

INTRODUCTORY NOTE TO GUIDELINES ON INTERNATIONAL PROTECTION NO. 11:
PRIMA FACIE RECOGNITION OF REFUGEE STATUS (UNHCR)
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Introduction

The United Nations High Commissioner for Refugees (UNHCR) has been charged with the task of supervising the application of international conventions for the protection of refugees.¹ This particular task of UNHCR has never been elaborated, neither during the drafting of UNHCR's Statute, nor at a later date. It is clear, however, that interpretation of the conventions UNHCR has to supervise is an accepted part of its task. Prompted by its Executive Committee in 1977,² it first drafted a *Handbook on Procedures and Criteria for Determining Refugee Status* (Handbook) under the 1951 Convention Relating to the Status of Refugees (1951 Convention) and its accompanying 1967 Protocol in 1979.³ The inclusion of procedures in the Handbook is particularly interesting since the 1951 Convention, and the 1967 Protocol for that matter, do not regulate the determination of refugee status: "It is therefore left to each Contracting State to establish the procedure that it considers most appropriate."⁴ The Handbook nonetheless comprises procedures for the determination of refugee status based on and induced by the observation that state practice regarding status determination varies considerably; ranging from formal procedures to informal arrangements. It is acknowledged that realizing identical procedures would be unlikely and the Handbook therefore confines itself to laying down certain basic requirements.

The Handbook has meanwhile been supplemented by various guidelines, and these may be distinguished into those that interpret the substance of obligations and those that to a greater or lesser extent focus on procedures. Examples of the former are the guidelines pertaining to the definition of refugee (Article 1A(2) of the 1951 Convention) such as in particular those on membership of a particular social group, religion-based refugee claims, and claims to refugee status related to military service.⁵ Other guidelines are a combination of substance and procedure such as those on cessation of and exclusion from refugee status.⁶ The latest to be released, *Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status* (Guidelines), are clearly of a procedural nature.

UNHCR's supervisory task is complemented by the obligation of states to cooperate with UNHCR in the exercise of its functions, and in particular to facilitate its duty of supervising the application of the conventions to which they are parties.⁷ The Handbook and guidelines UNHCR issues invariably refer to this particular obligation and explain that they are intended to provide legal interpretative guidance for governments, legal practitioners, decision-makers, as well as UNHCR staff carrying out refugee status determination under its mandate.

Prima Facie Recognition of Refugees

Prima facie recognition of refugees is, in essence, a collective form of status determination that presumes that each individual member of a particular group qualifies for refugee status based on objective information on the circumstances causing flight. It has been practiced both by UNHCR and individual states predominantly in situations of mass influx in which individual status determination is impractical if not impossible. The present Guidelines imply that *prima facie* recognition is exceptional: "The ending of a *prima facie* approach signals that the asylum system is back to normal, with refugee claims being assessed through individual refugee status determination procedures."⁸ Actual figures would seem to buttress the opposite conclusion: *prima facie* determination of status as the rule and individual status determination as exceptional. In 2012, 1.1 million refugees were recognized on a collective—*prima facie*—basis and 239,000 by individual status determination procedures,⁹ and even these procedures may comprise *prima facie* approaches, e.g., accelerated processes based on the manifestly founded nature of a class of claims.¹⁰

Preceding the presently issued guidelines on *prima facie* recognition, UNHCR discussed this form of eligibility determination in various fora such as the so-called "global consultations" on international protection. In the global consultations, which culminated in the adoption of UNHCR's *Agenda for Protection* in 2002, the practice of group determination on a *prima facie* basis was highlighted as something that was practiced with respect to large-scale flows in Africa, Latin America, and South Asia, i.e., by states that have no legal framework for dealing with refugees.¹¹ This prompted the observation that implementing such a response in states with highly developed systems

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focusing on individual recognition of refugee status is difficult.¹² One question then is whether collective recognition is considered in the present Guidelines as a method of recognition in any situation of mass influx, that is, regardless of the procedures that may or may not be in place in the country of refuge. Another issue worth mentioning is what has been identified as the purpose of group determination on a *prima facie* basis, to wit, “to ensure admission to safety, protection from *refoulement* and basic humanitarian treatment to those patently in need of it.”¹³ The implication appears to be that such a determination entitles refugees to treatment that falls short of that laid down in the 1951 Convention,¹⁴ possibly since collective determination is often associated with the ill-defined designation of “temporary protection” that has connotations with entitlements short of those called for under the 1951 Convention.¹⁵ Other issues that are in need of clarification comprise the question regarding the applicable definition, particularly in refugee hosting states that are not parties to the relevant universal and regional instruments (predominantly in Asia and the Middle East), and those which are but confine their obligations to European refugees.¹⁶ In short, the publication of guidelines addressing the legal basis, procedural, and evidentiary aspects of *prima facie* recognition is timely.

The Guidelines on *Prima Facie* Recognition

Structure of the Guidelines

The Guidelines start with an introduction that defines “*prima facie* recognition,” recalls the ensuing refugee status and applicable rights, and describes the situations where a *prima facie* approach is appropriate. The second part of the Guidelines consists of a substantive analysis of the circumstances on which *prima facie* recognition is based, contrary evidence, and cessation of refugee status. The third part comprises evidentiary and procedural aspects. The surprisingly brief Guidelines conclude with three model decisions on respectively adopting a *prima facie* approach for a large-scale arrival, for groups of similarly situated persons, and to end the *prima facie* recognition of persons originating from a particular country. A few aspects of each of those three parts will be highlighted.

