

## **UNHCR Guidelines on International Protection – *Call for comments on:***

### **Guidelines on International Protection No. 11: Prima facie recognition of refugee status**

UNHCR issues its Guidelines on International Protection 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. UNHCR Guidelines provide legal interpretative guidance for governments, legal practitioners, decision makers and the judiciary, as well as UNHCR staff carrying out mandate refugee status determination or advising governments on their own procedures.

UNHCR is committed to a broad consultation process in the issuance of its Guidelines on International Protection. Comments will be carefully reviewed to inform our own deliberations, alongside other consultation processes and other relevant instructive sources.

All stakeholders, including States, other UN and regional human rights mechanisms, UN organisations or specialised agencies, National Human Rights Institutions, Non-Governmental Organisations (NGOs), research institutions, and academics are invited to provide their comments in writing to [HQPPLAGL@unhcr.org](mailto:HQPPLAGL@unhcr.org); *Subject*: Guidelines on International Protection No. 11: Prima facie recognition of refugee status.

#### **Submissions should:**

- be submitted in English [regrettably we are not able to receive submissions in French at this time];
- be submitted in WORD format;
- submissions may be posted on UNHCR's website.

#### **Deadline:**

- Comments must be submitted by **11 November 2014**. **To facilitate the work of UNHCR, this deadline will be strictly applied.**



**UNHCR**  
United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

---

Distr. GENERAL

HCR/GIP/??/??

?? 2014 Original: ENGLISH

---

## **DRAFT FOR EXTERNAL CONSULTATION**

### **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 offices advising 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>.

## I. INTRODUCTION

1. Refugee status is determined ordinarily on an individual basis by ascertaining the facts of a case taking into account the claimant's personal circumstances evaluated against all the evidence and applying the relevant refugee definition to such facts.<sup>1</sup> At times, however, a group-based ('prima facie') approach may be more suitable, requiring an examination of the objective situation/event compelling persons to flee across international borders and determining whether, due to that objective situation/event, the members of the group may be exposed to risks bringing them within the applicable refugee definition.<sup>2</sup> Group determination on a *prima facie* basis means the recognition by a State of refugee status on the basis of the readily apparent, objective circumstances in the country of origin or, in the case of stateless asylum-seekers, their former habitual residence, giving rise to the exodus.<sup>3</sup>
2. A prima facie approach is commonly associated with situations of large-scale influx, although it may also be applied to other examples of group departure less than a large-scale influx, for example, where the refugee character of a similarly situated group of persons is apparent.
3. Granting refugee status on a prima facie basis has been a common practice of both UNHCR and States 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,<sup>4</sup> there has been limited articulation of uniform standards to guide the practice. These Guidelines explain the legal basis as well as the procedural and evidentiary aspects of applying a prima facie approach.

### A. Definition and description

4. In general, 'prima facie' means 'of first appearance'.<sup>5</sup> UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status* describes group determination on a prima facie basis as follows:

'While refugee status must normally be determined on an individual basis, situations have also 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

---

<sup>1</sup> See UNHCR, 'Handbook on Procedures and Criteria for Determining Refugee Status', 1979, reissued December 2011, paragraphs 195-205 (hereafter 'UNHCR, Handbook').

<sup>2</sup> Ivor C. Jackson, *The Refugee Concept in Group Situations* (Martinus Nijhoff, 1999), p. 3.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> Derived from Latin and Greek. '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* (10<sup>th</sup> edition, 2005).

status, whereby each member of the group is regarded *prima facie* (i.e. in the absence of evidence to the contrary) as a refugee.<sup>6</sup>

5. Refugee status may be granted 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),<sup>7</sup> *and/or*
  - one of the extended definitions in the regional refugee instruments.<sup>8</sup>

While commonly associated with the granting of refugee status under the 1969 Organization of African Unity (African Union) Convention Governing the Specific Aspects of Refugee Problems in Africa (hereinafter OAU Convention),<sup>9</sup> it 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 (paragraphs 11-13).

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

6. A prima facie approach is particularly suited to situations of large-scale influx of refugees. Large-scale situations are characterized by the arrival across an international border of persons seeking international protection in such numbers and at such a rate as to render individual determination of their asylum claims impracticable.<sup>10</sup>
7. It may also be appropriate in relation to groups of similarly situated individuals whose arrival does not constitute a large-scale influx. The characteristics shared by the similarly situated individuals may be, for example, their nationality or a combination of their nationality and one or more other features, such as ethnicity, place of former habitual residence or religion, which exposes them to risk. There may be other circumstances when groups based on age or gender, for example, can be accepted as refugees on the basis of the readily apparent objective circumstances.
8. A prima facie approach may be employed in urban, rural as well as camp or out-of-camp settings.

