19 of these Guidelines) creating hardships for the civilian population. The humanitarian situation of civilian populations living in areas affected by situations of armed conflict and violence is often dire, including as a result of blocking supply routes and restrictions on humanitarian aid and freedom of movement. Considering these factors, in many situations of armed conflict and violence, it may neither be relevant nor reasonable to apply an internal flight or relocation alternative.

41. Only when the situation of armed conflict and violence and its impact is geographically limited and confined to a specific part of the county would it be relevant to assess whether an internal flight or relocation alternative exists.[83] In such situations, a careful examination needs to be made of the practical, legal and safe accessibility of the identified alternative area, in particular for the person concerned, and the ability of the state or other entity to provide protection that is effective. Protection must be provided by an organized and stable authority exercising full control over the territory and population in question.[84] It would be inappropriate to equate the exercise of a certain administrative authority and control over territory by international organisations or non-state actors, with national protection provided by a state.[85] Such control is often transitional or temporary and without the range of functions required of a state, including the ability to readmit nationals to the territory or to exercise other basic functions of government. Specifically, non-state entities and bodies do not have the attributes of a state. Their ability to enforce the law is limited. Further, in determining whether the internal flight or relocation alternative is reasonable, a careful assessment needs to be made of the ability of the person to live in safety and security without undue hardship, and for her or his human rights to be ensured. In addition, and in particular, the likely spread of the situation of armed conflict and violence into new areas needs to be taken into account (see paragraphs 25 and 40 of these Guidelines).[86] It is not reasonable to expect someone to relocate to a zone of active armed conflict and violence.

42. The presence of internally displaced persons, including those who are receiving international assistance, in one part of the country, is not necessarily evidence of the reasonableness of a proposed internal flight or relocation alternative in that part of the country.[87] Internally displaced persons often do not enjoy basic rights[88] and may face economic destitution or existence below an adequate level of subsistence, which would be evidence of the unreasonableness of the proposed internal flight or relocation alternative.[89] It is also necessary to consider the capacity of local authorities to provide protection against harm, as well as whether human rights, particularly non-derogable rights, are respected.[90] Further, in some situations, internal displacement may be the result of ethnic cleansing policies, or similar, in violation of the prohibitions on forcible transfer and arbitrary displacement under IHL in the context of an armed conflict. In such circumstances, an internal flight or relocation alternative should not be presumed to exist.[91]

43. Equally, "protected zones"[92] or "safe zones"[93] and other similar areas should not necessarily be considered a relevant or reasonable internal flight or relocation alternative. Under IHL, protected zones agreed upon by the concerned belligerents are set up as measures to protect the civilian population and other categories of protected persons (for example, the wounded and sick, including wounded and sick combatants/fighters) from the effects of armed conflict. Similarly, "safe zones" and other similar areas established on the basis of United Nations Security Council resolutions, seek to prevent certain areas and persons from falling into enemy hands, even if their establishment and implementation differs from the "protected zones" within the meaning of IHL. Despite the overall objective of these zones and areas, the safety of the people living in such zones and areas may be compromised, as a result of sieges, or attacks against the zone or area and the population therein.

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[83] UNHCR Handbook, note 26 above, para. 91. For UNHCR guidance on a proper assessment of an internal flight or relocation alternative, see UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, 23 July 2003, HCR/GIP/03/04, ("UNHCR IFA Guidelines"), http://www.refworld.org/docid/3f2791a44.html.

[84] UNHCR IFA Guidelines, note 83 above, para. 17.

[85] *Ibid.*, paras. 16 and 17.

[86] *Ibid.*, paras. 17 and 27 to 30.

[87] *Ibid.*, para. 31.

[88] *Ibid.*, para. 32.

[89] *Ibid.*, para. 29. See also, *Sufi and Elmi v. United Kingdom*, note 45 above, para. 291.

[90] UNHCR IFA Guidelines, note 83 above, para. 28.

[91] *Ibid.*, para. 31.

[92] The term "protected zones" is the overarching term used by the International Committee of the Red Cross (ICRC) for all relevant zones stipulated in the 1949 Geneva Conventions and Additional Protocol I, and see Rules 35 to 37 of customary IHL, in: J –M Henkaerts and L Doswald-Beck (eds.), *Customary International Law, Volume I: Rules* (Cambridge University Press, 2005), pp. 119-126. The legal bases for establishing protected zones in the context of an armed conflict within the meaning of IHL can be found in Article 23 of the First Geneva Convention, note 38 above, Article 14 (hospital and safety zones and localities) and 15 (neutralized zones) of the Fourth Geneva Convention, note 13 above, and Article 59 (non-defended localities) and 60 (demilitarized zones) of Protocol I to the Geneva Convention, note 13 above.

[93] In a number of instances, the United Nations Security Council has called upon the creation of "safe zones", see, for example, UNSC Res. 787 (1992), 16 November 1992; UNSC Res. 819 (1993), 16 April 1993; UNSC Res. 824 (1993), 6 May 1993; UNSC Res. 918 (1994), 17 May 1994; and UNSC Res. 929 (1994), 22 June 1994.

III. SUBSTANTIVE ANALYSIS OF ARTICLE I(2) OF THE 1969 OAU CONVENTION

44. Article I(1) of the 1969 OAU Convention replicates the 1951 Convention refugee definition contained in Article 1A(2) of the 1951 Convention, as amended by the 1967 Protocol,[94] while Article I(2) offers refugee protection to:

> 'every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.'