Applicable Definition(s) of Refugee

Any kind of recognition as a refugee requires an applicable definition of refugee. The Guidelines identify a number of definitions in the introductory part, such as the 1951 Convention definition, regional definitions, and UNHCR’s own—extended—definition of refugee. None of those definitions, not even the 1951 Convention definition of refugee with its emphasis on fear of persecution, inherently militates against collective application. What is less clear, but perhaps goes somewhat beyond the pertinent Guidelines, is the issue of recognition by different actors, i.e., host states and UNHCR. States have to determine who are entitled to benefit from the rights under a particular convention, and UNHCR has to determine who falls within its mandate and is hence entitled to the international protection UNHCR provides. When both states and UNHCR apply the same definition, there is naturally no problem and a continuum of protection is the result: protection of refugees by the host state, supplemented by international protection to the very same, identically defined, refugees by UNHCR. Things become complex and muddled when there is a discrepancy between the applicable definitions: for instance, a situation in which UNHCR recognizes a particular group of refugees under its extended definition and the host state solely on the basis of the much narrower 1951 Convention definition. Or, UNHCR recognizes a particular group of refugees under its extended definition whilst the host state—not a party to any of the relevant instruments—does not apply any definition, or leaves the applicable definition implicit.¹⁷ The guidelines on *prima facie* recognition do not address the far from theoretical possibility of these scenarios and their consequences.

Collective Cessation of Refugee Status

Prima facie recognition signifies that all persons belonging to the relevant group of persons are refugees, unless there is contrary evidence regarding particular individuals making up that group: the person concerned appears, for instance, to have a different country of origin, or he or she falls within one of the exclusion clauses. Any decision in this respect requires an individual assessment. Although the *prima facie* or collective approach is explicitly confined to determining eligibility,¹⁸ cessation of refugee status may nonetheless be implemented on a general basis when the circumstances that led to the recognition of *prima facie* refugee status have ceased

to exist,¹⁹ provided (individual) exemption procedures are made available. First, it is a moot point whether states that practice collective recognition by wont of (any) status determination procedures are capable of offering such exemption procedures. Secondly, it would seem that UNHCR goes beyond *lex lata* and moves to *lex ferenda* when it cites compelling reasons arising out of past persecution as a ground for exemption, which they *stricto sensu* are not: those are only applicable to refugees as defined in pre-World War II instruments (known as “statutory refugees”).²⁰ Third, actual practice is confusing since the fact that states and UNHCR have distinct responsibilities is insufficiently accounted for: UNHCR is used to issuing general statements regarding cessation of refugee status, and it is of course entitled to do so with reference to its own mandate, but it cannot decide this for states. Despite this, the agency acts as though it can.²¹ Again, the simultaneity of mandates and responsibilities is not addressed.

Temporary Protection

The Guidelines address the relationship of *prima facie* recognition with temporary protection or stay arrangements, noting that the two should be distinguished. So far so good, but then the puzzling observation is made that these temporary arrangements “are not intended to substitute for existing protection mechanisms (such as *prima facie* recognition).”²² What is actually meant here is unclear, and as to the relationship between collective recognition and temporary protection, the Guidelines are confined to indicating that in some cases it may be appropriate to apply a temporary protection or stay arrangement preceding collective recognition. The Guidelines should have reiterated in this section that collective recognition entitles the refugees concerned to the rights contained in the relevant instruments.²³

Proof of Recognition

In the third part, evidentiary and procedural aspects are discussed, including identification and registration. The Guidelines discuss registration procedures as key to *prima facie* recognition. There is nothing to find fault with this except that what is key to the refugee is proof of recognition as a refugee. This issue is only addressed in part one and consists of one line: “Refugees recognized on a *prima facie* basis should be informed accordingly and issued with documentation certifying their status.”²⁴ The Guidelines could have elaborated on this in the procedural section: proof of registration and particularly recognition is vital, and the plight of Afghan refugees in Pakistan preceding the decision to register them and issue proof of registration cards is a case in point. Such proof protects refugees against harassment on the part of local authorities and against *refoulement*.

Flexible use of Collective and Individual Status Determination Procedures

The Guidelines appear to imply flexibility in the section on ending the *prima facie* approach for a particular situation and reversion to regular individual status determination. This flexibility, in particular when it is made clear who benefits from the collective approach and when, and who from the individual approach and when, is commendable, but most likely beside the point in practice: states without status determination procedures have little choice, and the implicit flexibility would only be practicable in states with proper procedures in place. In the case of the latter, however, pre-existing procedures will be difficult to abandon in case of a mass influx. Current state practice in Germany and other Western European states with respect to Syrian refugees is not indicative of taking recourse to *prima facie* recognition. On the other hand, incorporating elements of collective recognition—dubbed “*prima facie* approach within individual procedures”—which boils down to providing an “‘evidentiary benefit’ to the applicant in the form of accepting certain objective facts,” is perfectly capable of being integrated in individual status determination procedures.

Conclusion

In sum, some of the standards articulated in the Guidelines may indeed, as intended, serve to contribute to a more uniform practice, but a number of issues have not been properly addressed, which may dilute the effort.

