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**GUIDANCE NOTE ON REFUGEE CLAIMS
RELATING TO CRIMES OF *LÈSE MAJESTÉ*
AND SIMILAR CRIMINAL OFFENCES**

**United Nations High Commissioner for Refugees (UNHCR)
Division of International Protection
Geneva**

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The Office of the United Nations High Commissioner for Refugees (UNHCR) issues Guidance Notes on thematic legal issues pursuant to its mandate, as contained in the *Statute of the Office of the United Nations High Commissioner for Refugees*, and subsequent General Assembly resolutions in conjunction with Article 35 of the *1951 Convention relating to the Status of Refugees* and Article II of its *1967 Protocol*. Guidance Notes seek to provide guidance in the particular thematic area concerned, by analyzing international legal standards, jurisprudence and other relevant documents.

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I. INTRODUCTION

1. This Note is aimed at facilitating the determination of claims to refugee status related to national crimes of *lèse majesté* and similar criminal offences against the State and its officials (hereinafter “crimes of *lèse majesté*”).

2. *Lèse majesté*, a crime committed against the sovereign power, or an offence that violates the dignity of a ruler as the representative of a sovereign power, and similar crimes insulting or bringing into disrepute the State and its officials continue to be maintained and implemented in a number of countries.¹ They can include similar crimes using a variety of names, such as *desacato* (“disrespect of authority”), “defamation”, “libel”, “contempt”, “insult” or “attack of honour” laws.²

II. LÈSE MAJESTÉ AND SIMILAR CRIMES IN THE CONTEXT OF REFUGEE CLAIMS

3. No comprehensive statistics exist on the number and nationality of applicants applying for refugee status as a result of risks arising from crimes of *lèse majesté* and similar criminal offences against the State and its officials. However, UNHCR is aware that such applications for refugee status have been filed on this basis and guidance on how to assess such claims is needed.

4. Whether an application for refugee status related to crimes of *lèse majesté* or similar criminal offences will be accepted in accordance with the refugee definition contained in Article 1A(2) of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (“1951 Convention”) must be carefully assessed in accordance with the framework for analysis outlined in this Note.

III. INTERNATIONAL HUMAN RIGHTS LAW AND LÈSE MAJESTÉ

5. The rule of law requires States to provide a safe, transparent and rights-respecting environment in accordance with international human rights standards. Respect for freedom of expression is considered necessary for the realization of transparency and accountability, which are in turn essential for the promotion and protection of human rights.³ Freedom of opinion and freedom of expression constitute the foundation stone for every free and democratic society.⁴ Opinions are absolutely protected under international human rights law, expressions are not (see paragraphs 7 to 10 below). As such, people may think the most extreme of thoughts, but giving expression to them may legitimately be restricted, for example when advocating hatred that constitutes incitement to discrimination, hostility or violence.⁵

6. Freedom of opinion and freedom of expression are enshrined in Article 19 of the Universal Declaration of Human Rights 1948, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and other provisions under regional human rights

¹ See, for example, R. Walden, *Insult Laws: An Insult to Press Freedom, A World Press Freedom Committee Study of More Than 90 Countries and Territories*, World Press Freedom Committee Rex Rand Fund, 2000, <http://www.wpfc.org/site/docs/pdf/Insult%20Laws-Text.PDF>, which provides an overview of “insult laws” and laws specifically criminalising “insulting” government officials and institutions in over 90 countries around the world. While the study focuses on the impact of such laws on the freedom of the press (and therefore tends to place a greater emphasis on crimes of libel and defamation), many of the national criminal provisions outlined therein also apply to private citizens. It should, however, be noted that some of the criminal provisions referred to in the study have been amended or repealed since its publication.

² See, UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, <http://www.refworld.org/docid/4ed34b562.html>, para. 38.

³ *Ibid.*, para. 3.

⁴ *Ibid.*, para. 2.

⁵ *Ibid.*, para. 28.

instruments.⁶ These freedoms are closely related to the rights to freedom of assembly and association, and the exercise of the right to vote.⁷ All branches of the State are obligated to respect freedoms of opinion and expression.⁸ Crimes of *lèse majesté* and similar crimes against the State and its officials may be incompatible with the freedoms of opinion and expression.