A. Preliminary considerations to guide interpretation

45. In applying the 1969 OAU Convention definition, the primacy of the 1951 Convention needs to be borne in mind, given its status as the 'basic and universal instrument' for the protection of refugees.[95] Following the adoption of the 1967 Protocol, which made the 1951 Convention the global instrument for the protection of refugees, the 1969 OAU Convention sought in large part to address the specific challenges facing African countries in responding to refugee crises on the continent.

46. The 1969 OAU Convention is a widely ratified, legally binding instrument,[96] which is protection- and humanitarian-oriented[97] and reflects trans-African solidarity.[98] It specifically reaffirms the importance of the institution of asylum,[99] the principle of *non-refoulement*[100] and non-discrimination,[101] the duties of refugees,[102] and the search for durable solutions, including respect for the voluntary character of repatriation.[103] Cooperation with the African Union and UNHCR is also emphasized,[104] and it calls on all OAU (now African Union) Member States to accede to the 1951 Convention.[105]

Scope of the 1969 OAU Convention definition

47. In accordance with the ordinary meaning of the terms, the 1969 OAU Convention definition applies to all persons within the jurisdiction of a State Party and is not limited to persons whose country of origin or nationality is in Africa.

48. Article I(2) of the 1969 OAU Convention is the first refugee definition of its kind to steer away from persecutory conduct towards more generalized or so-called "objectively" identifiable situations. The 1969 OAU definition acknowledges that the compulsion for persons to leave their country may occur not only as a result of the conduct by state or non-state actors in the refugee's country of origin, but also as a result of that government's loss of authority or control due to external aggression, occupation, foreign domination or events seriously disturbing public order.[106] The 1969 OAU definition focuses on situations that compel people to leave their countries in search of safety and sanctuary.

B. Elements of the 1969 OAU Convention definition

49. Article I(2) of the 1969 OAU Convention protects as refugees persons who (i) are outside their country of origin,[107] (ii) having been compelled to leave their place of habitual residence, (iii) because one or more of the situations listed in the definition exists in their country of origin or nationality. These elements of the 1969 OAU Convention definition are explained below and need to be considered as part of a holistic assessment of a claim for refugee status.

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[94] Contrary to Article 1A(2) of the 1951 Convention, Article I(1) of the 1969 OAU Convention does not include the temporal limitation of having a well-founded fear as a result of 'events occurring before 1 January 1951'; a limitation later removed with the adoption of the 1967 Protocol, Article I(2).

[95] 1969 OAU Convention, note 4 above, ninth preambular paragraph.

[96] To date, the 1969 OAU Convention has been ratified by 46 of the African Union's (AU) 54 Member States. Djibouti, Eritrea, Madagascar, Mauritius, Namibia, Sao Tomé & Principe and Somalia have signed but not ratified or acceded to the 1969 OAU Convention. Only the Saharawi Arab Democratic Republic (SADR) has neither signed nor ratified or acceded to the 1969 OAU Convention. Morocco is a party to the 1969 OAU Convention, but not a Member State of the African Union.

[97] 1969 OAU Convention, note 4 above, second preambular paragraph.

[98] *Ibid.*, eighth preambular paragraph.

[99] *Ibid.*, Article II. A right to seek and obtain asylum is recognized in Article 12(3) of the African Charter on Human and Peoples' Rights, Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), http://www.refworld.org/docid/3ae6b3630.html.

[100] 1969 OAU Convention, note 4 above, Article II(3).

[101] *Ibid.*, Article IV.

[102] *Ibid.*, Article III.

[103] *Ibid.*, Article II(5), referring to a right to reside, to be granted temporary residence, and resettlement. The right to voluntary repatriation is regulated by Article V of the 1969 OAU Convention.

[104] *Ibid.*, eleventh preambular paragraph and Articles VII and VIII.

[105] To date, of the African Union's 54 Member States only the Comoros, Eritrea, Libya, Mauritius and South Sudan have neither signed nor ratified the 1951 Convention or its 1967 Protocol. Madagascar is a party to the 1951 Convention but not to the 1967 Protocol. Madagascar and the Republic of Congo continue to recognise the 1951 Convention's geographical limitation. Finally, Cabo Verde is party to the 1967 Protocol but not the 1951 Convention.

[106] J.C. Hathaway, *The Law of Refugee Status* (Butterworths, 1991), 17.

[107] The phrase 'country of origin or nationality' refers to the person's country of nationality, or in the case of stateless persons, the reference to 'country of origin' can be assimilated with 'country of former habitual residence' in Article 1A(2) of the 1951 Convention. To benefit from the 1969 OAU Convention, an applicant needs to be outside her or his country of origin or nationality.

Compelled to leave one's place of habitual residence

50. By including the language of "compulsion" in the definition, Article I(2) of the 1969 OAU Convention emphasizes the seriousness of the situation. The verb "to compel" is understood to mean 'to urge irresistibly, to constrain, oblige, force'.[108] Reference to one's 'place of habitual residence' must be understood as part of the compulsion to leave and seek refuge outside one's country of origin or nationality, i.e. the situation must have an impact on the person's place of habitual residence. The 'place of habitual residence' element has no other or separate legal effect. Thus, when the situation in question is sufficiently serious that it is objectively reasonable for a person to leave her or his place of habitual residence and seek refuge in another country, she or he needs to be protected.[109]

51. Article I(2) of the 1969 OAU Convention does not require a personalized or discriminatory threat or risk of harm.[110] Whole groups of persons or an entire population may be affected by the situation and be compelled to leave their places of habitual residence owing to the situation in question. As Article I(2) emphasizes the assessment of the seriousness of the situation in question more than motives for flight or the risk of harm, decision-makers should assess whether flight from the country of origin or nationality is objectively reasonable.

