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International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update I

1. This paper supersedes and replaces UNHCR's June 2012 *Protection Considerations with regard to people fleeing the Syrian Arab Republic*¹ and UNHCR's March 2012 *Position on Returns to the Syrian Arab Republic*.²
2. In July 2012, the ICRC concluded that it considers the conflict in Syria to be a non-international armed conflict, signifying that international humanitarian law applies to all areas where hostilities are taking place.³ As of 11 December 2012, more than 509,000 Syrians are registered or waiting to be registered in the neighbouring countries of Jordan, Lebanon, Turkey and Iraq, as well as countries in North Africa.⁴ In addition, over 25,500 asylum applications have been submitted by Syrians in Western European countries since April 2011.⁵ Within Syria, an estimated 1.2 million people are currently displaced,⁶ many of whom are living in inadequate shelters.⁷ The humanitarian situation has continued to deteriorate and it is estimated that as many as 4 million Syrians are affected by the conflict and in need of humanitarian assistance at present.⁸ Destruction of medical facilities and flight of medical staff have left large number of Syrians without access to health care.⁹ Access to education is affected by the use of schools as shelters

¹ UN High Commissioner for Refugees, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic*, June 2012, <http://www.unhcr.org/refworld/docid/4fd60deb2.html>.

² UN High Commissioner for Refugees, *UNHCR Position on Returns to the Syrian Arab Republic*, 2 March 2012, <http://www.unhcr.org/refworld/docid/4f50db552.html>.

³ ICRC, *Syria: ICRC and Syrian Arab Red Crescent maintain aid effort amid increased fighting*, 17 July 2012, <http://www.icrc.org/eng/resources/update/2012/syria-update-2012-07-17.htm>. See also Al Jazeera, *Red Cross declares Syria conflict a civil war*, 16 July 2012, <http://www.aljazeera.com/news/middleeast/2012/07/2012716231913738.html>. The ICRC declaration that the conflict qualifies as a non-international armed conflict superseded an earlier ICRC statement which indicated that the situation had met the threshold of a non-international armed conflict in certain locations, in particular Idlib Homs and Hama. Regarding the earlier ICRC statement; see, Reuters, *Some Syria violence amounts to civil war: Red Cross*, 8 May 2012, <http://www.reuters.com/article/2012/05/08/us-syria-redcross-idUSBRE8470D920120508>.

⁴ UN High Commissioner for Refugees, *Number of Syrian refugees registered in region tops 500,000 mark*, 11 December 2012, <http://www.unhcr.org/refworld/docid/50c717a92.html>. For regularly updated figures on registration of Syrians, see Syria Regional Refugee Response Information Sharing Portal: <http://data.unhcr.org/syrianrefugees>.

⁵ This number includes *sur place* asylum applications and repeat applications. Based on data on asylum applications in the EUROSTAT database, http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database, accessed 10 December 2012. As regards the situation of Syrians in Europe, see also UN News Service, *As Syrians continue to flee, UN urges European Union to uphold asylum principles*, 16 October 2012, <http://www.unhcr.org/refworld/docid/508542d72.html>.

⁶ See UN Office for the Coordination of Humanitarian Affairs, *United Nations: Ordinary people paying the price in Syria (EN/AR)*, 3 December 2012, <http://reliefweb.int/report/syrian-arab-republic/united-nations-ordinary-people-paying-price-syria-enar>; and UN Office for the Coordination of Humanitarian Affairs, *Syria Humanitarian Bulletin - Issue 13 | 12 – 26 November 2012 (EN/AR)*, 29 November 2012, <http://reliefweb.int/report/syrian-arab-republic/syria-humanitarian-bulletin-issue-13-12-%E2%80%9326-november-2012-enar>.

⁷ For example, in Homs, many individuals were living in unheated communal shelters in November 2012. UN High Commissioner for Refugees, *UNHCR assessment team finds dire living conditions in Homs*, 30 November 2012, <http://www.unhcr.org/refworld/docid/50bc62952.html>.

