Exclusion clause (article 1F)

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Key points

- Be aware of potential exclusion issues from the beginning of an emergency and start collecting relevant information as early as possible.

- Identify potentially excludable profiles or individuals and put into place a system of tracking them, even if it is not possible to take action immediately.

- Consider possible negative consequences of initiating exclusion procedures too early and/or without a proper framework in place (e.g. rumours and misunderstandings, resulting security threats and/or impact on information flow during registration and/or other stages of processing, etc.).

1. Overview

The "exclusion clauses" in Article 1F of the 1951 Convention relating to the Status of Refugees provide for the denial of international refugee protection to persons who would otherwise meet the refugee definition contained in Article 1A(2) of the 1951 Convention (See Entry on refugee definition), but with regard to whom there are serious reasons for considering that they have committed

(a) war crimes, crimes against humanity, crimes against peace;
(b) serious non-political crimes (outside the country of refuge prior to admission); and/or
(c) acts contrary to the purposes and principles of the United Nations.

Whenever there are indications that an individual may have been involved in such crimes or acts, it is necessary to establish whether exclusion is applicable. This requires a thorough examination of all relevant circumstances, to be done in individualized refugee status determination procedures. This is rarely a priority in an emergency context, where ensuring access to safety and meeting immediate protection needs will generally be the pressing concern.
However, in situations where it is known or suspected that persons falling within the scope of Article 1F are among those arriving in the host country, certain measures should be taken as soon as possible to facilitate consideration of exclusion at a later stage. This is particularly relevant if there are indications that persons responsible for war crimes, crimes against humanity or other serious crimes may be among those arriving as part of large-scale movements.

Persons involved in acts covered by Article 1F may also be, or have been, combatants/fighters, and their arrival or presence may in some situations give rise to security concerns. It is important to distinguish between measures related to exclusion from international refugee protection, and those required to preserve the civilian and humanitarian character of asylum (See Entry on civilian and humanitarian character of asylum) and/or address security concerns (see also below).

Exclusion issues may arise not only at the initial eligibility stage, but also after recognition in the context of cancellation (where it is determined that a person did not meet the eligibility criteria and should not have been recognized as a refugee in the first place) or revocation procedures (where a refugee engages in acts within the scope of Article 1F(a) or 1F(c) of the 1951 Convention after recognition).

Article 1(2)(iii) of the 1954 Convention relating to the Status of Stateless Persons, which replicates the exclusion grounds in Article 1F of the 1951 Convention, provides for denial of protection under the 1954 Convention to persons who would otherwise meet the stateless person definition contained in Article 1(1) of the 1954 Convention on account of their involvement in serious crimes or heinous acts (See Entry on stateless person definition). The guidance provided in this entry of the Emergency Handbook is focused on exclusion under the 1951 Convention, but similar considerations would apply with regard to exclusion in the context of statelessness determination procedures.

### 2. Main guidance

#### Protection objectives

- Preserve the integrity of refugee status by making sure that exclusion is applied to persons who are not eligible for international refugee protection on account of their involvement in serious crimes or heinous acts, as soon as it becomes feasible to conduct individual RSD, cancellation or revocation procedures. (See Entry on Refugee status determination)
- Ensure access to protection and assistance for those in need of international protection while bearing in mind the possibility of exclusion-related proceedings at a later stage, when individualized status determination processing becomes feasible (See Entry on access to territory and non-refoulement).
- Prevent or address security risks emanating from the presence of excludable persons among refugees, in particular those responsible for war crimes, crimes against humanity or other serious crimes, including those considered to be of a terrorist nature.
Underlying principles and standards

The exclusion clauses provided for in Article 1F of the 1951 Convention form part of the refugee definition. Those who fall within the scope of these provisions are not eligible for international protection under the 1951 Convention, nor do they qualify for refugee status under UNHCR's mandate. Where UNHCR conducts RSD under its mandate, the authority to do so derives from its mandate under its 1950 Statute. However, UNHCR applies the eligibility criteria as set out in the 1951 Convention, which constitutes the later, more specific and authoritative expression of the refugee definition. This applies to inclusion as well as exclusion.