Refugees sur place

52. *Sur place* claims are accepted under the 1969 OAU Convention consistent with the interpretation of the 1951 Convention (see paragraph 31 of these Guidelines).

Situations compelling flight

53. The situations mentioned in Article I(2) of the 1969 OAU Convention are to be given their ordinary meaning in their context and in light of their (protection-oriented) object and purpose.[111] They should also, wherever possible, be interpreted in such a way that they remain relevant and applicable to situations that were not foreseeable when the 1969 OAU Convention was drafted.

54. The situation may be the result of 'external aggression', i.e. aggression through the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations.[112] These situations may include armed conflicts fuelled by outside involvement or that have spilled over from neighbouring states, including because of the presence of (members of) the armed forces of another state or incursions by foreign armed groups.

55. Situations of armed conflict and violence may also accompany, or be the result of, 'occupation', i.e. a situation whereby the territory is actually placed under the authority or effective control of a hostile foreign state's armed forces.[113] This may also be the case for other situations not classified as 'occupation' within the meaning of IHL, where armed group(s) from either within or outside the country exercise control over territory.[114] Situations of armed conflict and violence could also accompany, or be the result of, 'foreign domination', i.e. the political, economic or cultural control of a state by (agents of) one or more other states, association of states, or state-governed international organizations.[115]

56. The phrase 'events seriously disturbing public order' should be construed, in line with the 1969 OAU Convention's humanitarian object and purpose, to include events that impact the maintenance of public order (*ordre public*) based on respect for the rule of law and human dignity to such an extent that the life, security and freedom of people are put in danger.[116] The threshold of "serious" refers to public disorder events likely to disrupt the normal functioning of the institutions of the state and affect internal and external security and stability of the state and society. Such events may be categorized as an IAC or NIAC within

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[108] 'compel, *v*', *The Oxford English Dictionary* 2nd edition, OED online, 2015, Oxford University Press.

[109] *Radjabu v. The Chairperson of the Standing Committee for Refugee Affairs*, 8830/2010, South Africa: High Court, 4 September 2014, para. 6, http://www.refworld.org/docid/540874f94.html. The criterion of 'objectively reasonable to leave' speaks to the ordinary meaning of the word 'compulsion'. According to the Court, compulsion rather than volition is the predominant factor, whereby determining whether a person qualifies for refugee status under the regional definition requires an assessment of the existence of objectively ascertainable circumstances in the person's country of origin corresponding with any of those stipulated in the definition and whether their effect on the person concerned has been such as to force him or her to leave the place where s/he ordinarily resided.

[110] Article I(2) of the 1969 OAU Convention is not ignorant of a risk of harm as is evident from the phrase 'is compelled to leave' in the definition read in conjunction with the principle of *non-refoulement* laid down in Article II(3) of the 1969 OAU Convention, protecting people from being returned to a territory where their life, physical integrity or liberty would be threatened. However, a threat or risk of harm is not a necessary requirement to be granted protection under the regional definition.

[111] EXCOM Conclusion No. 103 (LVI), 2005, para. (c).

[112] United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Article 2(4) and Chapter VII, ("UN Charter"), http://www.refworld.org/docid/3ae6b3930.html. Article 1 of the UN General Assembly, *Definition of Aggression*, 14 December 1974, A/RES/3314, http://www.refworld.org/docid/3b00f1c57c.html, and Article 3, which includes a non-exhaustive list of acts that qualify as an act of aggression. See also, Article *8bis* of the Rome Statute ICC, note 32 above.

[113] *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907, Article 42, http://www.refworld.org/docid/4374cae64.html. See also, *Chiragov and Others v. Armenia*, Application no. 13216/05, Council of Europe: European Court of Human Rights, 16 June 2015, para. 96, http://www.refworld.org/docid/5582d29d4.html.

[114] African Commission on Human and Peoples' Rights, *Statement by the African Commission on the Present Human Rights Situation in Mali*, 18 January 2013, http://www.refworld.org/docid/5108d96a2.html.

[115] Banjul Charter, note 97 above, Article 20(3): 'All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.'

[116] UNHCR, *Persons covered by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and by the Cartagena Declaration on Refugees (Submitted by the African Group and the Latin American Group)*, 6 April 1992, EC/1992/SCP/CRP.6, http://www.refworld.org/docid/3ae68cd214.html.

the meaning of IHL, but may also include events not categorized as an armed conflict within the meaning of IHL, involving violence by or between different groups in society or between the state and non-state actors.[117] The ground of 'events seriously disturbing public order' appears to be the primary element of Article I(2) of the 1969 OAU Convention under which refugee status is determined.[118]

57. A serious disturbance of public order may either be prompted by one-off acts or incidents, or a series of acts or incidents of a systematic or cumulative nature, in response to which the state is either unwilling or unable to provide protection. According to the ordinary meaning of the definition's terms, 'events seriously disturbing public order' may take place in either part or the whole of the country. Situations that have prompted the government to declare a state of emergency may be an important, albeit unnecessary indicator of the ground, although each situation should be assessed individually.[119]

58. 'Events seriously disturbing public order' also include situations of generalized violence, i.e. violence that is widespread, affecting large groups of persons or entire populations, serious and/or massive human rights violations, or events characterized by the loss of government control and its inability or unwillingness to protect its population - including situations characterized by repressive and coercive social controls by non-state actors, often pursued through intimidation, harassment and violence.