7. Paragraph 19(1) of the ICCPR requires protection of the right to hold opinions without interference, which does not permit any restriction, reservation or derogation.⁹ The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions he/she may hold, constitutes a violation of Article 19(1) of the ICCPR.¹⁰

8. Freedom of expression in Article 19(2) of the ICCPR requires States parties to guarantee the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. It includes political discourse, commentary on one's own and on political affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching and religious discourse.¹¹ It includes all forms of expression and their means of dissemination.¹² It even embraces expression that may be regarded as deeply offensive, although such expression may be restricted, in accordance with Article 19(3) of the ICCPR, in respect of the rights or reputation of others or the protection of national security or public order (*ordre public*) or of public health or morals, as well as in accordance with Article 20 of the ICCPR, when it entails propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.¹³

9. The right to freedom of expression carries with it special duties and responsibilities and may therefore be subject to certain restrictions in accordance with Article 19(3) of the ICCPR. State-imposed restrictions on freedom of expression must (i) be provided by law; (ii) only be applied in respect of the rights or reputation of others, or to the protection of national security or public order (*ordre public*) or of public health or morals; (iii) conform to the tests of strictly necessary and proportionate; and (iv) not put in jeopardy the right itself.¹⁴ For example, it may be legitimate to restrict freedom of expression in order to protect the right privacy and protect people from unlawful, including discriminatory, attacks on their honour and reputation.¹⁵ Invoking a legitimate ground for restricting freedom of expression requires a State to demonstrate in a specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.¹⁶

10. Restrictions on freedom of expression can only be legitimately applied and enforced when they are clearly defined in formal legislation or as an unwritten norm of common law and not when they are based on an administrative provision, a vague statutory authorization, or enshrined in traditional, religious or other such customary laws.¹⁷

⁶ See, for instance, Article 10 of the European Convention on Human Rights (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, <http://www.refworld.org/docid/3ae6b3b04.html>); Article 13 of the American Convention on Human Rights (Organization of American States (OAS), *American Convention on Human Rights*, "Pact of San Jose", Costa Rica, 22 November 1969, <http://www.refworld.org/docid/3ae6b36510.html>); and Article 9(2) 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>).

⁷ See, UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, <http://www.refworld.org/docid/4ed34b562.html>, para. 4.

⁸ *Ibid.*, para. 7.

⁹ *Ibid.*, para. 5.

¹⁰ *Ibid.*, para. 9.

¹¹ *Ibid.*, para. 11.

¹² *Ibid.*, para. 12.

¹³ *Ibid.*, para. 11.

¹⁴ *Ibid.*, paras. 21 and 22.

¹⁵ *Ibid.*, para. 28.

¹⁶ *Ibid.*, para. 35.

¹⁷ *Ibid.*, paras. 24 and 25. See also, M. Nowak, *U.N. Covenant on Civil and Political Rights. CCPR Commentary*, (2nd revised edition) Kehl [etc.]: N.P. Engel Publisher 2005, 460 [46]; UN Commission on Human Rights, *The Siracusa Principles on*

11. In respect of *lèse majesté* and similar crimes, the UN Human Rights Committee has, on several occasions, expressed its concern about such crimes, emphasizing the high threshold for restricting criticism of Governments and Heads of State;¹⁸ and has, with regard to some countries, declared laws penalizing such crimes contrary to Article 19(3) of the ICCPR, calling upon those countries to repeal such laws.¹⁹ While the UN Human Rights Committee has not declared laws penalizing crimes of *lèse majesté* or similar crimes in breach of international human rights standards per se, it has stated that:

“in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high”;²⁰

and continues,

“[t]hus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition. Accordingly, the Committee expresses concern regarding laws on such matters as, lese majesty, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration.”²¹

12. The UN Human Rights Committee has also made clear that defamation laws must be crafted with care in compliance with Article 19(3) of the ICCPR and that they do not serve, in practice, to stifle freedom of expression.²² Importantly, according to the Committee, States should consider the decriminalization of defamation; and, in any case, the application of the

the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984, E/CN.4/1985/4, Principles 15 to 18, <http://www.refworld.org/docid/4672bc122.html> (“*Siracusa Principles*”); and Article 19, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, 1 October 1995, Principle 1.1, <http://www.refworld.org/docid/4653fa1f2.html> (“*Johannesburg Principles*”).