For exclusion to be justified, a full individualized assessment of all relevant facts is required in each case, and a determination, based on clear and credible evidence, of "serious reasons for considering" that the person concerned has committed a crime within the scope of Article 1F or participated in its commission in a manner that gives rise to individual responsibility.

As an exception to an international instrument that establishes fundamental human rights protections, the exclusion clauses in Article 1F must be interpreted restrictively and used with caution; however, where the exclusion criteria are met, they must be applied "scrupulously" to protect the integrity of the institution of asylum.

Exclusion based on Article 1F also needs to be distinguished from the application of exceptions to the principle of non-refoulement provided for in Article 33(2) to refugees determined to pose a danger to the security of the host country or to its community - the latter does not result in loss of refugee status.

Protection Risks

- The presence and activities of serious criminals in refugee movements, camps and settlements may pose security risks for persons of concern to UNHCR, including in the form of exploitation and recruitment into armed/criminal groups (See Entry on The civilian and humanitarian character of asylum). Threats may arise also for UNHCR and others assisting persons of concern and/or for host populations.
- The presence of excludable persons among asylum-seekers/refugees in an emergency may undermine support for persons in need of international protection more globally. Indications that individuals responsible for war crimes, crimes against humanity or other serious crimes benefit from protection and assistance and/or exercise control over refugees in refugee camps or settlements may have a negative impact on the perception of refugee populations more generally. Where such persons are still involved in military activities, their presence may also undermine the civilian and humanitarian character of refugee camps or settlements.(See Entry on Civilian and humanitarian character of asylum.
- In extreme cases, this may result in a risk of refoulement for whole groups of refugees/asylum-seekers, including restricted access to safe territory and rejection at the frontier, or their expulsion from the host country, because some individuals among them may be seen as security threats.
Other risks

- UNHCR may be perceived as supporting criminals, if persons responsible for war crimes, crimes against humanity or other serious crimes (including those considered to be of a terrorist nature) are allowed to benefit from protection and/or assistance extended to refugees.
- There may be a threat to the integrity of UNHCR's RSD and Resettlement (See Entry on resettlement) procedures resulting from attempts by such persons to use these channels for purposes of relocating in third countries, possibly even to continue criminal activities from these countries.
- UNHCR's ability to exercise its mandate in line with the humanitarian principles of humanity, neutrality, impartiality and independence, may be negatively affected and/or security threats may arise for UNHCR, partners and/or government personnel.

Key decision points

1. Based on the available information, are there indications that the integrity of asylum may be at risk due to the presence of potentially excludable persons, requiring action by UNHCR?

- In principle, persons falling within the exclusion clauses in Article 1F should not benefit from international refugee protection. If there are indications that an exclusion clause is applicable to an asylum-seeker, an individualized determination would need to be conducted to determine his or her eligibility for international protection. In practice, in an emergency context (especially when there is a situation of large-scale arrivals) individual status determination will usually be the exception rather than the rule, even if potentially excludable persons are among those arriving.
- In such situations, those arriving are often recognized as refugees on a prima facie basis. Certain categories of persons should not, however, be included in a group determination of refugee status:
  - Active combatants/fighters, who should be disarmed and separated from civilians by the host country authorities, as their status is incompatible with the civilian and humanitarian nature of asylum. (See Entry on Civilian and humanitarian character of asylum).
  - ii. Former combatants/fighters wishing to submit refugee claims should always be channelled into individual RSD procedures. Such persons may be admitted into RSD procedures once it is established that they have genuinely and permanently renounced military activities.
- Persons who do not fall within the above categories, but whose profile and/or past activities raises the possibility of exclusion, would normally be included in a group determination on prima facie basis. (See Entry on Prima facie recognition of refugee status). However, the host authorities – who have primary responsibility for the determination of refugee status – and UNHCR should take certain steps and measures to make sure that exclusion concerns can be addressed (through cancellation or revocation, as appropriate), as soon as this becomes feasible at a later stage.
- To the extent possible, State authorities and/or UNHCR should conduct screening of
persons of concern in situations of large-scale movements, especially new arrivals, for potential exclusion triggers and seek to collect information relevant for the possible application of the exclusion clauses at a later stage. (see below at 5.2).