59. Factual indicators of events seriously disturbing public order include: a declared state of emergency; violations of IHL including war crimes;[120] acts of terrorism; a significant number of people killed, injured or displaced; the closure of schools; a lack of food, medical services and supplies, and other vital services such as water, electricity and sanitation; a change in, or collapse of, government institutions and services, political systems or the police and justice system; the imposition of parallel or informal justice and administrative systems; and/or non-state actors controlling state territory.

C. Internal flight or relocation alternative

60. The consideration of internal relocation is not generally relevant to the determination of refugee status under Article I(2) of the 1969 OAU Convention.[121] Article I(2) covers both situations that affect either 'part' or 'the whole' of the refugee's territory.[122] As the focus of Article I(2) is on situations that seriously disrupt state and societal structures, people cannot be required to relocate to other parts of the country, even if the situation in these parts may be less disrupted. The only exception would be where the situation is indisputably confined to a particular part of the country or to a particular region or city, and where the state is able and willing to protect its citizens in other areas. Consideration of the likely spread of the situation and the accompanying violence and disorder into other areas would need to be carefully assessed, with a forward-looking perspective.

IV. SUBSTANTIVE ANALYSIS OF CONCLUSION III(3) OF THE 1984 CARTAGENA DECLARATION

A. Preliminary considerations to guide interpretation

61. The Cartagena Declaration on Refugees is a regional protection instrument, adopted in 1984 by a group of experts from several Central and South American countries.[123] It resulted from a colloquium on International Protection for Refugees and Displaced Persons in Central America, Mexico and Panama held in Cartagena de Indias, Colombia. Its adoption represented a humanitarian and pragmatic response to the movements of people from conflict and other situations characterized by indiscriminate threats to life, security or freedom. The Cartagena Declaration reaffirms the peaceful, non-political and exclusively humanitarian nature of asylum and the principle of *non-refoulement*; the importance of searching actively for durable solutions; and the necessity of co-ordination and harmonization of universal and regional systems and national efforts.[124]

62. Conclusion III(3) of the Cartagena Declaration recommends to include among refugees:

[117] See paragraph 5 of these Guidelines. See also, Article 1(2) Protocol II to the Geneva Conventions, note 14 above.
[118] M Sharpe, 'The 1969 OAU Refugee Convention in the Context of Individual Refugee Status Determination', in V Türk, A Edwards and C Wouters (eds.), *In Flight from Conflict and Violence. UNHCR's Consultations on Refugee Status and Other Forms of International Protection* (Cambridge University Press and UNHCR, forthcoming 2017), 133.
[119] ICCPR, note 34 above, Article 4. Also, HRC General Comment 29, note 43 above.
[120] Rome Statute ICC, note 32 above, Article 8.
[121] UNHCR IFA Guidelines, note 83 above, para. 5.
[122] *Recueil des décisions (No 2 - 2008)*, Benin: Comité d'éligibilité au statut de réfugié, 2008, p. 97, http://www.refworld.org/docid/563cede14.html. See also, A. Edwards, 'Refugee Status Determination in Africa' (2006) 14 *Afr J Intl Comp L* 227.
[123] Belize, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Venezuela.
[124] See, respectively, Conclusion III(4) on the right to asylum; Conclusion III(5) on the principle of *non-refoulement*; Conclusion III(11) on integration and Conclusion III(12) on voluntary repatriation; and Conclusions III(14) to (17) on co-operation, coordination and harmonization.

> 'persons who have fled their country because their lives, security or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.'[125]

63. The Cartagena refugee definition has attained a particular standing in the region, not least through its incorporation into national laws and its application in practice.[126] The authority of the Cartagena refugee definition has been reaffirmed by the Inter-American Court of Human Rights (IACrtHR),[127] the San José Declaration on Refugees and Displaced Persons (1994),[128] the Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America (2004),[129] the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas (2011)[130] and the Brazil Declaration and Plan of Action (2014).[131]

64. As a protection instrument, the Cartagena Declaration has at its foundation the commitment to ensure the treatment provided by the 1951 Convention to all refugees.[132] It drew inspiration from the 1969 OAU Convention, as well as the doctrine of the Inter-American Commission on Human Rights (IACHR).[133] Its interpretation is to be informed by international and regional law, especially the norms and standards of the 1948 American Declaration of the Rights and Duties of Man,[134] the 1969 American Convention on Human Rights,[135] and the evolving case law of the Inter-American human rights bodies.

65. Furthermore, as a humanitarian- and protection-oriented instrument, the Cartagena Declaration calls for an inclusive, evolving and flexible interpretation of the refugee definition.[136] Where the ordinary meaning is not clear, the text should be given a purposive or teleological interpretation.