ENDNOTES

- 1 G.A. Res. 428(V), annex, Statute of the United Nations High Commissioner for Refugees [UNHCR], ¶ 8(a) (Dec. 10, 1950).
- 2 UNHCR, Add. to the Rep. on the Work of Its Twenty-Eighth Session, Conclusion No. 8 (XXVII), ¶ 53(6)(g), Supp. No. 12A (A/32/12/Add.1) (1977).
- 3 UNHCR, Handbook and Guidelines on Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, U.N. Doc. HCR/IP/4/ENG/REV.3 (2011, Reissue).
- 4 *Id.* ¶ 189.
- 5 Respectively, see UNHCR, Guidelines on International Protection No. 2, U.N. Doc. HCR/GIP/02/02 (2002); UNHCR, Guidelines on International Protection No. 6, U.N. Doc. HRC/GIP/04/06 (2004); and UNHCR, Guidelines on International Protection No. 10, U.N. Doc. HRC/GIP/13/10/Corr.1 (2014).
- 6 Respectively, see Guidelines on International Protection No. 3, U.N. Doc. HCR/GIP/03/03 (2003); and Guidelines on International Protection No. 5, U.N. Doc. HCR/GIP/03/05 (2003).
- 7 *See* Convention Relating to the Status of Refugees art. 35(1), July 28, 1951, 189 U.N.T.S. 137 [hereinafter 1951 Convention]; Protocol Relating to the Status of Refugees art. II(1), Oct. 4, 1967, 606 U.N.T.S. 267 [1967 Protocol].
- 8 Guidelines on International Protection No. 11, U.N. Doc. HCR/GIP/15/11, ¶ 38 (2015) [hereinafter Guidelines No. 11].
- 9 *Id.* at 2 n.3.
- 10 *Id.* ¶ 40.
- 11 UNHCR, Global Consultations on International Protection/Third Track: Protection of Refugees in Mass Influx Situations: Overall Protection Framework, U.N. Doc. EC/GC/01/4, ¶ 7 (Feb. 19, 2001) [hereinafter Protection of Refugees in Mass Influx Situations].
- 12 UNHCR Executive Comm. of the High Commissioner's Programme, Global Consultation on International Protection: Report of the Meetings Within the Framework of the Standing Committee (Third Track), U.N. Doc. A/AC.96/961, ¶ 9 (June 27, 2002).
- 13 *See* Protection of Refugees in Mass Influx Situations, *supra* note 11, ¶ 6.
- 14 Years later, the question as to applicable standards of treatment for "prima facie refugees" was identified as one in need of further clarification. *See* UNHCR Executive Committee of the High Commissioner's Programme, International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations, Standing Committee, Thirty-Third Meeting, U.N. Doc. EC/55/SC/CRP.14, ¶ 7 (June 7, 2005). The Assistant High Commissioner for Refugees (Protection) observed in 2009 that the rights which have accompanied *prima facie* status "have usually amounted to no more and no less than the fundamental protections against irreparable harm [*non refoulement* being central among them] and guarantees of physical dignity and security [. . .]." Erika Feller, Assistant High Commissioner for Refugees – Protection, Statement at Monash University Prato Center, "Refugee Futures" Conference (Sept. 11, 2009), available at <http://www.unhcr.org/4ad58ba49.pdf>.
- 15 The Guidelines on Temporary Protection or Stay Arrangements, which UNHCR issued in February 2014, confirm the lesser entitlements. UNHCR, GUIDELINES ON TEMPORARY PROTECTION OR STAY ARRANGEMENTS 2, 4–5 (2014).
- 16 The possibility of confining the scope of the obligations to European refugees is given in Article 1B(1) (a) of the 1951 Convention. The 1967 Protocol was adopted to abolish both the temporal and optional geographical limitations of the 1951 Convention definition, save that existing declarations made on the basis of Article 1B(1)(a) of the 1951 Convention could be maintained. *See*, 1967 Protocol, *supra* note 7, art. 1(3).
- 17 This may seem far-fetched, but was the practice in Pakistan regarding Afghan refugees. *Cf.* UNHCR, RETURN TO AFGHANISTAN, 5 (2002), available at <http://www.unhcr.org/3e3f96da4.html>; UNHCR, SEARCHING FOR SOLUTIONS: 25 YEARS OF UNHCR-PAKISTAN COOPERATION ON AFGHAN REFUGEES (2005).
- 18 Guidelines No. 11, *supra* note 8, ¶ 6.
- 19 *Id.* ¶ 28.
- 20 *See* 1951 Convention, *supra* note 7, art. 1C (referring to the instruments enumerated in Articles 1A(1)); *cf.* Regina v. Special Adjudicator, ex parte Hoxha [2005] UKHL 19 (appeal taken from Eng. and Wales).
- 21 Many examples can be given, including, UNHCR, DECLARATION OF CESSATION – TIMOR LESTE, ¶ 4 (2002); UNHCR, APPLICABILITY OF THE "CEASED CIRCUMSTANCES" CESSATION CLAUSES TO PRE-1991 REFUGEES FROM ETHIOPIA, ¶ 2 (1999).
- 22 Guidelines No. 11, *supra* note 8, ¶ 26.
- 23 *Id.* ¶¶ 7, 26–27 (addressing the relationship with temporary protection or stay arrangements in paragraphs 26 and 27).
- 24 *Id.* ¶¶ 8, 34–35 (addressing identification and registration in paragraphs 34 and 35).

GUIDELINES ON INTERNATIONAL PROTECTION NO. 11:
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GUIDELINES ON INTERNATIONAL PROTECTION NO. 11:

Prima Facie Recognition of Refugee Status

UNHCR issues these Guidelines pursuant to its mandate, as contained in the Office's Statute, in conjunction with Article 35 of the 1951 Convention relating to the Status of Refugees and Article II of its 1967 Protocol. These Guidelines complement the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (1979, reissued, Geneva, 2011) and the other Guidelines on International Protection.

These Guidelines, having benefited from broad consultation, are intended to provide legal interpretative guidance for governments, legal practitioners, decision-makers, as well as UNHCR staff carrying out refugee status determination under its mandate and/or advising governments on the application of a prima facie approach.

The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and the Guidelines on International Protection are available at: <http://www.unhcr.org/refworld/docid/4f33c8d92.html>.

Calls for public consultation on future guidelines will be posted at: <http://www.unhcr.org/544f59896.html>.

I. INTRODUCTION

1. A prima facie approach means the recognition by a State or UNHCR of refugee status on the basis of readily apparent, objective circumstances in the country of origin or, in the case of stateless asylum-seekers, their country of former habitual residence.¹ A prima facie approach acknowledges that those fleeing these circumstances are at risk of harm that brings them within the applicable refugee definition.²

2. Although a prima facie approach may be applied within individual refugee status determination procedures (see Part III. D in these Guidelines), it is more often used in group situations, for example where individual status determination is impractical, impossible or unnecessary in large-scale situations. A prima facie approach may also be applied to other examples of group departure, for example, where the refugee character of a group of similarly situated persons is apparent.