⁸ UN Office for the Coordination of Humanitarian Affairs, *United Nations: Ordinary people paying the price in Syria (EN/AR)*, 3 December 2012, <http://reliefweb.int/report/syrian-arab-republic/united-nations-ordinary-people-paying-price-syria-enar>.

⁹ Integrated Regional Information Networks (IRIN), *Syria: Healthcare system crumbling*, 11 December 2012, <http://www.unhcr.org/refworld/docid/50c72c3c2.html>. In addition, medical personnel have reportedly been targeted in attacks; see, for example, Médecins du Monde, *Doctors call for urgent action to avert winter catastrophe*, 10 December 2012, <http://reliefweb.int/report/syrian-arab-republic/doctors-call-urgent-action-avert-winter-catastrophe>. See also footnote 6.

for the internally displaced and damage to school buildings resulting from the conflict.¹⁰ With the onset of winter, the cold weather and shortages of essential clothing, adequate shelter and heating threaten to affect many families.¹¹ In responding to this situation, UN agencies, together with our national and international partners, have been scaling up their activities in accordance with the Syria Humanitarian Assistance Response Plan.¹²

3. The UN and media sources continue to report on-going violence and killings in Syria.¹³ Since the start of the unrest in March 2011, there have been reports of grave, widespread and systematic human rights violations, including but not limited to extrajudicial killings, torture, arbitrary detention and use of heavy weaponry against civilian populations.¹⁴ On 16 December 2012, eight persons were reportedly killed and many wounded in Yarmouk camp, the largest refugee camp for Palestinians in Damascus, as a result of what was reported to be the first airstrike targeting the camp. Many residents are reported to have fled since the attack, leaving the camp in a chaotic state with fighting reported between different factions.¹⁵ As of November 2012, the death toll since the start of the uprising was estimated to be anywhere from 20,000 to 40,000 persons.¹⁶ The violence is disproportionately affecting some of the most vulnerable populations, such as children. Recent reports continue to indicate the heavy impact of fighting on children¹⁷ and the apparent targeting of children in the conflict.¹⁸ There have also been reports that children have been

¹⁰ See, for example, UN News Service, *UNICEF condemns mortar attack on Syrian school*, 5 December 2012, <http://www.unhcr.org/refworld/docid/50c1bc712.html>. See also footnote 6.

¹¹ See footnote 6.

¹² UN Office for the Coordination of Humanitarian Affairs, *Draft Syria Humanitarian Assistance Response Plan 2012*, 25 October 2012, <http://www.unocha.org/cap/appeals/draft-syria-humanitarian-assistance-response-plan-2012>.

¹³ See, for example, Radio Free Europe/Radio Liberty, *UN chief 'horrified' by Syria violence*, 30 November 2012, <http://www.unhcr.org/refworld/docid/50c209891f.html>; The New York Times, Neil MacFarquhar, *In Syria, Failed Truce and No Lull in Violence*, 29 October 2012, <http://www.nytimes.com/2012/10/30/world/middleeast/attacks-continue-during-failed-holiday-truce-in-syria.html>; and Associated Press, Edith M. Lederer, *UN chief: Both sides in Syria violating rights*, 4 September 2012, <http://bigstory.ap.org/article/germany-urges-syria-opposition-ready-transition>.

¹⁴ See, for example, UN Human Rights Council, *Situation of human rights in the Syrian Arab Republic : resolution / adopted by the Human Rights Council*, 17 October 2012, A/HRC/RES/21/26, <http://www.unhcr.org/refworld/docid/50adee0d2.html> and UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 16 August 2012, A/HRC/21/50, <http://www.unhcr.org/refworld/docid/503485d02.html> and UN High Commissioner for Human Rights, *Independent International Commission of Inquiry on the Syrian Arab Republic established pursuant to United Nations Human Rights Council Resolutions S-17/1, 19/22 and 21/26, Periodic Update*, 20 December 2012, <http://www.ohchr.org/Documents/Countries/SY/ColSyriaDecember2012.pdf>. See also Associated Press, *UN Chief urged Syria to stop using heavy weapons*, 2 October 2012, <http://bigstory.ap.org/article/un-chief-urged-syria-stop-using-heavy-weapons>.