Scope of the Cartagena refugee definition

66. The Cartagena refugee definition provides international protection to people fleeing the threats resulting from "objectively" identifiable circumstances which have seriously disturbed public order. The circumstances referred to in the Cartagena refugee definition are characterized by the indiscriminate, unpredictable or collective nature of the threats they present to the lif(v)e(s), security or freedom of a person or group of persons, or even to populations at large. The focus of the Cartagena refugee definition is on the exposure of people to the threats inherent in the circumstances referred to.

67. As the Cartagena refugee definition focuses on indiscriminate threats, decision-makers are advised to adopt a consistent approach to persons fleeing similar circumstances in the same country. This contributes towards addressing protection gaps in the region, and to ensuring more consistent outcomes between cases.

B. Elements of the Cartagena refugee definition

68. The Cartagena refugee definition protects as refugees persons who (i) are outside their country,[137] (ii) because their life, security or freedom has been threatened, (iii) as a result of circumstances referred to in the definition existing in their country. The particular elements of the Cartagena refugee definition are explained below. These elements need to be considered as part of a holistic assessment.

Refugees sur place

69. *Sur place* claims are accepted under the Cartagena refugee definition consistent with the interpretation of the 1951 Convention (see paragraph 31 of these Guidelines).

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[125] The original Spanish text of Conclusion III(3) of the Cartagena Declaration refers to '*seguridad*', which is properly translated into English as 'security' rather than 'safety', which is the word used in the Cartagena Declaration, note 5 above.

[126] To date, the Cartagena refugee definition has been incorporated into the national laws of 14 countries: Argentina, Belize, Bolivia, Brazil, Chile, Colombia, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, and Uruguay. In addition, the Constitutional Court of Ecuador has ordered the regional definition to be reinstated in the national legal framework in September 2014: *Sentencia No 002-14-SIN-CC*, Ecuador: Corte Constitucional, 14 August 2014, http://www.refworld.org/docid/578f56084.html.

[127] *Advisory Opinion OC-21/14 of August 19, 2014 requested by the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay: Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, OC-21/14, Inter-American Court of Human Rights (IACrtHR), 19 August 2014, paras. 76, 77, 79 and 249, http://www.refworld.org/docid/54206c744.html.

[128] *San José Declaration on Refugees and Displaced Persons*, 7 December 1994, http://www.refworld.org/docid/4a54bc3fd.html.

[129] *Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America*, 16 November 2004, http://www.refworld.org/docid/424bf6914.html.

[130] *Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas*, 11 November 2010, http://www.refworld.org/docid/4cdd44582.html.

[131] *Brazil Declaration and Plan of Action*, 3 December 2014, http://www.refworld.org/docid/5487065b4.html.

[132] Cartagena Declaration, note 5 above, Conclusion III(8). See also Recommendation E of the Final Act of the 1951 United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, A/CONF.2/108/Rev.1, http://www.refworld.org/docid/40a8a7394.html.

[133] See the text of Cartagena Declaration, note 5 above, Conclusion III(3).

[134] Inter-American Commission on Human Rights (IACHR), *American Declaration of the Rights and Duties of Man*, 2 May 1948, http://www.refworld.org/docid/3ae6b3710.html.

[135] Cartagena Declaration, note 5 above, Conclusion III(8) and (10) make explicit reference to the 1969 American Convention on Human Rights, note 43 above.

[136] EXCOM Conclusion No. 103 (LVI), 2005, para. (c).

[137] For the purposes of the Cartagena definition, reference to 'their country', in the phrase 'persons who have fled their country', is to be interpreted in line with the 1951 Convention as a person's country of nationality, or, in the case of stateless persons, the country of former habitual residence.

Circumstances compelling flight

70. These circumstances referred to in the Cartagena refugee definition include, but are not limited to, generalized violence, foreign aggression, internal conflicts, and massive violation of human rights. Further, other circumstances which have seriously disturbed public order in the country may also result in threats to persons' lives, security or freedom forcing them to flee their country. Guided by the protection purpose of the Cartagena Declaration, the circumstances referred to in the Cartagena refugee definition are to be given their ordinary meaning, wherever possible, and interpreted in an evolutionary way so that they remain relevant to situations not foreseeable when the Cartagena Declaration was drafted.

71. 'Generalized violence' is not a term of art, nor does it have a strict or closed meaning. Adopting a case-by-case approach, the term encompasses situations characterized by violence that is indiscriminate and/or sufficiently widespread to the point of affecting large groups of persons or entire populations. Drawing on international human rights law to determine whether a situation of generalized violence prevails, it would be appropriate to identify factual indicators relating to the number and type of security incidents, as well as the overall level of violence in the country of origin and its effect on civilian populations.[138] Situations of generalized violence include situations involving mass and/or serious violations of human rights or IHL. Generalized violence is established via the intensity or geographic spread of the violence, or through a combination of these.

72. Since 'generalized violence' is not a term found in IHL, it cannot be limited to situations of armed conflict within the meaning of IHL, although it can include these situations if the conditions for applicability of IHL are met. See also paragraph 5 of these Guidelines in relation to the limited relevance of categorizing a situation as an armed conflict under IHL in determining who is a refugee.

73. Situations of generalized violence encompass violence carried out by state or non-state actors. It is the situation on the ground, and the risks that the violence presents, that is at issue.