3. Recognizing refugee status on a prima facie basis has been a common practice of both States and UNHCR for over 60 years. Despite its common use and the fact that the majority of the world's refugees are recognized on a prima facie basis,³ there has been limited articulation of uniform standards to guide the practice. These Guidelines explain the legal basis as well as some procedural and evidentiary aspects of applying a prima facie approach. They outline standards of general application by States and by UNHCR, albeit some of those (e.g. legal decrees) are employable only by States. The Guidelines focus on group determination primarily, albeit they touch on how a prima facie approach may be applied in individual procedures at Part III. D.

A. Definition and description

4. In general, "prima facie" means "at first appearance",⁴ or "on the face of it."⁵ UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status* describes group determination on a prima facie basis as follows:

* This text was reproduced and reformatted from the text available at the United Nations High Commissioner for Refugees website (visited November 30, 2015), <http://www.unhcr.org/558a62299.html>.

[s]ituations have [. . .] arisen in which entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees. In such situations the need to provide assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of the group. Recourse has therefore been had to so-called “group determination” of refugee status, whereby each member of the group is regarded *prima facie* (i.e. in the absence of evidence to the contrary) as a refugee.⁶

5. Refugee status may be recognized on a *prima facie* basis pursuant to any of the applicable refugee definitions, including:

- Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (hereinafter “1951 Convention”);⁷
- one of the definitions in the regional refugee instruments;⁸
- UNHCR’s Statute and refugee mandate as further developed under the authority of the United Nations General Assembly.⁹

The regional refugee definitions were designed to respond, in part, to large-scale arrivals of people fleeing from objective circumstances in their countries of origin, such as conflict, occupation, massive human rights violations, generalised violence or events seriously disturbing public order, and are thus particularly suited to forms of group recognition. While commonly associated with the refugee definition under the 1969 Organization of African Unity (African Union) Convention Governing the Specific Aspects of Refugee Problems in Africa (hereinafter “OAU Convention”),¹⁰ adopting a *prima facie* approach is not unique to Africa. Whichever instrument is applied, the assessment is based on the readily apparent, objective circumstances in the country of origin or former habitual residence relevant to the applicable refugee definition (II. A).

6. A *prima facie* approach operates only to recognize refugee status. Decisions to reject require an individual assessment.

B. Refugee status and applicable rights

7. Each refugee recognized on a *prima facie* basis benefits from refugee status in the country where such recognition is made, and enjoys the rights contained in the applicable convention/instrument. *Prima facie* recognition of refugee status is not to be confused with an interim or provisional status, pending subsequent confirmation. Rather, once refugee status has been determined on a *prima facie* basis, it remains valid in that country unless the conditions for cessation¹¹ are met, or their status is otherwise cancelled¹² or revoked.¹³

8. Refugees recognized on a *prima facie* basis should be informed accordingly and issued with documentation certifying their status.¹⁴

C. Settings for use and situations where a *prima facie* approach is appropriate

9. A *prima facie* approach is particularly suited to situations of large-scale arrivals of refugees. Large-scale situations are characterised by the arrival across an international border of persons in need of international protection in such numbers and at such a rate as to render individual determination of their claims impracticable.¹⁵

10. A *prima facie* approach may also be appropriate in relation to groups of similarly situated individuals whose arrival is not on a large-scale, but who share a readily apparent common risk of harm. The characteristics shared by the similarly situated individuals may be, for example, their ethnicity, place of former habitual residence, religion, gender, political background or age, or a combination thereof, which exposes them to risk.

11. A *prima facie* approach may be employed in urban, rural as well as camp or out-of-camp settings.

12. A *prima facie* approach may not be appropriate in all of the aforementioned situations, taking into account security, legal or operational factors. Alternative protection responses may be more suited to the situation at hand,

such as screening or other procedures (e.g. temporary protection) and, in some circumstances, individual status determination.¹⁶

II. SUBSTANTIVE ANALYSIS

A. Readily apparent, objective circumstances

13. Prima facie recognition is based on readily apparent, objective circumstances in the country of origin or former habitual residence assessed against the refugee definition being applied to that situation.

14. In determining the appropriate instrument pursuant to which to recognize refugee status on a prima facie basis, the 1951 Convention criteria should generally be considered first as the universal and primary legal instrument for refugees, unless there are good reasons for doing otherwise.¹⁷

15. In respect of the 1951 Convention definition, where there is evidence of persecution against an entire group on account of a 1951 Convention ground, refugee status should be recognized pursuant to the 1951 Convention. An individualized assessment of the element of fear would normally be rendered unnecessary in such circumstances, as being on its face self-evident from the event or situation which precipitated the flight.

16. As for the regional refugee definitions, persons may be alternatively or additionally recognized under the extended refugee definitions in the OAU Convention or the Cartagena Declaration.¹⁸ In such instances, States regularly agree on the “refugee-producing” character of certain situations and apply a prima facie approach.

17. Country information will play an important role in identifying the readily apparent circumstances that underlie a decision to recognize refugee status on a prima facie basis.¹⁹ Such information should be relevant, current and from reliable sources. At the same time, the complexity of events in the country of origin or former habitual residence may result, at least initially, in scant or conflicting information. Because of its international protection mandate, including its supervisory responsibility,²⁰ field presence and operational activities, UNHCR is often uniquely placed to obtain first-hand information on the causes and motivations of flight. UNHCR has a long established practice of recommending to governments the application of a prima facie approach to given situations. Where information is uncertain or the situation is fluid, other protection responses (such as temporary protection, see II. E. below) may be appropriate in these early stages before activating a prima facie approach.

