

# Civilian and humanitarian character of asylum

25 July 2019

## Key points

- Asylum has an inherently peaceful, civilian and humanitarian character. Military activity is incompatible with the institution of asylum. Persons who pursue military activities in a country of asylum cannot be asylum-seekers or refugees, may not stay in or enter refugee camps, and may not benefit from humanitarian assistance provided by UNHCR under its international refugee mandate.
- The civilian and humanitarian character of asylum is an established and respected international refugee standard and a principle of international protection. It derives from rules in international refugee law, human rights law, international humanitarian law, national law, UNHCR's Statutes and the UN Charter.
- Prepare as much as possible in advance for the possibility that fighters or combatants may be present or may mix with refugees and displaced people. Analyse the conflict, activate early warning arrangements, and react promptly, because the best outcomes are achieved when a State identifies, disarms and separates combatants at entry, before they are in camps or settlements. In UNHCR's experience, it is more effective to prevent refugee camps from being infiltrated or militarized than to repair a situation in which their civilian and humanitarian character has already been jeopardised.
- Consider children who are associated with armed forces and armed groups primarily as victims, regardless of how they were recruited. They should benefit from special protection and assistance measures, notably to demobilize and rehabilitate them. They should have priority in identification and in principle should not be interned.
- If you need advice on the status and treatment of fighters or combatants in a specific context, in order to advise the authorities and other relevant actors appropriately, ask UNHCR's regional legal adviser in the bureau or regional representation, or DIP's Field Protection Support Service, Geneva.
- Acknowledge the State's genuine security concerns and capacities but ensure that States uphold their obligations. Refoulement, discrimination and arbitrary detention are prohibited; States should grant refugees access to their territories, provide international protection, and ensure the civilian and humanitarian character of asylum.

- Discuss confidentially with relevant authorities. Participate in and promote inter-agency dialogue with other relevant actors (UN Country Team, ICRC, OHCHR, UNDP, UNICEF, UN/regional peace operations).
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## 1. Overview

Asylum is granted when a State offers protection on its territory to an individual who has fled another country in response to persecution, serious harm, armed conflict or other situations of violence. Asylum therefore has an inherently peaceful, civilian and humanitarian character. Military activity is incompatible with it, and persons who pursue military activities in a country of asylum cannot be asylum-seekers or refugees. In consequence, **only civilians** may benefit from asylum or from the humanitarian assistance provided by UNHCR and its partners under its international refugee mandate.

Refugee camps, sites and settlements must also be protected from militarization and the presence of combatants or fighters (defined below). This means that combatants or fighters may not enter or stay in such camps, sites and settlements, even for short periods of time.

Maintaining the civilian and humanitarian character of asylum is of crucial importance, notably during emergency preparedness and at the start of an emergency situation.

During emergency situations, particularly when people are fleeing armed conflict, combatants or fighters may cross a border at the same time as refugees, or with them. They may also seek to take advantage of refugee camps, and humanitarian assistance and services, to recruit or train, regroup, plan military attacks, or for '[rest and recuperation](#)'.

To maintain the civilian and humanitarian character of asylum, six key measures are recommended in all refugee operations:

- (1) Preparedness planning.
- (2) Effective security management.
- (3) Disarmament of armed elements.
- (4) Identification of fighters and combatants.
- (5) Separation and control measures (including internment).
- (6) Verification that fighters or combatants who seek international protection have renounced military activities, enabling a determination of refugee status to be made.

In the context of the civilian and humanitarian character of asylum, the terms 'combatant' and 'fighter' refer to "any man, woman or child who is either a member of State armed forces (other than medical personnel and religious personnel) or a member of the fighting forces of a non-State armed group, and who has entered a country of asylum". Please see [UNHCR Guidance Note on Maintaining the Civilian and Humanitarian Character of Asylum, December 2018](#).

Host Governments are primarily responsible for maintaining the civilian and humanitarian character of asylum. However, a multi-stakeholder approach is often required in practice. When appropriate, all three pillars of the UN (human rights, development, and peace and security), other international and regional organisations, and other States may be involved. In particularly complex situations, which implicate international peace and security (due to the presence of a large number of active fighters or combatants, for example), interventions may require a collective engagement by the UN Country Team or Humanitarian Country Team as a whole, rather than by individual UN entities.