74. 'Foreign aggression' is understood to be the same as the terms 'aggression', 'war of aggression' and 'act of aggression' as defined under international law, as well as the term 'external aggression' included in the 1969 OAU Convention (see paragraph 54 of these Guidelines).[139] Consistent with the object and purpose of the Cartagena Declaration, foreign aggression can be equated to the crime leading to an IAC within the meaning of IHL,[140] as well as relating to situations not categorized as such under IHL. These situations may include conflicts fuelled by outside involvement or those that have spilled over from neighbouring states, including because of the presence of (members of) the armed forces of another state or incursions by foreign armed groups.

75. 'Internal conflicts' in the Cartagena refugee definition includes NIACs within the meaning of IHL.[141] However, keeping in mind the protection purpose of the Cartagena Declaration, the term 'internal conflicts' extends to internal armed conflicts that are not classified as NIACs within the meaning of IHL. IHL is considered to be informative, though not determinative of whether an internal conflict exists. Similarly, the qualifications made by the parties involved or affected by it are also considered to be informative rather than determinative (see paragraph 5 of these Guidelines).[142] For the purpose of the Cartagena refugee definition, situations that fall below the threshold of a NIAC within the meaning of IHL may be better captured under the ground of 'generalized violence' or 'massive violation of human rights'.

76. To determine whether a situation of 'massive violation of human rights' prevails, reference to the jurisprudence of the IACrtHR is particularly relevant. The term 'massive' refers to the scale or magnitude of the violation, irrespective of the duration, and as such, the violation may be the result of a single event.[143] Where the effects of human rights violations go beyond the actual/direct victims to affect large segments of the population, or even the society as a whole, the situation may also be classified as

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[138] The IACrtHR has considered a situation of generalized and indiscriminate violence in El Salvador in the early 1980s to exist, referring to systematic violence indiscriminately affecting a large number of people over a prolonged period of time. See *The Massacres of El Mozote and nearby places v. El Salvador*, Inter-American Court of Human Rights (IACrtHR), 25 October 2012, paras. 70 and 193, http://www.refworld.org/docid/564ecfee4.html.The Inter-American Commission on Human Rights (IACHR) has referred to similar indicators when describing situations of "widespread violence". These include the following: a) the number of violent incidents as well as the number of victims of those incidents is very high; b) the prevailing violence inflicts heavy suffering among the population; c) violence manifests itself in most egregious forms, such as massacres, torture, mutilation, cruel, inhuman and degrading treatments, summary executions, kidnappings, disappearances of persons and gross breaches to IHL; d) the perpetration of acts of violence is often aimed at causing terror and, eventually, creating a situation such that individuals are left with no option other than flee the area affected; e) violence can emanate from state and non-state agents, and when it emanates from the first, or from others acting at the instigation or with the acquiescence of the state's authorities, the authors enjoy impunity; f) where violence emanates from non-state agents, authorities are unable to effectively control them; and g) the level and extent of violence is such that the normal functioning of society is seriously impaired. See, for example, Inter-American Commission on Human Rights (IACHR), *Report on the Situation of Human Rights in Jamaica*, 10 August 2012, OEA/Ser.L/V/II.144, pp. 5 and 27, http://www.refworld.org/docid/51ff65004.html.

[139] See supra note 112 and *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America); Merits*, International Court of Justice (ICJ), 27 June 1986, http://www.refworld.org/docid/4023a44d2.html.

[140] See, Common Article 2(1) of the 1949 Geneva Conventions, note 13 above, which is applicable to IAC and refers to 'cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting States', and see also Article 1(4) of Protocol I to the Geneva Conventions, note 13 above, which makes further reference to 'armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination'.

[141] See, Common Article 3 of the 1949 Geneva Conventions, note 38 above, Article 1 of Protocol II to the Geneva Convention, note 14 above, and *Prosecutor v. Dusko Tadic aka "Dule" (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction)*, IT-94-1, International Criminal Tribunal for the former Yugoslavia (ICTY), 2 October 1995, para. 70, http://www.refworld.org/docid/47fdfb520.html.

[142] For example, while an UN Security Council designation of a situation as a NIAC within the meaning of IHL would be sufficient for the purposes of the Cartagena refugee definition, such a qualification cannot be a requirement. See also, UNHCR Arusha Summary Conclusion, note 29 above, para. 24.

[143] *Case of the "Las Dos Erres" Massacre v. Guatemala*, Inter-American Court of Human Rights (IACrtHR), 24 November 2009, paras. 73, 79 and 152, http://www.refworld.org/docid/564ed31a4.html; *Río Negro Massacres v. Guatemala*, Inter-American Court of Human Rights (IACrtHR), 4 September 2012, paras. 56, 58-60 and 63, http://www.refworld.org/docid/564ed2714.html.

'massive violation of human rights'. The elements of planning and organization on the part of the perpetrator – whether a state or non-state actor – can also indicate a situation of 'massive violation of human rights', although they are not a requirement. In the case of non-state actors committing human rights abuses, a situation of 'massive violation of human rights' may exist when the state is either unable or unwilling to protect their citizens by failing to prevent, investigate, prosecute or sanction these violations.[144] In this context, displacement may be an indicator of 'massive violation of human rights' or lead to serious human rights violations. The Cartagena refugee definition makes no distinction between the types of rights that are threatened.

77. The existence of judgments or provisional measures by the IACrtHR[145] or precautionary measures by the IACHR[146] related to a given situation would be strong evidence that a situation of massive violation of human rights exists. The statements of human rights bodies or courts may also provide relevant indicators. However, such judgments or measures are not required to qualify a situation as one of 'massive violation of human rights'. This is a factual assessment, to be undertaken by the relevant asylum adjudication body, relying on relevant information and evidence, including the applicant's own testimony.