B. Evidence to the contrary

18. A prima facie approach, once in place, applies to all persons belonging to the beneficiary class, *unless* there is evidence to the contrary in the individual case. Evidence to the contrary is information related to an individual that suggests that he or she should not be considered as a refugee – either because he or she is not a member of the designated group or, although being a member, should not be determined to be a refugee for other reasons (e.g. exclusion).

19. Examples of evidence to the contrary include, but are not limited to information, that the applicant:

- i. is not from the designated country of origin or former habitual residence or does not possess the shared characteristic underlying the designated group’s constitution;
- ii. did not flee during the designated time period;
- iii. left for other, non-protection reasons unrelated to the situation/event in question and has no *sur place* claim;
- iv. has/had taken up residence in the country of asylum and is recognized by the competent authorities as having the rights and obligations attached to the possession of nationality of that country (Article 1E, 1951 Convention);²¹
- v. may fall within the exclusion clauses in Article 1F of the 1951 Convention or of the relevant regional instruments.²²

20. For reasons of legal certainty, any evidence to the contrary ought to be recorded and assessed as soon as possible after arrival. Such information may come to light, for example, during registration (see III. B. below). Where contrary evidence comes to light during registration, various case management strategies may need to be instituted (see III. B. below). As noted above at paragraph 6, a *prima facie* approach operates only to recognize refugee status. Decisions to reject require an individual assessment.

21. Contrary evidence that already existed at the time of recognition may only emerge after the recognition of refugee status, in which case cancellation procedures would be initiated.²³

C. Dealing with combatants or armed elements

22. Owing to the civilian and humanitarian character of asylum, combatants and other armed elements are not eligible for international protection, until it has been established that they have genuinely and permanently renounced military or armed activities.²⁴ In the context of large-scale movements as a result of armed conflict, combatants and other armed elements should be identified early and separated from the civilian population through a careful screening mechanism.²⁵ Even if they have genuinely and permanently renounced their military or armed activities and thus become eligible to apply for refugee status, a full individual examination of their refugee claim is generally required (in particular because of the possible involvement in excludable acts).²⁶

23. Special procedures would need to be in place for children who formerly took part in armed activities.²⁷

24. Civilian family members of combatants can benefit from refugee status on a *prima facie* basis unless there is evidence to the contrary in the individual case.²⁸

D. Sur place claims

25. Persons who departed their country of origin or former habitual residence prior to the situation/event giving rise to a *prima facie* approach may also benefit from a declaration of refugee status on a *prima facie* basis.²⁹ Should he or she have taken up residence in the country of asylum and be recognized by the competent authorities as having the rights and obligations attached to the possession of nationality of that country, Article 1E of the 1951 Convention may apply (see para. 19).

E. Relationship with temporary protection or stay arrangements

26. Refugee status on a *prima facie* basis is to be distinguished from forms of temporary protection or stay arrangements. Such arrangements have a long history as an emergency response to large-scale movements of persons in need of international protection, providing protection from *refoulement* and appropriate treatment in accordance with international human rights standards.³⁰ They are not intended to substitute for existing protection mechanisms (such as *prima facie* recognition), and are more commonly applied in non-States parties or as regional approaches to particular crises in regions with few States parties to the relevant international and regional refugee instruments.³¹

27. In certain scenarios, it may be appropriate to apply a temporary protection or stay arrangement, as a prelude to a *prima facie* approach or at its end, even in States parties to the relevant instruments. In fluid or transitional contexts, such as at the beginning of a crisis where the exact cause and character of the movement is uncertain and hence a decision on *prima facie* recognition cannot be taken immediately, or at the end of a crisis, when the motivation for ongoing departures may need further assessment, a temporary protection or stay arrangement could be the appropriate response.³²

F. Cessation

28. While Articles 1C(1)-(4) apply based on an individual's own actions, the "ceased circumstances" clauses in Article 1C(5)-(6) of the 1951 Convention ("general cessation") are widely activated by States to apply to refugees recognized on a *prima facie* basis.³³ In respect of the latter, while all recognized refugees who fall within the terms of a declaration of general cessation lose their refugee status automatically once the cessation declaration comes into effect, they must be given the possibility prior to the effective date to apply for an exemption

from cessation (“exemption procedures”). Even though the general circumstances may have ceased to exist, a certain number of refugees may continue to have a well-founded fear of persecution either in relation to past or new circumstances, or have compelling reasons arising out of past persecution justifying their continued need for international protection.³⁴

III. EVIDENTIARY AND PROCEDURAL ASPECTS

29. The decision to adopt a prima facie approach rests on an assessment, by the relevant authority in the country of asylum or, acting under its mandate, by UNHCR, that the readily apparent, objective circumstances in the country of origin or former habitual residence causing persons to leave (or stay outside their country) satisfies the applicable refugee definition. It is standard practice to consult with UNHCR at the activation and ending of a prima facie approach and to strive for regional coherence.

A. Formal decision regulated by law

30. The decision to adopt a prima facie approach is to be made in accordance with the national legal framework. Different States have adopted various ways to recognize refugee status on this basis, the most common being by decision of the executive, such as the relevant government ministry or by presidential or cabinet decision. It is also possible that such a decision is taken by the parliament or the administrative authority responsible for refugee affairs in the country of asylum carrying out regular refugee status determination. In each case, the entity needs to have the legal authority to do so. The decision may take the form of a published declaration, decree or order (for the purposes of these Guidelines, hereinafter “Decision”).³⁵

31. The Decision would generally specify the following:

- i. the applicable domestic law that provides the authority for declaring a prima facie approach;
- ii. the title of the 1951 Convention or regional instrument pursuant to which refugee status is recognized, along with the rights and duties accompanying this status;
- iii. a description of the events/circumstances in the country of origin or former habitual residence underlying the Decision, or the characteristics of the class of beneficiaries to whom the approach applies;
- iv. periodic review and modalities of termination.