¹⁸ Public officials, including Heads of State, must tolerate a higher degree of scrutiny than ordinary individuals because of their public function and the role they have in a democratic society, UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations: Dominican Republic*, 26 April 2001, CCPR/CO/71/DOM, <http://www.refworld.org/docid/3be11f544.html>, para. 38. See also, for example, *Aduayom et al v Togo*, CCPR/C/51/D/422-424/1990, UN Human Rights Committee (HRC), 12 July 1996, para. 7.4, in which the HRC observed, ‘that the freedoms of information and of expression are cornerstones in any free and democratic society. It is in the essence of such societies that its citizens must be allowed to inform themselves about alternatives to the political system/parties in power, and that they may criticize or openly and publicly evaluate their Governments without fear of interference or punishment, within the limits set by article 19, paragraph 3’; and *Bodroziv v Serbia and Montenegro*, CCPR/C/85/D/1180/2003, UN Human Rights Committee (HRC), 23 January 2006, para. 7.2, in which the HRC observed, ‘that in circumstances of public debate in a democratic society, especially in the media, concerning figures in the political domain, the value placed by the Covenant upon uninhibited expression is particularly high’. See also, *Concluding Observations on Jordan*, CCPR/C/79/Add.35, UN Human Rights Committee (HRC), 10 August 1994, para., 11; and *Concluding Observations on Kuwait*, CCPR/C/KWT/CO/2, UN Human Rights Committee (HRC), 18 November 2011, para. 25. See also, *Tristán Donoso v Panama*, Inter-American Court on Human Rights, 27 January 2009, Series C No. 193, para. 115; *Kimel v Argentina*, Inter-American Court on Human Rights, 2 May 2008, Series C No. 117, para. 86; Inter-American Declaration of Principles on Freedom of Expression, Inter-American Commission on Human Rights, October 2000, Principle 11, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&IID=1>.

¹⁹ See, for example, UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations: Dominican Republic*, 26 April 2001, CCPR/CO/71/DOM, <http://www.refworld.org/docid/3be11f544.html>, para. 22, and UN Human Rights Committee (HRC), *Concluding Observations of the Human Rights Committee: Zambia*, 9 August 2007, CCPR/C/ZMB/CO/3, <http://www.refworld.org/docid/46d277762.html>, para. 25. See also, Conclusions and Recommendations of the Inter-American Commission on Human Rights, Annual Report 2014, Volume II, *Annual report of the Office of the Special Rapporteur for Freedom of Expression*, OEA/Ser.L/V/II, Doc. 13, 9 March 2015, Chapter V, <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/Annual2014-freedom-of-expression.pdf>, para. 9(a) and (b).

²⁰ UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, <http://www.refworld.org/docid/4ed34b562.html>, para. 38 (see also similar wording in para. 34).

²¹ *Ibid.*, para. 38.

²² *Ibid.*, para. 47.

criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.²³

13. States may justify the restrictions on the freedom of expression imposed by *lèse majesté* and similar criminal offences on the basis of protecting national security or preserving public order. For restrictions based on public order to be legitimate, they must be necessary and proportionate to ensure the functioning of society or the set of fundamental principles on which such society is founded, including respect for human rights.²⁴ In general, restrictions on the basis of national security are only justifiable if they address a threat to the existence of the nation or its territorial integrity or political independence against force or threat of force, as distinct from localised violence and ordinary criminal activities, cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.²⁵

14. Restrictions on freedom of expression can only be justified on the basis of national security concerns, when: (i) the expression is intended to incite imminent violence; (ii) it is likely violence is incited; and (iii) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.²⁶ In addition, restrictions on freedom of expression may also be justified when the expression is aimed at propagating war or advocating hatred on the basis of nationality, race or religion that incites discrimination, hostility or violence.²⁷ Restrictions on freedom of expression sought to be justified on grounds of national security are not legitimate if they are to protect interests unrelated to national security, including for example, to protect the Government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology.²⁸