Although promoting the civilian and humanitarian character of asylum falls squarely within UNHCR's mandate, humanitarian organisations such as UNHCR have neither the mandate nor the means to assume the security functions of a State (such as disarmament, or separation and control measures for fighters and combatants). For this reason, UNHCR and other humanitarian organizations should not take individual decisions related to identification or verification of renunciation.

UNHCR may provide technical advice and guidance to the relevant authorities and assist them in determining appropriate procedures and measures. It may also, where deemed appropriate,

choose to participate or support a task force that deals with these processes, or provide financial and other support to relevant host State authorities, in particular when they act to ensure that refugee sites and hosting areas are secure.

This section sets out what actions UNHCR and its partners can take to advise and assist the authorities and other relevant stakeholders to ensure that the civilian and humanitarian character of asylum is respected.

## **2. Main guidance**

### **Protection objectives**

The ultimate aim and objective of measures to maintain the civilian and humanitarian character of asylum are:

- To protect refugees from violence or insecurity related to the presence, proximity or actions of armed elements and fighters or combatants.
- To enable humanitarian access for the purposes of providing international protection and delivering humanitarian assistance and services.
- To safeguard the integrity of institutions of asylum by ensuring that fighters or combatants do not benefit from asylum, and that the arrival and presence of fighters or combatants in a host State is managed appropriately, in accordance with relevant provisions of international and national law, in a manner that prevents adverse consequences to the asylum and protection space in the host State.

### **Underlying principles and standards**

The civilian and humanitarian character of asylum is a fundamental principle of international refugee protection. This principle itself gives rise to several standards, namely:

- Camps and settlements should not contain fighters/combatants (see textbox below).
- Fighters or combatants should not be registered as refugees or asylum seekers.
- Fighters or combatants should not benefit from humanitarian assistance provided by UNHCR and its partners under UNHCR's international refugee mandate.

Host States are primarily responsible for upholding the civilian and humanitarian character of asylum. They should disarm all persons carrying weapons on their territory, identify fighters and combatants, and separate them from civilian arrivals (including refugees). They should also take other measures to ensure the safety and security of refugees on their territory, whether they are hosted in camps or not. These may include measures to prevent military recruitment, including of refugee children.

If individuals permanently and genuinely renounce military activity, they may have their claims to international protection assessed (as former fighters or combatants). Such claims must be

assessed on an individual basis (not prima facie) and must consider any exclusion concerns.

Any measures taken by a host State to maintain the civilian and humanitarian character of asylum must respect the State's legal obligations under international human rights law, international humanitarian law, neutrality law (where applicable), refugee law, and domestic law. In particular, they must:

- Uphold the principle of non-refoulement and allow access to their territory. State action to ensure security must not prevent a person from being able to seek international protection, nor lead to refoulement. No person seeking international protection should be rejected at the border, or returned to his or her country of origin, on the mere suspicion that he or she is a fighter or combatant; nor should borders be closed because fighters or combatants may be present among asylum-seekers.
- Respect the right to liberty and security of the person, and the prohibition of arbitrary [detention](#). State action to ensure security must not lead to arbitrary [detention](#). [Detention](#) and internment may only be undertaken in compliance with national law and international law. During [detention](#) or internment, States must respect minimum procedural safeguards, the right of detainees to humane and dignified conditions of [detention](#), and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, including SGBV.
- Protect children. Children associated with armed forces or groups should benefit from special protection and assistance measures. They should be regarded as victims, regardless of how they were recruited. Children must be treated as a priority during identification, demobilization and rehabilitation, when verifying renunciation and when assessing asylum claims. At all times their best interests must be a primary consideration. They should benefit from specialist expertise and age-appropriate procedures, taking into account their vulnerabilities and protection needs. [Child protection](#) agencies should be called upon to advise and assist the host State, and particular attention should be given to both girls and boys who are survivors of SGBV. Children should in principle not be interned or otherwise deprived of their liberty. For children aged 15 years and older, internment may be used as a last resort, for the shortest possible period of time, taking into account their best interests. If interned, children should be separated from adults, and accommodated at a distance from them, unless they are with a parent.
- Address protection considerations for women. The specific protection and assistance needs of women recruited by armed forces or groups must be addressed, notably if women have been subject to SGBV. If a woman decides to renounce military activity, evaluation of her renunciation and asylum claim should be prioritized where this is appropriate (for example, because she has particular vulnerabilities or is accompanied by children). If women are interned, they should be interned in separate facilities from men; as far as possible, their supervisors should be women.