32. Sample Decisions covering the two distinct situations described in paragraphs 9–10 are attached as Annexes A and B to these Guidelines.

33. In accordance with its mandate, UNHCR has the authority to declare persons to be refugees, based on a prima facie determination. States are required to cooperate with UNHCR in the exercise of its functions to provide international protection and to find solutions, together with Governments and other relevant actors, for refugees.³⁶

B. Identification and registration

34. Registration procedures are key to the application of a prima facie approach and are the principal way in which individuals are identified within group-based processing.³⁷ Registration procedures aim both to ensure persons are appropriately identified so as to benefit from the prima facie approach as well as to channel those for whom further individualised inquiries may be required. While noting that the type and extent of data collected will vary depending on the situation,³⁸ the aim of registration as part of applying a prima facie approach would be to capture sufficient information on the individual and members of his/her family to determine their membership in the beneficiary class. Appropriate questions to identify any contrary evidence, including potentially excludable individuals, should also be included during the registration process.³⁹ Registration should ordinarily occur as soon as possible after arrival.⁴⁰

35. Where there are indications of evidence to the contrary, persons need to be referred to a more enhanced registration process to gather more information. Where questions remain, the individual needs to be referred to regular refugee status determination procedures to assess adequately issues such as credibility and/or exclusion. In

the event that regular status determination procedures are not operational, an assessment of the contrary evidence may need to be delayed, while making sure that the information is clearly recorded within the registration system. This will have the benefit of facilitating a review of eligibility for refugee status or possible cancellation at a later stage, when individual processing becomes feasible and/or operational.⁴¹ In the meantime, such persons should benefit from an alternative form of stay.

C. Decision to end the prima facie approach and to revert to regular individual status determination

36. A prima facie approach remains appropriate as long as the readily apparent circumstances prevailing in the country of origin or former habitual residence continue to justify a group-based approach to refugee status. The decision to adopt a prima facie approach, therefore, needs to be kept under periodic review, such that the on-going use of the practice is deliberative. Likewise, through registration, the profile of individuals and their reasons for flight can be monitored on a continual basis.

37. When circumstances change, careful consideration of ending the prima facie approach needs to be undertaken. Such reviews are guided by the situation in the country of origin, while recognizing the need for consistency and stability in refugee status approaches.⁴²

38. As with the decision to recognize refugee status on a prima facie basis, the decision to end this approach rests with the relevant authority in the country of asylum. The decision to end the prima facie approach is to be communicated in the same manner (that is, via declaration, decree or order) as the initial decision to implement the prima facie approach, stating the end date. It should be made clear in such a decision, as well as through public communication and outreach, that the ending of the prima facie approach does not affect the refugee status of those who have already been recognized under this approach (their status would cease only in accordance with Article 1C of the 1951 Convention, see II. F). Equally, such a decision does not affect the right of asylum-seekers to apply for asylum through individual procedures. The ending of a prima facie approach signals that the asylum system is back to normal, with refugee claims being assessed through individual refugee status determination procedures.

39. A sample of a decision to end the prima facie approach is contained in Annex C.

D. Prima facie approach within individual procedures

40. Although these Guidelines have focused on the group application of a prima facie approach, a number of States apply prima facie approaches within individual procedures. In the context of individual procedures, a prima facie approach may also be part of simplified or accelerated processes based on the manifestly founded nature of a class of claims or on a presumption of inclusion.⁴³ Adopting a prima facie approach in individual procedures operates to provide an “evidentiary benefit”⁴⁴ to the applicant in the form of accepting certain objective facts. Refugee status would be provided to those who can establish that they belong to the pre-established “beneficiary class”, unless there is evidence to the contrary.

41. Adopting a prima facie approach in individual procedures has many advantages, not least those of fairness and efficiency. In terms of fairness, it allows like cases to be treated alike as far as decision-makers are required to accept certain objective facts relating to the risks present in the country of origin or former habitual residence. In terms of efficiency, such an approach would generally reduce the time needed to hear cases because individuals are required to establish only that he or she (i) is a national of the country of origin or, in the case of stateless asylum-seekers, a former habitual resident, (ii) belongs to the identified group, and/or (iii) the specified time period of the event/situation in question.⁴⁵

Annex A: Model Decision to adopt a prima facie approach for a large-scale arrival*Declaration of prima facie recognition*

IN EXERCISE of the powers conferred by [*domestic law*], the [*relevant authority*] declares as follows:

1. Taking effect as at [*insert date*], any person who fled from [*country of origin*] arriving in [*country of asylum*] on or after [*date*] due to [*circumstances/event*] is recognized as a refugee, pursuant to a prima facie basis.
2. Any person who arrived in [*country of asylum*] from [*country of origin or, in case of stateless asylum-seekers, country of former habitual residence*] prior to [*date*] and is unable or unwilling to return to [*country of origin or former habitual residence*] due to [*circumstances/event*] will also benefit from prima facie recognition as a refugee (recognition *sur place*).
3. Any such persons recognized as refugees pursuant to [*Article 1A(2) of the 1951 Convention/1967 Protocol and/or regional refugee definition*] and [*relevant national law*] shall enjoy the rights and benefits as refugees pursuant to [*the 1951 Convention/regional refugee instrument, as applicable*], and have duties to conform to national laws and regulations.
4. This decision to recognize refugees pursuant to a prima facie approach will be kept under periodic review and remains valid until, after due consideration of country of origin information and consultation with UNHCR, it is terminated by [*formal decision by relevant authority*].