IV. FRAMEWORK FOR ANALYSIS

A. Well-Founded Fear

15. A person's fear is well-founded if he or she can establish, to a reasonable degree, that, upon return, he or she would be subjected to serious harm amounting to persecution.²⁹ The main risks associated with crimes of *lèse majesté* and similar crimes against the State and its officials are prosecution and punishment upon conviction, which depending on the country concerned may range from fines to long-term imprisonment. Other possible risks of harm

²³ *Ibid.*, para. 47. According to the UN Special Rapporteur on the Right to Freedom of Opinion and Expression criminal defamation laws are inherently harsh and have a disproportionate chilling effect on free expression, see, for example, UNGA, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 10 August 2011, A/66/290, para. 40.

²⁴ *Siracusa Principles*, Principle 22.

²⁵ *Siracusa Principles*, paras. 29 to 31. See also *Johannesburg Principles*, Principle 2.

²⁶ *Johannesburg Principles*, Principle 6. See also the judgments of the European Court of Human Rights (ECtHR) in *Sener v. Turkey*, Application No. 26680/95, 18 July 2000, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58753>; and *Karataş v. Turkey*, Application No. 23168/94, 8 July 1999, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58274>; as well as the UN Human Rights Committee decision in *Keun-Tae Kim v. Republic of Korea*, CCPR/C/64/D/574/1994, UN Human Rights Committee (HRC), 4 January 1999, <http://www.refworld.org/docid/3f588eff7.html>.

²⁷ According to Article 20 of the ICCPR, "(1) [a]ny propaganda for war shall be prohibited by law; and (2) [a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". See also, UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, <http://www.refworld.org/docid/4ed34b562.html>, paras. 50 to 52.

²⁸ *Johannesburg Principles*, Principle 2(b). A further non-exhaustive list of expressions not considered to constitute a threat to national security is provided in Principle 7(a), including expressions that: (i) advocate non-violent change of government policy or the government itself; (ii) constitute criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials; (iii) constitute objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes; (iv) are directed at communicating information about alleged violations of international human rights standards or international humanitarian law.

²⁹ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV. 3, re-issued December 2011, <http://www.refworld.org/docid/4f33c8d92.html>, para. 42 ("UNHCR Handbook").

include, but are not limited to, prosecution and punishment for (un)related offences, extrajudicial punishment, and ill-treatment in detention.

16. The well-founded fear assessment is forward-looking. The 1951 Convention protects those who are at risk of being persecuted; there is no need for them to have already been subjected to persecution. In the latter case, it may be assumed that a person has a well-founded fear of being persecuted if s/he has already suffered from persecution in the past.³⁰ With regard to claims related to *lèse majesté* and similar crimes, it follows that there is no requirement that the applicant has already been subjected to such laws, either by way of having been investigated for, charged with, or prosecuted and punished for such crimes. Depending on the circumstances it may suffice that the applicant has committed acts that fall within the scope of the relevant criminal provisions – and that they have come to the attention of the authorities – or that such acts are attributed to the applicant. In such cases, however, there would usually be evidence of a pattern of such investigations and prosecutions such that there is a reasonable likelihood that the laws will be applied.

17. The existence of *lèse majesté* or similar criminal offences in the country of origin does not in and of itself establish a risk of harm in the event of return. Consideration needs to be given to the content of such laws, the penalties attached thereto and whether and how such laws are applied and enforced in practice. Depending on the country context, the existence of *lèse majesté* and similar criminal offences, even if not systematically or regularly applied and enforced, can, nevertheless, create or contribute to an atmosphere of intolerance to political dissent or debate and generate a threat of harm for persons holding political opinions, or perceived to hold political opinions, critical of the State, the ruler or other government officials.

18. The existence of such laws may also be used for personal or political gain, in the form of blackmail or extortion.

19. In cases where the risk of harm is at the hands of non-State actors, such as powerful elites or rank-and-file members of opposing political parties, the ability and willingness of the State authorities to provide protection to the applicant against such harm will need to be assessed.