¹⁵ See e.g. Al Jazeera Syrian forces surround Palestinian camp, 17 December 2012, <http://www.aljazeera.com/news/middleeast/2012/12/2012121717419248502.html>; The Guardian, *Syrian jet fires rocket at Palestinian refugee camp in Damascus*, 16 December 2012, <http://www.guardian.co.uk/world/2012/dec/16/syrian-rocket-palestinian-refugee-camp>.

¹⁶ See Radio Free Europe/Radio Liberty, *UN chief 'horrified' by Syria violence*, 30 November 2012, <http://www.unhcr.org/refworld/docid/50c209891f.html> and UN News Service, *Security Council must come together to solve crisis in Syria - UN-Arab League envoy*, 29 November 2012, <http://www.unhcr.org/refworld/docid/50b8ae572.html>. See also Agence France-Presse (AFP), *Attacks, air strikes hit Syria as death toll mounts*, <http://reliefweb.int/report/syrian-arab-republic/attacks-air-strikes-hit-syria-death-toll-mounts>.

¹⁷ See, for example, Human Rights Watch, *Syria: Evidence Shows Cluster Bombs Killed Children*, 27 November 2012, <http://www.unhcr.org/refworld/docid/50b8a3592.html>.

¹⁸ See, for example, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *SRSZ Zerrougui condemns the killing of Syrian children in Government airstrikes*, 19 October 2012, <http://childrenandarmedconflict.un.org/press-releases/srsz-zerrougui-condemns-the-killing-of-syrian-children-in-government-airstrikes/>.

¹⁸ According to the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, “*The situation for children in Syria is dire. My staff and other United Nations colleagues have documented Government attacks on schools, children denied access to hospitals, girls and boys suffering and dying in bombardments of their neighbourhoods, and also being subject to torture, including sexual violence, sometimes for weeks. Since the publication of this report, my Office has also gathered evidence on violations committed by non-State armed groups in Syria. We have received information concerning indiscriminate bomb attacks which have killed children in Damascus and other areas, and continue to document incidents committed by armed actors, such as the Free Syrian Army, who may have children associated with their forces...*” Office of the Special Representative of the Secretary-General for Children and Armed Conflict, 19 Sept 2012 – Open Debate Security Council Statement, 19 September 2012, <http://childrenandarmedconflict.un.org/statements/19-sept-2012-open-debate-security-council-statement/>.

recruited to participate in the armed conflict.¹⁹ Sexual violence, affecting mostly women and girls but also men and boys, continues to be reported, particularly in the context of house searches and at checkpoints, and in detention.²⁰

4. UNHCR appreciates that neighbouring countries have for the most part continued to keep their borders open and to receive Syrians and others fleeing the country in search of protection and safety, and urges these States to continue to do so. UNHCR characterizes the flight of civilians from Syria as a refugee movement. Syrian civilians and persons who had their habitual residence in Syria will continue to require international protection until such time as the situation in Syria improves and allows for voluntary return in safety and dignity. Syrians and habitual residents of Syria in need of international protection who approach UNHCR and the respective host Governments have been or are being registered, where applicable, as persons seeking international protection and are being assisted. UNHCR encourages states to ensure arrivals are afforded international protection and associated rights, the form of which may vary, depending on how the situation in Syria unfolds and on the processing and reception capacity of countries receiving them.
5. It is essential that protection provided to those fleeing Syria entail treatment which respects the fundamental humanity and dignity of the individuals concerned and guarantees minimum humanitarian standards, including:
 - a. Access to the territory and to safety;
 - b. Protection from *refoulement*;
 - c. Access to the necessities of life, including
 - i. Adequate shelter with appropriate sanitary arrangements (whether provided in dedicated sites or ensured through community hosting arrangements)
 - ii. Food
 - iii. Health care facilities
 - iv. Access to primary education;
 - d. Identity documentation;
 - e. Respect for family unity and where needed, special protection for children, in particular those who are unaccompanied/separated, including family tracing arrangements; and
 - f. Respect for the principles of non-discrimination and freedom of movement.²¹
6. In addition, the psychological, protection and other needs of specific groups, such as victims of torture, trauma or sexual violence, must be addressed. This may include counseling, health and protection arrangements, including with regard to accommodation and psychological and physical well-being.²²
7. Given the situation of violence and conflict, it is possible that among those departing Syria and seeking international protection in neighbouring states there may be people who have taken part in the

¹⁹ For example, according to Human Rights Watch, boys as young as 14 have been serving as soldiers, guards and lookouts for opposition groups. Human Rights Watch, *Syria: Opposition Using Children in Conflict*, 29 November 2012, <http://www.unhcr.org/refworld/docid/50b8a47c2.html>.