2. Can exclusion processing be applied as part of the emergency response?

- Time and resource requirements mean that examination of the applicability of the exclusion clauses in individual RSD processing should be considered as part of the emergency response only if it is the most appropriate, or the sole, protection tool available to ensure the protection and/or implement a durable solution for all/select individuals/groups and/or to maintain or expand the protection space for other individuals/groups through responsibility-sharing with the host country.
- In most emergency contexts, implementing the kinds of individual procedures necessary to examine exclusion will not be feasible until the situation has reached a certain degree of stabilization. Depending on the profiles and numbers of potentially excludable persons, significant human resources may be required to conduct refugee status determination or cancellation procedures. (See Entry on Refugee status determination).
- Whenever UNHCR carries out exclusion proceedings and/or related measures jointly with, or on behalf of the host authorities, it is important that this be done on the basis of a formal agreement which clarifies the steps of the process, roles and responsibilities of the authorities involved, including with regard to security, as well as standards and procedures for reaching decisions, information-sharing and data protection.

3. Should potentially excludable persons be treated differently from other refugees/asylum-seekers?

- In situations where the presence and activities of potentially excludable persons cause security risks, appropriate steps will need to be taken to address/mitigate these risks. This will generally require coordination with the host authorities who are responsible for ensuring physical safety.
- Unless there are immediate security issues or protection concerns for others that need to be dealt with, those identified (“flagged” – see also below at 5.2.2.) as potentially excludable would in principle not be treated differently from other refugees/asylum-seekers, at least during the emergency response. As noted above at 5.1.2., such persons would generally not be kept outside a prima facie determination, where applicable.
- Any differential treatment (e.g. issuing them asylum-seeker certificates rather than refugee documentation, issuing documents with shorter validity, or in terms of assistance) would need to be carefully thought through, as it could affect UNHCR’s ability to obtain information (e.g. if it becomes known or rumoured that certain responses at registration or during a screening will have negative consequences) and, in some contexts, may give rise to security concerns.
- This said, there may be cases where particularly significant reputational risks for UNHCR (or for the institution of asylum) may exceptionally require individualized RSD for certain individuals even during an emergency.
Key steps

1. Collect and analyse relevant information

- The possibility that some among the individuals seeking international protection may fall within the scope of the exclusion clauses should be borne in mind from the beginning of an emergency. Measures which may assist in anticipating potential exclusion and/or security issues include the following:
  - Gathering information about the situation in the country of origin with a view to anticipating possible exclusion and/or security issues. (Field Office, Bureau, Division of International Protection (DIP), host authorities or other countries, partners etc.)
  - Analysing such information to understand the numbers involved, the kinds of criminal activities which may bring those concerned within the scope of an exclusion clause, as well as potential security profiles. (Field Office, Bureau, DIP, FSS)