(i) *Sur Place Claims*

20. A well-founded fear of persecution related to crimes of *lèse majesté* or similar criminal offences may arise as a result of an applicant's conduct after departure from his or her country of origin. The main considerations in determining *sur place* claims based on an applicant's actions after departure are:

- (i) whether the applicant's conduct has, or is likely to, come to the attention of the authorities in the country of origin; and
- (ii) whether, as a result, there is a reasonable likelihood that the applicant would experience persecution upon return.³¹

21. What, if any, consequences such actions are likely to entail for an applicant may depend on a variety of factors, including the applicant's political profile and the relative importance of his or her opinions, and will need to be determined carefully in light of current information on the human rights situation in the country of origin, including restrictions on freedom of expression and treatment of political dissidents or government critics.

³⁰ *Ibid.*, para. 45.

³¹ *Ibid.*, paras. 94-96. See also UNHCR, *Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees*, April 2001, <http://www.refworld.org/docid/3b20a3914.html>, para. 34.

B. Persecution

22. Although not specifically defined in the 1951 Convention, the term “persecution” is considered to encompass serious human rights violations, including a threat to life or freedom,³² and other kinds of serious harm. In addition, lesser forms of harm may constitute persecution by accumulation.³³ Discrimination will amount to persecution where the effect leads to a situation that is intolerable or substantially prejudicial to the person concerned.³⁴

23. Whether the harm arising in the context of *lèse majesté* or similar criminal offences amount, individually or on a cumulative basis, to persecution will depend on the circumstances of each case. In assessing whether an anticipated harm reaches the threshold of persecution, it is important to take into account the impact that such harm may have on the applicant in question as assessed in light of his or her profile, age, gender, opinions, feelings and psychological make-up.³⁵

24. Refugee claims related to *lèse majesté* and similar crimes against the State and its officials, flags and symbols may include, but are not limited to: (i) prosecution and punishment; and (ii) interference or breach of other human rights.

(i) Prosecution and Punishment Amounting to Persecution for Crimes of Lèse Majesté and Similar Criminal Offences

25. Refugee claims related to crimes of *lèse majesté* or similar crimes against the State and its officials often involve prosecution and punishment under national laws. Where the law in question imposes penalties such as imprisonment, physical labour or other physical punishment, they are, in principle, persecutory.³⁶ Also, where other penalties are imposed that are disproportionate, the laws and the associated punishment are also considered persecutory.³⁷ Another form of persecution based on crimes of *lèse majesté* and similar criminal offences is when they are applied or enforced in a discriminatory manner related to one or more Convention grounds.³⁸ This would be the case, for example, where the applicant may be falsely accused of crimes of *lèse majesté* or similar offences in order to discredit or neutralize him or her as being a real or perceived political opponent. This may, for example, affect persons of a specific profile, political or religious affiliation, gender or ethnicity. In this context, non-respect of due process standards may be an indication that the law has been applied in a discriminatory manner.

(ii) Interference or Breach of Other Human Rights

26. The implementation of *lèse majesté* and similar criminal provisions may also unlawfully restrict and be related to violations of other fundamental human rights, such as the

³² From Article 33 (1) of the 1951 Convention, which sets out the principle of *non-refoulement*, it may be inferred that a threat to life or freedom for one of the 1951 Convention reasons always amounts to persecution. See, UNHCR Handbook, para. 51.

³³ *Ibid.*, para. 55.

³⁴ *Ibid.*, para. 54.

³⁵ *Ibid.*, para. 52.

³⁶ *Ibid.*, para. 57.