#### **C. Situations where a prima facie approach is not appropriate**

9. A prima facie approach is not appropriate in all situations. It would not be appropriate when there are indications that a substantial number of **potentially excludable**

---

<sup>6</sup> UNHCR, Handbook, para. 44.

<sup>7</sup> Prima facie recognition may also apply to groups of Palestinian refugees pursuant to Article 1D of the 1951 Convention, in circumstances where the protection or assistance of UNRWA has ceased.

<sup>8</sup> 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 '1969 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, Conclusion III(3).

<sup>9</sup> Ibid.

<sup>10</sup> 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', February 2006, available at: <http://www.refworld.org/docid/43f48c0b4.html> (hereafter 'UNHCR, Mass Influx Exclusion Guidelines'), para. 1.

**individuals** are among those arriving.<sup>11</sup> Registration and profiling play an important role in providing such indications (see III. C. below).

10. A prima facie approach is similarly not appropriate in respect of **current or former combatants/fighters**.<sup>12</sup> Combatants/fighters and other armed elements are not eligible for international protection owing to the civilian character of asylum.<sup>13</sup> In the context of large-scale influx as a result of armed conflict, the establishment of a screening mechanism to ensure their separation from civilians would need to put in place.<sup>14</sup> Even if they genuinely and permanently renounce their military or armed activities and thus become eligible to apply for refugee status, a full and individual examination of their claim is required (in particular because of the possible involvement in excludable acts) and they remain unsuited to benefit from prima facie recognition.<sup>15</sup>

## II. SUBSTANTIVE ANALYSIS

### A. Readily apparent circumstances

11. Prima facie recognition is based on readily apparent circumstances in the country of origin that suggest that the large majority of individuals, or the large majority of a group of similarly situated individuals, arriving in the country of asylum are refugees. Such an assessment will depend on the situation at hand in the country of origin or former habitual residence and the refugee definition being applied to that situation.
12. Where there is evidence, for example, of widespread persecution against a particular group on account of a 1951 Convention ground, refugee status would be granted under the 1951 Convention. The 1951 Convention definition is capable of being applied in large-scale situations on a group basis. Individualised assessment of the subjective element of fear would normally be rendered unnecessary, as being on its face self-evident from the event or situation which precipitated the flight in Convention terms. Alternatively, where there is an armed conflict and other situations of violence, systemic or massive violations of human rights, and/or breakdown of law and order or other events seriously disturbing public order, persons may be better recognised under the applicable regional definition.<sup>16</sup>
13. Country information including motivation for flight and profiles of those moving will play an important role in identifying the readily apparent circumstances that underlie a decision to recognise refugee status on a prima facie basis.<sup>17</sup> Such information should be relevant, current and from reliable sources. However, it needs to be noted that the complexity of events in the country of origin or former habitual residence may result, at least initially, in scant or conflicting information. Other approaches in these early stages may be appropriate before activating a prima facie approach (such as temporary protection, see II. F. below). Because of its international protection mandate and supervisory responsibility,<sup>18</sup>

---

<sup>11</sup> UNHCR, Mass Influx Exclusion Guidelines, paras. 22–23.

<sup>12</sup> UNHCR, Mass Influx Exclusion Guidelines, para. 15.

<sup>13</sup> UNHCR, 'Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum', September 2006, available at: <http://www.refworld.org/docid/452b9bca2.html>.

<sup>14</sup> Ibid., at p.23

<sup>15</sup> Ibid.

<sup>16</sup> See, paragraph 5 of these Guidelines.

<sup>17</sup> See, generally, UNHCR, 'Country of Origin Information: Towards Enhanced International Cooperation', February 2004, available at: <http://www.refworld.org/docid/403b2522a.html>.

<sup>18</sup> See, UNHCR, 'Note on the Mandate of the High Commissioner for Refugees and his Office', October 2013, available at: <http://www.refworld.org/docid/5268c9474.html>.

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 and established practice of recommending to governments the application of a prima facie approach to given situations.

## **B. Evidence to the contrary**

14. A prima facie approach, once declared, applies to all persons fleeing the specific country or situation/event, *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 recognized as a refugee and needs to be assessed individually.
15. Examples of evidence to the contrary would include, but are not limited to information that the applicant:
  - is not from the designated country of origin or former habitual residence;
  - does not possess the shared characteristic underlying the group's constitution;
  - did not flee within the relevant time period;
  - fled for other, non-protection reasons unrelated to the situation/event in question and has no *sur place* claim;
  - may have committed acts bringing them within the exclusion clauses in Article 1F, 1951 Convention.
16. For reasons of legal certainty and legitimate expectations, any evidence to the contrary ought to be assessed as soon as possible after arrival. Such information may come to light, for example, during registration (see III. C. below). Where contrary evidence comes to light during registration, various case management strategies may need to be instituted (see III. C. below). Importantly, a group-based prima facie approach operates to **include, not exclude**, individuals. It should be noted that decisions **to reject**, or to exclude, **must always be assessed individually**.
17. For example, where there are indications that the individual may have committed acts bringing them within the scope of Article 1F, their refugee status needs to be determined in regular individual procedures. If an individual engages in conduct within the scope of Article 1F(a) or 1F(c) after the recognition of refugee status, then his or her refugee status may be revoked.<sup>19</sup>
18. Contrary evidence may also emerge only after the granting of refugee status, in which case cancellation procedures may need to be initiated.<sup>20</sup>