[signature]

[stamp]

[date]

Annex B: Model Decision to adopt a prima facie approach for groups of similarly situated persons*Declaration on prima facie recognition for [description of the group]*

IN EXERCISE of the powers conferred by [*domestic law*], the [*relevant authority*] declares as follows:

1. Taking effect as at [*insert date*], the following persons shall be recognized as refugees on a prima facie basis:
 - [*insert description of the group*]
2. Any such persons recognized as refugees pursuant to [*Article 1A(2) of the 1951 Convention/1967 Protocol and/or regional refugee definition*] and [*relevant national law*] shall enjoy the rights and benefits as refugees pursuant to [*the 1951 Convention/regional refugee instrument, as applicable*], and have duties to conform to national laws and regulations.
3. Any decision to recognize refugees on a prima facie basis will be kept under periodic review and will remain valid until, after due consideration of country information and consultation with UNHCR, it is terminated by [*formal decision by relevant authority*].

[signature]

[stamp]

[date]

Annex C: Model decision to terminate a prima facie approach*Decision to end the prima facie recognition for [description]*

IN EXERCISE of the powers conferred by [*domestic law*], the [*relevant authority*] declares as follows:

1. Decision [*insert decision number and date*] made by [*relevant authority*] to recognize refugees on a prima facie basis from [*name country of origin/circumstance/event*] is, after due consideration of the current situation in the country of origin and following consultation with UNHCR, terminated in accordance with [*applicable national law*], effective [*insert date*].
2. Nothing in this decision to terminate a prima facie approach removes the right of asylum-seekers to apply for asylum or other forms of international protection within the regular status determination procedures.
3. This decision does not in any way affect the refugee status of those who have been recognized under this approach [*date and number of decision declaring prima facie recognition*]. They continue to be recognized as refugees until their status is ceased in accordance with Article 1C of the 1951 Convention.

[signature]

[stamp]

[date]

ENDNOTES

- 1 UNHCR, "Protection of Refugees in Mass Influx Situations: Overall Protection Framework", 19 February 2001, EC/GC/01/4, available at: <http://www.unhcr.org/3ae68f3c24.html>, para. 6.
- 2 Ivor C. Jackson, "The Refugee Concept in Group Situations" (Martinus Nijhoff, 1999), p. 3.
- 3 UNHCR data indicates that in 2012, 1,121,952 refugees were recognized on a group basis and 239,864 were recognized individually. All refugees recognized on a group basis were recognized pursuant to a prima facie approach.
- 4 Derived from Latin. "A case in which there is evidence which will suffice to support the allegation made in it, and which will stand unless there is evidence to rebut the allegation": *Osborn's Concise Law Dictionary* (10th edition, Thomson Sweet & Maxwell, 2005).
- 5 The Oxford English Dictionary (1st edition 1933, reprinted 1978, online version, available at: <http://www.oed.com/view/Entry/151264?redirectedFrom=prima+facie#eid>).
- 6 UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, reissued December 2011, HCR/1P/4/ENG/REV.3 (hereafter "UNHCR, *Handbook*"), para. 44.
- 7 Prima facie recognition may also apply to Palestinian refugees pursuant to Article 1D of the 1951 Convention, in circumstances where the protection or assistance of UNRWA has ceased.
- 8 See, e.g., the extended regional refugee definitions in: Organization of African Unity (African Union), Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969 (hereafter "OAU Convention"), Art. I(2); Cartagena Declaration on Refugees, adopted at the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984 (hereafter "Cartagena Declaration"), Conclusion III(3).
- 9 UNHCR, "Note on the Mandate of the High Commissioner for Refugees and his Office", October 2013, p. 3, which summarizes UNHCR's mandate for refugees as covering "all persons outside their country of origin for reasons of feared persecution, conflict, generalized violence, or other circumstances that have seriously disturbed public order and who, as a result, require international protection."
- 10 OAU Convention, Art. 1.
- 11 See UNHCR, "The Cessation Clauses: Guidelines on their Application", 26 April 1999, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3c06138c4>, para. 2, and UNHCR, "Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C (5) and (6)", 10 February 2003, HCR/GIP/03/03, available at: <http://www.refworld.org/docid/3e50de6b4.html> (hereafter "UNHCR, Cessation Guidelines"), para. 1.
- 12 See UNHCR, "Note on the Cancellation of Refugee Status", 22 November 2004, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=41a5dfd94> (hereafter "UNHCR, Note on Cancellation"), para. 1(i).
- 13 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, available at: <http://www.unhcr.org/>