³⁷ See, for example, ECtHR, *Otegi Mondragon v. Spain*, Application no. 2034/07, 15 March 2011, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103951>, paras. 54, 56 and 61, in which the applicant, a spokesperson for a left-wing Basque separatist parliamentary group, was convicted for insult of the King pursuant to Article 490 §3 of the Spanish Criminal Code and sentenced to one year's imprisonment and suspension of his right to vote during that period. The Court found that the Applicant was speaking in his capacity as an elected representative and spokesperson and that his comments were political expression, and considered that “[...] while some of the remarks made in the applicant's speech portrayed the institution embodied by the King in a very negative light, with a hostile connotation, they did not advocate the use of violence, nor did they amount to hate speech, which in the Court's view is the essential element to be taken into account”. The Court further found that simply because the King occupied a more neutral position than the Government “it should not shield him from all criticism in the exercise of his official duties or [...] in his capacity as representative of the State which he symbolises” and therefore concluded that “the applicant's conviction was disproportionate to the aim pursued”. See also, ECtHR, *Eon v. France*, Application no. 26118/10, 14 March 2013, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117742>, para. 62.

³⁸ UNHCR Handbook, para. 57.

right to liberty and security (Article 9 ICCPR), the right to be treated with humanity and dignity while in detention (Article 10 ICCPR), the right to a fair trial (Article 14 ICCPR), and freedom from inhuman or degrading treatment or punishment (Article 7 ICCPR). For example, treatment while awaiting trial such as detention as well as the conditions in detention may be particularly relevant.

C. “For Reasons of” and the Convention Grounds

27. Crimes of *lèse majesté* and similar crimes against the State and its officials are considered political in character. It follows that, where an applicant has a well-founded fear of persecution related to *lèse majesté* laws, “political opinion” will generally be the most relevant 1951 Convention ground. In this context, it is important to note that “political opinion” must be interpreted broadly, as encompassing any opinion concerning matters on which the machinery of the State, government, society or policy may be engaged.³⁹

28. Whether the acts, committed by or attributed to the applicant, that fall within the scope of *lèse majesté* laws or similar crimes against the State and its officials, were politically motivated is irrelevant. The key consideration is whether the applicant has been or is likely to be subject to such laws.

29. In countries where criminal charges under *lèse majesté* or similar laws can be brought as a result of complaints by private individuals or groups, the “causal link” is satisfied if the reason for the complaint is linked to a 1951 Convention ground (for example, the complaint is made for the purposes of silencing or discrediting a political opponent).⁴⁰

30. While the majority of cases may be decided on political opinion, the facts of each case require careful assessment as to whether other 1951 Convention grounds are relevant. For example, an applicant may fear prosecution and punishment under *lèse majesté* or other similar crimes for his or her religious beliefs. Often the expression of political and religious views goes hand-in-hand, especially in non-secular societies where the head of State may also be the head of the official State religion. Likewise, one’s ethnicity, race or social group (including gender) may be the basis for the discriminatory enforcement of the laws in question, or their disproportionate application.

D. Internal Flight Alternative

31. An internal flight or relocation alternative (IFA) is generally not a relevant consideration where the persecution originates from or is condoned or tolerated by the State and its agents, as these are presumed to exercise authority and control throughout the territory of the country. Consequently, in cases where a well-founded fear of persecution relates to *lèse majesté* or similar crimes against the State and its officials, an IFA will generally not be a relevant consideration.⁴¹ An IFA is also not a relevant consideration where *lèse majesté* charges are brought as a result of complaints by the general public, as the State remains the prosecutor of such crimes.

³⁹ See, for example, 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, <http://www.refworld.org/docid/3d36f1c64.html>, para. 32.

⁴⁰ This is applicable to any of the grounds enumerated in Article 1A(2) of the 1951 Convention. See, for example, UNHCR, *Guidelines on International Protection No. 2: “Membership of a Particular Social Group” 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/02/02, <http://www.refworld.org/docid/3d36f23f4.html>, para. 23.

⁴¹ 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, <http://www.refworld.org/docid/3f2791a44.html>, para. 13.

E. Exclusion

32. Exclusion from international refugee protection based on a person's involvement in criminal acts is justified only if the acts in question fall within the scope of Article 1F of the 1951 Convention. The application of this provision to acts which constitute a legitimate exercise of human rights would not, however, be consistent with the object and purpose of the 1951 Convention. This is because the prohibition of activities guaranteed by international human rights law should not be considered a "crime", much less one of a serious nature.⁴²

33. Thus, when considering whether exclusion may arise in cases involving *lèse majesté* or similar crimes against the State and its officials, the starting point needs to be a careful analysis of the crimes in question in light of international human rights law standards (see Part III of this Note). Where the applicant's conduct was/is criminalized under legislation imposing restrictions on the right to freedom of expression which are not in line with Article 19(3) of the ICCPR, denial of refugee status based on Article 1F of the 1951 Convention would not be justified.