## Protection Risks

Where the civilian and humanitarian character of asylum is compromised, the following problems are more likely to occur:

- Direct military attacks on camps or settlements.
- Forced adult recruitment and child recruitment.
- Physical violence, including sexual violence, harassment and execution.
- Movement of arms into camps or settlements.
- A general breakdown of law and order and high levels of criminality.
- Tension between refugees and host communities.
- Diversion of humanitarian aid, and challenges to humanitarian access.

In certain situations, the host State's security interventions may impact negatively on access to asylum or its peaceful enjoyment. Border closures based on national security concerns may prevent individuals from obtaining international protection, or lead to the refoulement or arbitrary [detention](#) of asylum-seekers and refugees. [See the Entries on [Access to territory and non-refoulement](#), and [Freedom of movement and detention](#).]

## Other risks

### Security risks

The presence of fighters or combatants in refugee camps or settlements can:

- Generate serious security concerns for refugees and humanitarian personnel, and undermine humanitarian access.
- Worsen the security situation in hosting areas around refugee camps and settlements, increasing tension in host communities.
- Jeopardize national or regional stability, and threaten inter-State relations.

## Key decision points

- **Based on available information, is the civilian and humanitarian character of asylum compromised, or likely to be compromised, requiring action by UNHCR?**

It is crucial to understand and analyse the composition of groups of arriving or arrived refugees and asylum-seekers, and notably whether fighters or combatants (including women or children associated with armed forces or groups) are among them. Ongoing conflict analysis should consider **inter alia**: the parties to an armed conflict; their structures; the fragmentation and allegiances of armed non-State actors; past or current violations of international human rights law or international humanitarian law (IHL); and the reasons for flight.

- **What situations or issues may compromise the civilian and humanitarian character of asylum?**

Depending on the circumstances, key issues for advocacy might include: the location of camps and settlements; the need for disarmament at border points or in-country; the identification of and separation of fighters and combatants; and the overall safety and security of refugee camps or other refugee-hosting areas, including urban centres.

- **Are host State authorities willing and able to take the required action? What activities might UNHCR undertake?**

UNHCR should always act on the basis that the host State is primarily responsible for ensuring the civilian and humanitarian character of asylum. Advocacy in favour of relevant Government action needs to start at an early stage, and should be coordinated with other stakeholders.

First and foremost, the host State needs to ensure that sufficient security resources, personnel, and training are made available, permitting key measures to be undertaken as early as possible. During emergency preparedness, these include: to identify the relevant authorities responsible for security, disarmament, identification and separation measures; and, where necessary, to enact national legislation and procedures for such measures, in conformity with the State's international legal obligations. A wide range of government entities may need to be involved, including foreign affairs, refugee and humanitarian agencies, border security, police, immigration, the armed forces (if required), and regional and local authorities. To manage the response, existing structures may be used or a specific coordination mechanism may be created, such as an interagency taskforce. Where possible and where required, the creation of a taskforce is recommended. It should be led by the host State, supported by UNHCR and other relevant partners.

Second, the authorities of the host State, advised as required by UNHCR and other relevant partners, should assess whether it needs additional support, including technical guidance, advice or capacity building. These services may be provided by other States, UNHCR or other UN entities, regional or international peace operations, or other regional or international organisations, such as the International Committee of the Red Cross (ICRC).

- **What other actors may need to be mobilized?**

Depending on the ability and willingness of host country authorities to protect the civilian and humanitarian character of asylum, UNHCR should understand the mandates of other organizations, decide its own level of involvement, and request other actors to support its advocacy efforts or activities. Particularly complex situations (for example, the presence of active fighters or combatants in a host State) will require a collective engagement by the UN Country Team or Humanitarian Country Team as a whole, rather than by individual UN entities. In such situations, UNHCR is expected to be a catalyst and should mobilize relevant stakeholders, including regional or international peace operations, and keep the UN Country Team or Humanitarian Country Team informed and up to date on situations of concern.