- 3f7d48514.html (hereafter “UNHCR, Article 1F Exclusion Guidelines”), para. 6.
- 14 Executive Committee, (hereafter “ExCom”) Conclusion No. 8 (XXVIII), 12 October 1977 on the Determination of Refugee Status, available at: <http://www.unhcr.org/3ae68c6e4.html>, para (v).
- 15 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, available at: <http://www.refworld.org/docid/43f48c0b4.html> (hereafter “UNHCR, Mass Influx Exclusion Guidelines”), para. 1. “Large-scale movements” or “large-scale arrivals” are the preferred terms for these Guidelines, although it is noted that other terms are used in other Guidelines, such as “mass influx”. There is no scientific number of persons for a situation to qualify as a “large-scale movement” or “large-scale arrival.” Rather such a designation is at the discretion of the State of arrival, factoring in such matters as the capacity for registration, processing as well as assistance to respond, also related to the speed and daily or monthly rates of arrivals.
- 16 Any alternative protection response is without prejudice to and should not undermine the protection regime established by the 1951 Convention or other legal instruments to which the State is a party. See II. E on temporary protection or stay arrangements.
- 17 See UNHCR, “Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa”, 20 December 2012, para. 6, available at: <http://www.refworld.org/docid/50d32e5e2.html>. In the Summary Conclusions, it was noted that some States have adopted different practices: some States have adopted the recommended sequential approach in which an assessment on the basis of the criteria of the 1951 Convention refugee definition precedes the application of one of the extended definitions; other States have adopted a “nature of flight” approach, in which the prevailing situation in the country of origin (for example, an armed conflict) would lead to an initial application of an extended definition, rather than the 1951 Convention refugee definition; and other situations have called for a pragmatic approach, in which an extended definition is applied for reasons of efficiency and ease (para. 31).
- 18 See para. 5 of these Guidelines.
- 19 See, generally, UNHCR, “Country of Origin Information: Towards Enhanced International Cooperation”, February 2004, available at: <http://www.refworld.org/docid/403b2522a.html>, para 14.
- 20 See UNHCR, “Note on the Mandate”.
- 21 UNHCR, “Note on the Interpretation of Article 1E of the 1951 Convention relating to the Status of Refugees”, March 2009, available at: <http://www.refworld.org/pdfid/49c3a3d12.pdf>.
- 22 UNHCR, “Article 1F Exclusion Guidelines”.
- 23 See UNHCR, “Note on Cancellation”.
- 24 ExCom, “Civilian and Humanitarian Character of Asylum”, 8 October 2002, Conclusion No. 94 (LIII), available at: <http://www.unhcr.org/3dafdd7c4.html>, para. (c)(vii) (hereafter “ExCom Conclusion No. 94”).
- 25 Ibid. para. (c)(iii).
- 26 UNHCR, “Article 1F Exclusion Guidelines”, para. 15; restated in UNHCR, “Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum” September 2006, available at: <http://www.refworld.org/docid/452b9bca2.html>, p. 33 (hereafter “UNHCR, Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum”).
- 27 UNHCR, “Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum”, Part 2J; UNHCR, “Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees”, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html> para. 51; UNHCR, “Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees”, 3 December 2013, HCR/GIP/13/10/Corr. 1, available at: <http://www.refworld.org/docid/529ee33b4.html>, paras. 12, 37–41.
- 28 ExCom Conclusion No. 94, para. (c)(vi).
- 29 UNHCR, *Handbook*, paras. 94–96.
- 30 UNHCR, “Guidelines on Temporary Protection or Stay Arrangements”, February 2014, available at: <http://www.refworld.org/docid/52fba2404.html> (hereafter “UNHCR, Guidelines on Temporary Protection or Stay Arrangements”). The Guidelines identify four situations in which temporary protection or stay arrangements may be appropriate, at para. 9: (i) large-scale arrivals of asylum-seekers or other similar humanitarian crises; (ii) complex or mixed cross-border population movements, including boat arrivals and rescue-at-sea scenarios; (iii) fluid or transitional contexts; or (iv) other exceptional and temporary conditions in the country of origin necessitating international protection and which prevent return in safety and dignity.
- 31 UNHCR, “Guidelines on Temporary Protection or Stay Arrangements”, paras. 3 and 8.
- 32 Ibid., para. 9(iii).
- 33 UNHCR, “Cessation Guidelines”, para 23.
- 34 UNHCR, “Guidelines on Exemption Procedures in respect of Cessation Declarations”, December 2011, available at: <http://www.refworld.org/docid/4eef5c3a2.html>.
- 35 Executive authorities have, at times, decided to recognize refugees on a prima facie basis without issuing a formal Decision and instead have informed UNHCR of such Decision by way of a letter. While UNHCR welcomes being formally notified of the Decision to recognize refugee status on a prima facie basis, this should be in addition to the more formal procedures described in the text at paras. 30–31.
- 36 UNHCR, “Note on the Mandate”, pp. 3–4. See 1951 Convention, Art. 35; 1967 Protocol, Art. II, as well as Cartagena Declaration, Conclusion II(2); OAU Convention, Art. VIII(1); and Treaty on the Functioning of the European Union, 13 December 2007, OJ C 115/47 of 9.05.2008, Art. 78 (1) per general reference to 1951 Convention; Declaration 17 of the Treaty of Amsterdam, Declaration on Article 73k of the Treaty establishing the European Community, OJ C 340/134 of 10.11.1997; EU Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326/13 of 13.12.2005, Art. 21.
- 37 See UNHCR ExCom, “Registration of Refugees and Asylum-Seekers”, 5 October 2001, Conclusion No. 91 (LII), available at: <http://www.unhcr.org/3bd3e1d44.html>, para. (a).

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- 38 UNHCR, “Handbook for Registration”, September 2003, available at: <http://www.refworld.org/docid/3f967dc14.html>, p. 21, 30, 32, 41 and 53 (hereafter “UNHCR, Handbook for Registration”): Registration is a systematic method of identifying, recording, verifying, updating and managing the information on persons with the aim of protecting, documenting and assisting them (if and when necessary). Registration is also a starting and fundamental step for the search of durable solutions.
- 39 See UNHCR, “Mass Influx Exclusion Guidelines”, paras. 51–53. See II. B of these Guidelines.
- 40 UNHCR, “Handbook for Registration”, p. 7.
- 41 See UNHCR, “Mass Influx Exclusion Guidelines”, paras. 54–55.
- 42 UNHCR ExCom Conclusion on the Extraterritorial Effect of Refugee Status, No. 12 (XXIX), 17 October 1978, available at: <http://www.refworld.org/docid/3ae68c4447.html>, para (b).
- 43 It may also be known as “expedited positive” processing, or similar nomenclature.
- 44 This evidentiary benefit was referred to as an “evidentiary shortcut” by J.-F. Durieux, “The Many Faces of “Prima Facie”: Group-Based Evidence in Refugee Status Determination” (2008) 25(2) *Refugee* 151.
- 45 UNHCR, “Note on Burden and Standard of Proof in Refugee Claims”, 16 December 1998, available at: <http://www.refworld.org/docid/3ae6b3338.html>, para. 8.