2. Plan and prepare for early "flagging" of potentially excludable individuals

- Based on the available information and analysis, measures in an emergency to inform planning and implement procedures that may facilitate addressing exclusion issues at a later stage include the following:
  - Identifying categories of potentially excludable profiles/categories among those arriving for whom exclusion "flags" may be entered in registration records to permit tracking of cases. (Field Office, Bureau, DIP)
  - Considering the most practical and effective ways of identifying those individuals among the refugees/asylum-seekers whose cases would need to be "flagged" for possible exclusion consideration in the future (e.g. based on information obtained at registration, more specific screening exercises and/or regular protection activities). (Field Office, Bureau, DIP)
  - Identifying the kinds of information that may be collected from asylum-seekers/refugees at registration and/or screening exercises, or through regular protection activities. (Field Office, Bureau, DIP)
  - Considering the consequences of exclusion "flagging". Depending on the circumstances, there may not be any immediate use of this information other than keeping it on record for use in any future RSD/cancellation proceedings. (Field Office, Bureau, DIP)
  - Assessing possible consequences if a differential treatment of "flagged" cases is envisaged, both with regard to potential negative implications for further information-gathering and/or security concerns. (Field Office, Bureau, DIP, FSS)
  - Detailing resource requirements for the information-gathering modality that may be applied in a given context, including human resources, physical setup as well as technical equipment and mechanisms required for recording potential exclusion concerns and tracking "flagged" cases (e.g. through drop-down menus in proGres adapted to the context required). (Field Office, Bureau, DIP, DPSM/FICSS)
  - Mapping out the process for gathering information that is considered suitable for the situation and developing clear SOPs for capturing relevant information and entering it into the individual's record. (Field Office, Bureau, DIP, DPSM/FICSS)
  - Making sure that registration/screening personnel is trained to collect information
effectively. (Field Office, FICSS)

3. Screen refugees/asylum-seekers for potential exclusion issues

- Once the scope and modalities of the information-gathering exercise are defined and necessary resources in place, screening should ideally be implemented as soon as it is feasible. (Field Office, FICSS, FSS)
- Whether this is done at registration or through a more specific information-gathering exercise (for example, at different stages of identifying cases for resettlement or humanitarian admission programmes), it is generally most effective to use questions which are reasonably asked of all arrivals without raising suspicions, and without any immediate difference in treatment (see also above at 5.1.3.).

4. Monitor the situation and gather additional information

- Information relevant to possible future exclusion procedures may also be collected through protection monitoring and other activities in the community, including:
  - Observing the situation in sites hosting refugees/asylum-seekers for any signs of the presence and/or activities of potentially excludable persons and reporting any concerns in this regard to protection staff for assessment and follow-up.
  - Sensitizing partners involved in protection and/or assistance activities to ensure that concerns are reported to UNHCR in a confidential manner.
  - Making sure that any such information is properly recorded for use in future proceedings.

5. Track cases "flagged" for potential exclusion concerns

- Even if the information obtained cannot be used immediately, it is essential that it be properly recorded to facilitate tracking of potentially excludable persons once individual review and processing becomes feasible and/or in case such persons approach UNHCR in other countries.

**Key management considerations**

- Laying the groundwork early on for addressing exclusion issues when it becomes feasible to do so will require making resources available to conduct/oversee screening and ensure tracking of potentially excludable individuals among the asylum-seekers/refugees
- Where it is contemplated to conduct individual RSD or cancellation procedures in cases raising exclusion concerns, this also requires planning for the necessary resources to ensure the expertise and skills required to conduct/oversee individual case processing is in place.
Resources and partnerships

Adequate resource allocation for individual case processing at all stages, including support personnel, will be vital to the success of an operation. If exclusion cases are to be adjudicated, it is necessary to ensure that personnel with the requisite skills and knowledge are in place.

Annexes

UNHCR, Background Note on the Application of the Exclusion Clauses - Article 1F of the 1951 Convention relating to the Status of Refugees, 4 September 2003

UNHCR, Guidelines on the Application in Mass Influx Situations of the Exclusion Clauses of Article 1F of the 1951 Convention relating to the Status of Refugees, 7 February 2006

UNHCR, Guidelines on the Cancellation of Mandate Refugee Status (internal), 22 November 2004

3. Links

UNHCR Protection Manual, Sections B.3.3 and B.4

4. Main contacts

As first port of call, the UNHCR Dep. Representative (Protection), UNHCR Asst. Rep. (Protection), and/or Snr Protection Officer in the country; or The UNHCR Regional Asst./Dep Rep (Protection) and/or Snr. Regional Protection Officer at the regional office (if applicable); or The Snr. Regional Legal Advisor in the respective UNHCR regional bureau, covering the respective country region, who in turn will liaise as required with the parent unit at UNHCR DIP.