UNHCR should usually coordinate with the ICRC, given its mandate, notably with respect to detained fighters and combatants. Several UN entities can also make significant contributions in accordance with their mandates and in the light of their specific expertise and capacities. For example:

- To advise on and strengthen local capacities for preparedness, early warning and early analysis: DPA, OHCHR, UNOCC, UN OCT, UNDP, UNICEF.
- To advise on and ensure the rule of law, and to strengthen the capacities of border security personnel, police, immigration and other law enforcement authorities, and community-based and local governance mechanisms, as well as, where required, armed forces: UN

Global Focal Point on Police, Justice and Corrections co-chaired by DPKO and UNDP; and UNDP, UNODC, or DPKO where they are present and mandated.

- To advise on and support disarmament, identification, separation and reintegration measures: UNDP and UN peace operations where they are present and mandated. To support the establishment of disarmament, demobilisation and reintegration (DDR) and similar programmes: operational members of the Inter-Agency Working Group on DDR, such as UNDP, DPKO/peace operations where they are present and mandated, IOM, and others.
- To advise on humanitarian civil-military coordination, as a component of any interaction, and coordination and advocacy with regard to the military (including State armed forces, UN or regional forces, armed non-State actors): OCHA.
- To advise on and strengthen national capacity to support children associated with (or formerly associated with) armed forces and groups: UNICEF.
- To advise on and strengthen national capacity to protect women and girls and address [sexual and gender based violence](#): UN Women, OMEN, UNFPA).

Note that key activities, such as disarmament, identification, separation or internment, normally involve law enforcement or defence agencies. In certain contexts, it may be appropriate to secure the assistance of foreign military or police forces, invited by the host government or mandated by the UN Security Council or a competent regional organization. In the last two decades, for example, UN peace operations have increasingly been mandated to offer protection to civilians, including to refugees and asylum-seekers. Depending on their mandate, UN missions can:

- Support and promote understanding among armed forces and groups of the civilian character of asylum, and the civilian character of refugee sites (including their protection under IHL from military attack).
- Protect security in and around refugee sites and other refugee-hosting areas; or assume specific functions with regard to the disarmament of armed elements, or identification, screening or separation measures.
- Offer DDR, 'pre-DDR' or community violence reduction training to fighters or combatants, including fighters or combatants who have renounced military activity and have sought asylum in the host State.

## Key steps

### 1. Pre-planning analysis and collection of information

- Monitor the situation and the operational environment, using early warning mechanisms. Analyse the conflict (its nature, participating groups, the composition of groups who flee, the potential presence of fighters and combatants among them).
- Decide which concerns and issues most directly compromise the civilian and humanitarian character of asylum (disarmament, identification and separation, safety of camps, etc.).
- Assess the authorities' political will, capacity and resources, and whether national laws



provide authority to undertake the security measures that may be required (forcible disarmament, physical separation and internment, etc.).

- Analyse the presence, capacity and mandates of other actors that may play a role, especially the ICRC, UNDP, UNICEF, and UN peace operations or regional missions.

## **2. Advocacy (in emergencies)**

- Discuss with relevant authorities the civilian and humanitarian character of asylum, and its relevance to refugees and host communities. Explain the limits of UNHCR's role and mandate.
- Ensure that advocacy uses common sense arguments on security and protection, and draws on international law and [humanitarian principles](#). Where national laws support UNHCR's positions, refer to them.
- Where relevant, argue that camps should be placed at a reasonable distance from borders, and that borders should remain open, in accordance with the Executive Committee's Conclusion on the Civilian and Humanitarian Character of Asylum (2002), and Articles II(2) and (6) of the OAU Convention governing the Specific Aspects of Refugee Problems in Africa (1969). No one seeking international protection should be rejected at the border merely because it is suspected that he or she is a combatant. See the Entry on [access to territory and non-refoulement](#).
- Express regret or protest if the authorities are unwilling to take required actions, or do so inappropriately. Stress the potential consequences for persons of concern. Consider issuing public statements if it is appropriate.
- Explain the civilian and humanitarian character of asylum to all relevant stakeholders. Keep the Humanitarian Country Team or Country Team informed about situations of concern (for example, the presence of fighters or combatants on the host State's territory), and act as a catalyst for a multi-stakeholder approach, when needed.