## **C. Application of Articles 1C, E and F**

---

<sup>19</sup> 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.refworld.org/docid/3f5857684.html>; UNHCR, Mass Influx Exclusion Guidelines, para. 16.

<sup>20</sup> 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 'Note on Cancellation').

19. Articles 1C, E and F are applicable to persons benefiting from the grant of refugee status on a prima facie basis. While Articles 1C(1)-(4), 1E and F would need to be assessed on an individual basis, the ‘ceased circumstances’ clauses in Article 1C(5)-(6) of the 1951 Convention, and as incorporated in the OAU Convention, would generally be applied in group situations that had benefited from prima facie recognition.<sup>21</sup> In respect of the latter, while all recognized refugees who fall within the terms of a cessation declaration lose their refugee status automatically once the cessation declaration comes into effect, they must, upon request, have the possibility to apply for an exemption of the cessation declaration on grounds relevant to their individual case (exemption procedures).<sup>22</sup>

#### **D. Refugee status and applicable rights**

20. Persons granted refugee status on a prima facie basis benefit from refugee status as individuals and enjoy the rights contained in the applicable convention/instrument pursuant to which their status is granted. There is no such thing as ‘prima facie refugee status’, nor is it to be confused with an interim status or presumption of eligibility, pending confirmation. Rather, once refugee status has been granted on a prima facie basis, it remains valid unless the conditions for cancellation,<sup>23</sup> revocation<sup>24</sup> or cessation<sup>25</sup> are met.
21. Family members of refugees recognised on a prima facie basis also benefit from derivative status,<sup>26</sup> although where they form part of the group, they would be granted refugee status in their own right.

#### **E. Documentation**

22. Refugees recognised on a prima facie basis should be informed accordingly and issued with documentation certifying their refugee status.<sup>27</sup>

#### **F. Relationship with temporary protection or stay arrangements**

23. Refugee status granted on a prima facie basis is distinguishable from forms of temporary protection or stay. Not unlike the prima facie approach, temporary protection or stay arrangements have a long history as emergency responses to the large-scale movements of asylum-seekers, providing protection from *refoulement* and basic minimum treatment in

---

<sup>21</sup> See UNHCR, Guidelines on International Protection: Cessation of Refugee Status under Article 1C (5) and (6), 10 February 2003, available at: <http://swigea56.hcrnet.ch/refworld/docid/3e510f864.html> (hereafter ‘UNHCR, Cessation Guidelines’).

<sup>22</sup> UNHCR, ‘Guidelines on Exemption Procedures in respect of Cessation Declarations’, December 2011, available at: <http://www.refworld.org/docid/4eef5c3a2.html>.

<sup>23</sup> See UNHCR, Note on Cancellation.

<sup>24</sup> See UNHCR, ‘Guidelines on International Protection: 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 ‘Article 1F Exclusion Guidelines’).

<sup>25</sup> See UNHCR, ‘The Cessation Clauses: Guidelines on their Application’, April 1999, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3c06138c4>, and UNHCR, Guidelines on International Protection: Cessation of Refugee Status Under Article 1C (5) and (6), 10 February 2003, available at: <http://swigea56.hcrnet.ch/refworld/docid/3e510f864.html> (hereafter ‘Cessation Guidelines’).

<sup>26</sup> UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1, IV.B, page 8 available at: <http://www.refworld.org/docid/40a8a7394.html>

<sup>27</sup> ExCom Conclusion, ‘Determination of Refugee Status’, 12 October 1977, Conclusion No. 8 (XXVIII), available at: <http://www.unhcr.org/3ae68c6e4.html>.

accordance with international human rights standards where individual status determination is impracticable or inapplicable.<sup>28</sup> Temporary protection or stay arrangements may also be suitable to humanitarian crises or complex or mixed population movements in situations where existing responses are not suited or adequate. However, temporary protection or stay arrangements 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.<sup>29</sup>

24. In certain scenarios, it may be appropriate to apply a temporary protection or stay arrangement, rather than a prima facie one, even in States parties to the relevant instruments. Such an approach would however need careful consideration. For example, this could be the case in fluid or transitional contexts, such as at the beginning of a crisis where the exact cause and character of the movement is uncertain, or at the end of a crisis, when the motivation for ongoing departures may need further assessment.<sup>30</sup> It is expected in both scenarios that temporary protection or stay arrangements would be temporary and transitional, for example, transitioning into either a prima facie approach for large-scale or group situations once the refugee character of the movement is apparent, or individuals would have their claims assessed in regular refugee status determination (RSD) procedures.