²⁰ According to the head of the UN investigative panel, Paulo Pinheiro, “We have good evidence in terms of summary executions, forced disappearance, arbitrary detentions, torture and sexual violence from both sides....” Al Jazeera, *Widespread rights abuses alleged in Syria*, 17 September 2012, <http://www.aljazeera.com/news/middleeast/2012/09/201291784743116694.html>. See also UN Human Rights Council, *Situation of human rights in the Syrian Arab Republic: resolution / adopted by the Human Rights Council*, 17 October 2012, A/HRC/RES/21/26, <http://www.unhcr.org/refworld/docid/50adee0d2.html>.

²¹ See, for example, Executive Committee of the High Commissioner’s Programme, *Conclusion No. 22 (XXXII), Protection of Asylum-Seekers in Situations of Large-Scale Influx*, 1981, in: *UN High Commissioner for Refugees, A Thematic Compilation of Executive Committee Conclusions*, 6th edition, June 2011, <http://www.unhcr.org/refworld/docid/4f50cfbb2.html>.

²² See, for example, Executive Committee of the High Commissioner’s Programme, *Conclusion No. 93 (LIII), 2002, Conclusion on reception of asylum-seekers in the context of individual asylum systems*, <http://www.unhcr.org/3dafdd344.html>.

hostilities—that is, combatants²³ or armed elements.²⁴ UNHCR calls upon concerned governments to make every effort to identify combatants and armed elements from all parties to the conflict among arrivals from Syria and to house them separately, consistent with the humanitarian and civilian character of asylum. Individuals identified as combatants or armed elements, including children associated with armed forces or armed groups, need to be treated in accordance with existing standards in applicable international law.²⁵

8. While the majority of Syrians and others currently leaving the country appear to remain in the region, there are increasing numbers of individuals who arrive in countries further afield and make claims for international protection. Where such arrivals occur in countries with established asylum systems, access to territory, asylum procedures and appropriate reception entitlements must be ensured, and their claims should be processed according to fair and effective procedures. Detention of asylum-seekers should be used only in very exceptional circumstances and as a last resort. UNHCR considers that many Syrians seeking international protection are likely to fulfil the requirements of the refugee definition contained in the 1951 Convention Relating to the Status of Refugees, since in many cases their well-founded fear of persecution will be linked to one of the Convention grounds.²⁶ Where persons are found not to meet the 1951 Convention criteria, criteria for complementary forms of protection, including those elaborated in

²³ Note that UNHCR uses the term “combatants” in a wider sense than the specific meaning of combatant in international humanitarian law and applies it to “any member, man or woman, of regular armed forces or an irregular armed group, or someone who has been participating actively in military activities and hostilities, or has undertaken activities to recruit or train military personnel, or has been in a command or decision-making position in an armed organization, regular or irregular, and who find themselves in a host State.” See UN High Commissioner for Refugees, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, p.17. <http://www.unhcr.org/refworld/docid/452b9bca2.html>.

²⁴ The term “armed elements” refers to all individuals carrying weapons, who may be either combatants or civilians. It is intended to include civilians who may happen to be carrying weapons for reasons of self-defense or reasons related to any military activities. While all armed elements need to be disarmed upon crossing the border into a host State, only combatants need to be separated and interned. See UN High Commissioner for Refugees, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, p.17. <http://www.unhcr.org/refworld/docid/452b9bca2.html>.