78. Of all the circumstances referred to in the Cartagena refugee definition, 'other circumstances which have seriously disturbed public order' is the least frequently applied by national adjudication bodies when determining refugee claims under the Cartagena refugee definition.[147] The notion of 'public order', while not having a universally accepted definition, can be interpreted in the context of the Cartagena refugee definition as referring to the peace, internal and external security as well as stability of the state and society, plus the normal functioning of the institutions of the state, based on respect for the rule of law and human dignity. Circumstances seriously disturbing public order can take place in times of armed conflict within the meaning of IHL as well as in peacetime. See also paragraphs 56 to 59 of these Guidelines.

79. In the jurisprudence of the IACrtHR, circumstances seriously disturbing public order have been defined by reference in part to the acts of states derogating from their human rights obligations in cases where a state of emergency has been declared.[148] However, a declaration of a state of emergency should not be seen as a prerequisite for the existence of a circumstance seriously disturbing public order, even though it would ordinarily be indicative of such a situation.

80. The inclusion of the adjective 'other' in 'other circumstances' in the Cartagena refugee definition allows states to grant protection in circumstances beyond those related to the four situations referred to in the Cartagena refugee definition.

Threat to life, security or freedom

81. The third element of the Cartagena definition is the link between the circumstance occurring in the country of origin and the threat it poses to the lives, security and freedom of persons residing in the country. The 'threat' or risk element in the definition connotes the possibility of harm being inflicted on a person, a group or a whole population; it does not imply that the harm has actually materialized. The link between the circumstance and the threat should not be interpreted in such a manner as to curtail or restrict unnecessarily the scope of international protection granted to persons fleeing their country, for example by requiring an individualized assessment of the risk to life, security or freedom. In fact, spatial/geographical proximity of the circumstance to the person would suffice to create a threat forcing the person to flee the country.

82. Since the Cartagena refugee definition is oriented towards circumstances that affect groups or whole populations, the focus is not on the personal circumstances of the individual fleeing a danger to her or his life, security or freedom, but rather on the objective circumstances in the country of origin.

83. Reference to persons' lives, security or freedom should be interpreted broadly, encompassing persons' physical and mental integrity, security, freedoms, human dignity and livelihoods, with reference to internationally and regionally recognized human rights.

Gang violence or violence from organized criminal groups

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[144] *González et al. ("Cotton Field") v. Mexico*, Inter-American Court of Human Rights (IACrtHR), 16 November 2009, para. 236, http://www.refworld.org/docid/564ed5234.html.

[145] Provisional measures are an instrument used by the IACrtHR to prevent irreparable harm to the rights and freedoms ensured under the American Convention on Human Rights of persons who are in a situation of extreme gravity and urgency. The measures are ordered ex officio or at the request of a party and result in a protection request to the respondent state of the alleged victim(s). See, American Convention on Human Rights, note 43 above, Article 63(2) and Organization of American States (OAS), *Rules of Procedure of the Inter-American Court of Human Rights*, 16-29 November 2009, Article 27, https://www.cidh.oas.org/Basicos/English/Basic20.Rules%20of%20Procedure%20of%20the%20Court.htm.

[146] Organization of American States (OAS), *Rules of Procedure of the Inter-American Commission on Human Rights*, 1 August 2013, http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp, Article 25, establishes that, in serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case, as well as to persons under the jurisdiction of the State concerned, independently of any pending petition or case.

[147] UNHCR, *Summary Conclusions on the interpretation of the extended refugee definition in the 1984 Cartagena Declaration; roundtable 15 and 16 October 2013, Montevideo, Uruguay*, 7 July 2014, p. 7, http://www.refworld.org/docid/53c52e7d4.html.

[148] American Convention on Human Rights, note 43 above, Article 27(1), allowing states to take derogating measures in time of war, public danger, or other emergency that threatens the independence or security of a State Party. See, *Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*, OC-8/87, Inter-American Court of Human Rights, 30 January 1987, paras. 19 and 20, http://www.refworld.org/docid/402795714.html.

84. People fleeing gang violence or violence by organized criminal groups may meet the refugee criteria under the 1951 Convention.[149] People fleeing such violence may also fall under one or more of the circumstances mentioned in the Cartagena refugee definition.

C. Internal flight or relocation alternative

85. The focus of the Cartagena refugee definition is on situations that seriously disrupt state and societal structures. Under such circumstances, people cannot be required to relocate to other parts of the country, even if the situation in these parts may be less disrupted. The only exception would be where the situation is isolated to a particular part of the country or to a particular region or city, and where the state is able and willing to protect its citizens in those other areas. Consideration of the likely spread of the situation and the accompanying violence and disorder into other areas would need to be carefully assessed, with a forward-looking perspective.

V. PROCEDURAL AND EVIDENTIARY ISSUES

A. Approaches to applying the 1951 Convention/1967 Protocol definition and the regional definitions

86. The various definitions of a refugee are not mutually exclusive. They each recognize a person as a refugee, thus triggering the standards of treatment foreseen by the 1951 Convention (see paragraph 8 of these Guidelines).