## **3. Disarmament**

- Where disarmament becomes a priority (for example, because weapons are brought into camps or settlements), press the host State to make appropriate and effective arrangements to protect camp security, ensure disarmament, search for weapons, etc.
- Explain that, because of its mandate, UNHCR cannot undertake disarmament or other security measures, although it may be present at entry points. Relevant State authorities (police and military, possibly with the assistance of peacekeepers) should screen and disarm; other actors including UN agencies may have an advisory role. Persons found with weapons in the camp should be referred to police or other authorities responsible for security.

## **4. Identification of fighters or combatants**

- Where fighters or combatants seek to mix with refugees and pretend to be civilians, encourage the host State to agree transparent criteria and operating procedures to identify and separate them, including specific age-appropriate procedures for identifying and screening children who are associated with armed forces or armed groups. If required, mobilize other actors, such as the UN Country Team, UNICEF, or a Peacekeeping Mission (if

- present). Always keep ICRC informed and explore its potential role.
- Although UNHCR cannot accept responsibility for identifying fighters or combatants, where security conditions permit, it may provide technical support. Consult HQ (Bureau/DIP) if invited to join such activities.
  - Advocate for combatants to be identified and separated as early as possible, preferably at the point of entry, at reception, or at transit centres for new arrivals (before relocation).
  - If a person being screened is sick or wounded, their medical treatment takes priority over their registration or other procedures. Screening can continue once the person is in a stable condition.
  - If a screened person claims to have deserted from military service, or to have fled service in an armed group, he or she may qualify (depending on circumstances) to be treated as a civilian asylum-seeker. Credible claims of renunciation should be verified by the authorities of the host State. Once within the asylum process, such claims need to be evaluated on an individual (not prima facie) basis. The procedure should assess potential exclusion concerns. (See UNHCR, Guidelines on Claims to Refugee Status related to Military Service.) Children should have priority in such processing.

## **5. Separation of combatants and control measures**

- Once fighters or combatants have been identified, disarmed and separated from the civilian population, the authorities may take certain control measures to protect the security of refugees and the host population. Depending on the circumstances, fighters or combatants may be interned, required to stay in a separate camp or facility, or obliged to report to the authorities daily or periodically.
- Where internment is imposed and UNHCR has concerns about their treatment or conditions, or the legal justification for internment, call the host State's attention to applicable principles and safeguards. These include:
  - Fighters and combatants must be interned at a safe location away from the border, and housed separately from civilians. Since internment is a non-punitive form of [detention](#), they should not be held in a prison.
  - Internment must be necessary in each individual case, and must be reasonable and proportionate. Certain principles and procedural safeguards must be respected to ensure that internment does not become arbitrary (ICCPR, Article 9).
  - Children associated with armed forces should be considered to be primarily victims, regardless of how they were recruited. They should benefit from special protection and assistance measures, notably with respect to their demobilization and rehabilitation. Children should in principle not be interned or otherwise deprived of their liberty. For children 15 years and above, internment may be used as a last resort, for the shortest possible period of time. In all respects, their best interests must be a primary consideration. If interned, children should be separated from adults, and located at a distance from them, unless they are with a parent.
- The specific protection and assistance needs of female fighters or combatants must be taken into account, including whether they may have been subject to SGBV. If a woman or girl decides to renounce military activity, her renunciation and asylum claim should be prioritized where appropriate (for example, if she has particular vulnerabilities or is accompanied by children). If women are interned, they should be interned in separate facilities from men, and, as far as possible, their supervisors should be women.

- Civilian family members of identified fighters or combatants should be treated as asylum-seekers or refugees and should not be interned.