²⁵ Including international human rights law and international humanitarian law. In general, children associated with armed forces or armed groups should not be interned, although exceptions may apply to children of 15 years of age and above for reasons related to the conflict. In such cases, interned children should benefit from special guarantees as provided for in humanitarian law and human rights law. See UN High Commissioner for Refugees, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, <http://www.unhcr.org/refworld/docid/452b9bca2.html>.

²⁶ The methods of warfare observed in Syria include the shelling of or other forms of attacks on whole neighbourhoods, purportedly for reason of real or perceived support to the other party, as well as more recent reports of bulldozing of residences. These actions, together with consistent and reliable reports of human rights violations committed by all parties to the conflict, indicate that substantial numbers of Syrian civilians are likely to have fled Syria because of a well-founded fear based on a real or imputed political opinion. In addition, Syria’s minority groups, such as Armenian Orthodox and other Christians, Druze communities, Palestinians and Alawites are reported to have been increasingly drawn into the conflict, which is said to be increasingly sectarian in nature. Members of minority communities may have a well-founded fear of persecution for reason of race or nationality. Other Convention grounds may however also be relevant, depending on the circumstances of the individual case. As regards attacks on whole neighbourhoods, see, for example, United Nations Office of the High Commissioner for Human Rights, Ms. Navi Pillay, *United Nations High Commissioner for Human Rights: Statement to the Side-event at the 21st session of the UN Human Rights Council on “Bearing witness: human rights and accountability in Syria”*, 10 September 2012, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12491&LangID=E>. Regarding the increased sectarianism and the position of minority groups in the conflict, see: UN High Commissioner for Human Rights, *Independent International Commission of Inquiry on the Syrian Arab Republic established pursuant to United Nations Human Rights Council Resolutions S-17/1, 19/22 and 21/26, Periodic Update*, 20 December 2012, <http://www.ohchr.org/Documents/Countries/SY/ColSyriaDecember2012.pdf>. There have also been reports of indiscriminate attacks, including shelling, by opposition forces; see, for example, Agence France Presse (AFP), *Syria rebels shell key pro-Assad area*, 8 November 2012, re-published in a number of news sources, including World News Australia, <http://www.sbs.com.au/news/article/1708757/Syria-rebels-shell-key-pro-Assad-area>.

binding or non-binding regional protection regimes or principles, or situation-based refugee criteria²⁷ are likely to apply.²⁸

9. As the situation in Syria is fluid and may remain uncertain for some time to come, UNHCR appreciates that Governments have taken measures to suspend the forcible return of nationals or habitual residents of Syria, including those who have had their asylum claims rejected. Such measures are intended to be implemented until such time as the security and human rights situation in the country has improved sufficiently to permit safe, dignified and sustainable return. UNHCR continues strongly to recommend that States maintain a moratorium on all returns to Syria for the time being, pending an assessment of when the changed situation in the country would permit return in safety and dignity.
10. UNHCR calls upon States beyond Syria's immediate region to explore concrete and meaningful ways of expressing solidarity, notably with a view to sharing the burden and protection responsibilities currently being assumed by the countries neighbouring Syria.
11. UNHCR furthermore urges States who have recognized Syrians as refugees in individual procedures to give effect to their right to family unity. Not only is respect for family unity a core right, but ensuring the implementation of this right through family reunification can also be considered as a meaningful demonstration of solidarity. Furthermore, facilitating family reunification will prevent family members of people recognized as needing international protection from embarking on dangerous journeys facilitated by smugglers out of Syria's neighbouring countries, in order to reunite with family members in the countries where they have been granted asylum.
12. This guidance is meant for States experiencing arrivals from Syria, and will be updated as the situation in Syria evolves.

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²⁷ This term is used to distinguish between international protection criteria which flow from the specific, individual circumstances of the person concerned (such as circumstances which can be linked to a 1951 Convention ground) and protection criteria which flow from the general situation in which all the people in a certain location / area find themselves.

²⁸ See Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa* ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>; European Union: Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 19 May 2004, 2004/83/EC, <http://www.unhcr.org/refworld/docid/4157e75e4.html>; *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.unhcr.org/refworld/docid/3ae6b36ec.html>; Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees* ("Bangkok Principles"), 31 December 1966, <http://www.unhcr.org/refworld/docid/3de5f2d52.html>.