87. In applying the refugee definitions, a sequential approach is preferred, whereby refugee status is initially assessed under the 1951 Convention definition before an assessment is made under the regional definitions if the person is found not to be a refugee under the 1951 Convention. Such an approach underscores the universal character of the definition of a refugee in Article 1A(2) of the 1951 Convention, the primacy of that Convention,[150] and the explicitly complementary character of the regional definitions.[151]

88. However, applying the regional definitions would be more practical and efficient in group situations or in specific regional contexts,[152] as long as the 1951 Convention standards of treatment apply.

B. Establishing the facts

89. Claims for refugee status related to situations of armed conflict and violence can raise complex factual issues, turning on the particular circumstances of the applicant viewed against the causes, character and impact of the situation of armed conflict and violence. Unless prima facie recognition of refugee status is applied, claims for refugee status should be considered on their individual merits, taking into account up-to-date and relevant country of origin information.

Country of origin information

90. Up-to-date, relevant country of origin information is important for understanding the situation of armed conflict and violence and whether the country of origin is experiencing one of the situations or circumstances referred to in the regional definitions.[153]

91. Relevant country of origin information includes both qualitative and quantitative information. Qualitative information is particularly relevant to avoid misunderstandings, stereotyping and generalizations and allows for a deeper understanding of the situation of armed conflict and violence, i.e. of the history and development of the situation, the actors involved, the means and methods of warfare, strategies and tactics used and the effects the situation has on the country and the people caught up in it.[154] Quantitative information related to situations of armed conflict and violence should be used with appropriate caution. Different sources may use diverse methodologies, often depending on their motivation for collecting data, resulting in substantial divergences between sources. While statistical data can provide an indication of the impact of the situation on the population, such data may be inconclusive or unreliable regarding the risk, harm, relevant 1951 Convention ground, and/or causal link between the risk of harm and ground, or situations mentioned in the regional definitions. Statistical information tends to focus on quantifiable

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[149] On the application of the 1951 Convention to such situations, see: UNHCR Gangs Guidance Note, note 12 above.
[150] EXCOM Conclusion No. 87 (L) 1999, para. (f); EXCOM Conclusion No. 89 (LI) 2000. See also, 1969 OAU Convention, note 4 above, ninth preambular paragraph, referring to the 1951 Convention/1967 Protocol as the basic and universal instrument for the protection of refugees.
[151] An additional argument for a sequential approach under the 1969 OAU Convention is the structure of Article I, where in paragraph 1 the 1951 Convention refugee definition is replicated before paragraph 2 provides the regional definition.
[152] UNHCR Prima Facie Recognition Guidelines, note 10 above, paras. 2 and 5.
[153] *Radjabu v. The Chairperson of the Standing Committee for Refugee Affairs*, note 107 above, para. 6, according to the Court, determining whether a person qualifies for refugee status under the extended definition requires an assessment of the existence of objectively ascertainable circumstances in the person's country of origin corresponding with any of the circumstances stipulated in the definition.
[154] *Sufi and Elmi v. United Kingdom*, note 45 above, para. 241.

features of the situation, such as the number of civilian casualties or the number of displaced persons, and may not capture other forms of harm – caused directly or indirectly by the armed conflict or violence – on persons, state structures or societies.

92. In the assessment of claims for refugee status, country of origin information must be relevant to the particular circumstances of the applicant. Obtaining reliable and accurate country of origin information that is specific to the situation of particular groups of applicants, including children,[155] or persons of diverse gender identities and/or sexual orientations,[156] frequently poses significant challenges. Such challenges may be especially pronounced in situations of armed conflict and violence. Similarly, the available country of origin information about situations of armed conflict and violence may not reflect the specific circumstances of women or of men, including the prevalence of gender-specific forms of harm, or take into account the changing composition and conduct of the actors involved.[157] Decision-makers must take due cognizance of this fact. In situations of armed conflict and violence, an absence of country of origin information about the situation of particular groups should not be interpreted as implying that such groups do not face specific threats.

Burden of proof

93. While in general the burden of proof lies with the person submitting the claim, the obligation to gather and analyse all relevant facts and supporting evidence is shared between the applicant and the decision-maker.[158] This shared responsibility is particularly important when the country of origin is experiencing a situation of armed conflict and violence, since this makes obtaining information and documentation – in general, as well as in relation to the individual – more difficult.[159] People fleeing such situations are likely to encounter significant problems in giving a detailed account of events demonstrating a need for international protection, and/or in obtaining evidence to substantiate the claim. In these circumstances, it is therefore frequently necessary to give applicants the benefit of the doubt.[160]

[155] UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, para. 74, http://www.refworld.org/docid/4b2f4f6d2.html.
[156] UNHCR Gender-Related Persecution Guidelines, note 56 above, para. 37. UNHCR Sexual Orientation and/or Gender Identity Guidelines, note 56 above, para. 66.
[157] UNHCR Cape Town Summary Conclusions, note 3 above, para. 23.
[158] UNHCR Handbook, note 26 above, para. 196. See also, UNHCR, *Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report*, May 2013, pp. 86-88, http://www.refworld.org/docid/519b1fb54.html.
[159] *Refugee Appeal No. 71462/99, Tamil and a Citizen of the Democratic Socialist Republic of Sri Lanka v. Refugee Status Branch of the New Zealand Immigration Service*, 71462/99, note 54 above, para. 51.
[160] UNHCR Handbook, note 26 above, para. 203.