## 6. Renunciation of military activity and eventual RSD or DDR

- Fighters or combatants who have been identified and separated should not be considered asylum-seekers until it has been established by the relevant host State authorities that they have genuinely and permanently renounced military activities. (A State's ruling should be made reasonably promptly, commonly within one to six months.) The ruling may consider subjective factors (such as an individual's intentions and plans) as well as objective factors (such as age, disability, changes in situation and context, etc.).
- When a ruling establishes that an individual has permanently renounced military activity, his or her case should be referred to the State's individual [refugee status determination](#) (RSD) procedures. These should pay particular attention to the [exclusion clauses](#). (See UNHCR, Guidelines on Claims to Refugee Status related to Military Service. See also the Entries on Deserters, Conscientious objectors, [Refugee status determination](#), and the Exclusion clause.) If the State does not have RSD procedures in place or is not a party to the 1951 Refugee Convention, other assessment procedures may be used; these should pay particular attention to grounds for exclusion.
  - Deserters and former fighters or combatants who have renounced military activities should not be granted refugee status on a prima facie basis.
  - Combatants who do not renounce military activities are not eligible for asylum but may eventually benefit from disarmament, demobilisation and reintegration (DDR) programmes in the host State or country of origin.
  - Fighters who renounce, but do not seek international protection, as well as prisoners of war who are not interned or are released on parole, are in principle subject to regular immigration and residency laws as a foreigner in the host State. They do not fall within UNHCR's international refugee mandate.

## Key management considerations

- Where a host state does not show commitment to the civilian and humanitarian character of asylum, UNHCR may be required to intervene at high level. Interventions may be made by the Bureau, the DIP Director, one or both of the Assistant High Commissioners for Protection and for Operations, or the High Commissioner.
- In certain circumstances, situations in which the civilian and humanitarian character of asylum has been compromised may constitute a threat to international peace and security. In such cases, the High Commissioner has a responsibility to keep the UN Secretary-General informed. It is therefore important to keep relevant Headquarters colleagues (listed above) properly informed.
- Particularly complex situations (for example, in which active fighters or combatants are present in a host State) will require action by the UN Country Team or Humanitarian Country team as a whole, rather than by individual UN entities. In such situations, UNHCR is expected to act as a catalyst and mobilize relevant stakeholders, including regional or

international peace operations, and keep the UN Country Team or Humanitarian Country Team informed and up to date.

- To manage such inter-agency involvement, some issues may have to be addressed by Headquarters, including with the ICRC in Geneva and with DPO in New York. At its own initiative, for instance, UNHCR may call for specific provisions to be included in the mandate of UN peace operations, to assist the host State to ensure the security of refugees in accordance with Security Council Resolution 1674 (2006).
- The State may require additional resources to ensure the civilian and humanitarian character of asylum. In such cases, funds will need to be budgeted or mobilized through other States or agencies. Any support that UNHCR or its implementing partners provide to (non UN) security forces must comply with the UN's Due Diligence Policy on United Nations support to non-United Nations Security Forces (A/67/775-S/2013/110).

## Resources and partnerships

### Partnerships

- The Government is primarily responsible for taking the security measures required to ensure the civilian and humanitarian character of asylum.
- A multi-stakeholder approach will be required to lobby States that fail adequately to ensure the civilian and humanitarian character of asylum. Such initiatives may be coordinated through the UN Country Team or Humanitarian Country Team, and supported, where appropriate, by other States or regional organisations.
- Where their mandates permit, other UN entities may also contribute their expertise and capacity. Examples include UN DPO, UNDP, OCHA, and UNICEF.
- UN peace operations have a specific mandate to offer protection to civilians, including refugees and asylum-seekers. Where they are present, UNHCR should work in cooperation with UN peace operations to promote the civilian and humanitarian character of asylum.

### Resources

- Where the authorities wish to uphold the civilian and humanitarian character of asylum but need support, UNHCR can provide financial or technical assistance. Any support to non-UN security forces must comply with the UN's Due Diligence Policy on United Nations support to non-United Nations Security Forces (A/67/775-S/2013/110).

## Annexes

[UN General Assembly, Resolution 68-141](#)

[UNHCR Handbook for the Protection of Women and Girls, 2008](#)

[Guidance Note on Maintaining the Civilian and Humanitarian Character of Asylum](#)

[Guidelines on International Protection No. 10](#)

### **3. Links**

[UNHCR Guidance Note on Maintaining the Civilian and Humanitarian Character of A... Norwegian Refugee Council, Camp Management Toolkit, Militarization of Camps](#)

### **4. Main contacts**

- The first port of call is the UNHCR Deputy Representative (Protection), or the UNHCR Assistant Representative (Protection), or the Senior Protection Officer in the country; alternatively, contact the UNHCR Regional Assistant or Deputy Representative (Protection) or the Senior Regional Protection Officer at the regional office (if applicable); or contact the Senior Regional Legal Advisor in the respective UNHCR regional bureau, covering the respective country region, who will liaise as required with the parent unit at UNHCR DIP.