34. In some cases, however, an applicant's statements or other forms of expression may raise questions of exclusion. Such conduct may amount to incitement to violent crimes or hate crimes, such as, for example, murder or serious assault, which are considered serious crimes in most jurisdictions regardless of the existence of *lèse majesté* or similar provisions and would thus generally fall within the scope of Article 1F(b).⁴³ Crimes related to treason or sedition may also give rise to exclusion based on Article 1F(b).⁴⁴ Exclusion under Article 1F(a) may be relevant where it is determined that an applicant's conduct amounts to incitement to the commission of war crimes, or crimes against humanity, whereas Article 1F(c) may be applicable if the acts in question meet the requirements for this exclusion ground. An individualized assessment of all relevant facts and circumstances will be required in each case.⁴⁵

V. EXTRADITION IN THE CONTEXT OF CRIMES OF *LÈSE MAJESTÉ* AND SIMILAR CRIMINAL OFFENCES

35. Where a refugee or an asylum-seeker is the subject of an extradition request based on charges of, or a conviction for, *lèse majesté* or similar crimes, the host State's obligations under international refugee and human rights law form part of the legal framework governing the decision on the extradition request. If the wanted person is a refugee, the requested State's *non-refoulement* obligation as enshrined in Article 33(1) of the 1951 Convention and customary international law establishes a mandatory bar to the applicant's extradition to the country of origin. Where the extradition request concerns an asylum-seeker, asylum and extradition proceedings may be conducted in parallel, but the host State's obligations under international refugee law require that his or her eligibility for refugee status be determined prior to a decision on extradition, and that the refugee claim be examined by specialized

⁴² See 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>, para. 14, and its accompanying *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, para. 38.

⁴³ There may be situations where the conduct as such meets the criteria of one of the exclusion grounds in Art 1F, but the punishment is persecutory. In such cases, one would need to weigh the seriousness of criminal conduct against the consequences of exclusion.

⁴⁴ These crimes have traditionally been considered to be political offences in an extradition context. While this is a significant element in assessing whether an applicant's conduct constitutes a "non-political" crime for the purposes of Article 1F(b), the applicability of this exclusion ground is nevertheless subject to a separate assessment in light of the particular facts of the case. See UNHCR, *Guidance Note on Extradition and International Refugee Protection*, April 2008, <http://www.refworld.org/docid/481ec7d92.html>, paras. 42 and 82.

⁴⁵ For further guidance on the relevant criteria, see 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> and its accompanying *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>.

asylum authorities. In all cases, bars to extradition under international human rights law apply if extradition would expose the wanted person to a risk of torture or other serious harm.⁴⁶

36. Extradition requests related to *lèse majesté* or similar crimes may likewise be denied based on traditional refusal grounds under applicable extradition treaties and/or national extradition legislation in the requested State. This may include, in particular, refusal on the basis of the political offence exemption, which is applicable under many extradition agreements and provided for in national legislation governing extradition in many countries, or due to the principle of double criminality, whereby extradition may be granted only if the acts imputed to the wanted person constitute a crime in both the requesting and the requested States.⁴⁷

⁴⁶ Further guidance on legal and procedural issues arising in the context of extradition requests concerning refugees or asylum-seekers can be found in UNHCR, *Guidance Note on Extradition and International Refugee Protection*, April 2008, <http://www.refworld.org/docid/481ec7d92.html>.

⁴⁷ For the purposes of extradition, acts such as treason, sedition, *lèse majesté*, espionage, subversive propaganda, founding of or membership in a prohibited political party or election fraud are generally deemed to be political offences. See, for example, UNHCR, *The Interface Between Extradition and Asylum*, November 2003, PPLA/2003/05, <http://www.refworld.org/docid/3fe846da4.html>, para. 75.