### III. EVIDENTIARY AND PROCEDURAL ASPECTS

25. The decision to adopt a prima facie approach rests on an assessment by the responsible authority in the country of asylum. The authority needs to be satisfied that the readily apparent circumstances in the country of origin or former habitual residence are such that the large majority of individuals, or the large majority of a group of similarly situated individuals, arriving in the country of asylum meet the applicable refugee definition; *that is*, that they are at risk owing to the readily apparent situation/event in question.

#### A. Formal decision regulated by law

26. The decision to adopt a prima facie approach is to be made in accordance with the national legal framework and should be formalised under that law. Different States have adopted a number of different ways in which refugee status may be granted on this basis, the most common being by decision of the executive, such as the relevant government ministry [such as a ministerial decree] or presidential or cabinet decision. It is also possible that such a decision is taken by the parliament, or by the administrative authority responsible for refugee affairs in the country of asylum carrying out regular RSD. In each case, the entity needs to have the authority of law to do so. The decision may take the form of a

---

<sup>28</sup> UNHCR, 'Guidelines on Temporary Protection or Stay Arrangements', February 2014, available at: <http://www.refworld.org/docid/52fba2404.html>. The Guidelines identify four situations in which temporary protection or stay arrangements may be suited, at para. 9: (i) large-scale influxes 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.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.



published declaration, decree or order (for the purposes of these Guidelines, hereinafter 'Decision').<sup>31</sup>

27. The Decision would generally specify the following:

- ii) the applicable domestic law that provides the authority for declaring a prima facie approach;
- iii) a description of the circumstances in the country of origin or former habitual residence underlying the Decision, including relevant dates;
- iv) modalities for handling sur place claims;
- v) the title of the international or regional legal instrument pursuant to which refugee status is being recognized, along with the rights accompanying this status;
- vi) modalities of implementation including periodic review and termination of the Decision;
- vii) the applicability of Articles 1C, 1E or 1F to refugees so recognised.

28. Two model Decisions are attached as Annexes A and B to these Guidelines which cover the two situations described in these Guidelines to which prima facie recognition procedures would apply, namely: the situation where the majority of persons departing meet the applicable refugee definition due to readily apparent circumstances in the country of origin or former habitual residence and the situation where the refugee character of a similarly situated group of persons is apparent.

## **B. Burden and standard of proof**

29. As the prima facie approach is group based and accepts that certain objective circumstances justify the need for international protection, the individual has a lower burden of proof than in regular status determination procedures. Because the risk of harm is accepted based on the prevailing situation in the country of origin or former habitual residence, or the characteristics of the designated group, the individual may be required only to establish that he or she belongs to the particular group or class of beneficiaries to which the prima facie approach applies. Depending on the scope of the prima facie designation, an individual may need to establish only that s/he: (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 ethnic or social group at risk, and/or (iii) fled during a specified time period.<sup>32</sup>

30. The burden of proof to establish such facts rests generally on the individual; however, the duty to ascertain and evaluate all the relevant facts is shared between the individual and the relevant decision-making authorities. It may not always be possible for the individual to produce relevant documentation (such as, a passport or other identity documents). In some cases, it may be for the decision-maker to use the means at his or her disposal to produce the necessary evidence in support of the application or to make inquiries of the applicant and on the basis of that information, accept the account as true in the absence of contrary evidence. Even such

---

<sup>31</sup> Executive authorities have, at times, decided to recognise 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 grant refugee status on a prima facie basis, this should be in addition to the more formal procedures described in the text at [paragraphs 27-29](#).

<sup>32</sup> UNHCR, Note on Burden and Standard of Proof in Refugee Claims, 16 December 1998, para. 8, available at: <http://www.refworld.org/docid/3ae6b3338.html>.

independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant has made a genuine effort to substantiate his or her claim, and the applicant's account does not run counter to generally known facts, he or she should, unless there are good reasons to the contrary, be given the benefit of the doubt.<sup>33</sup>

### C. Sur place claims

31. The requirement that a person must be outside his or her country of origin or former habitual residence to be a refugee does not mean that he or she must necessarily have left that country on account of the situation/event giving rise to a prima facie approach. A person becomes a refugee 'sur place' due to circumstances arising in his or her country of origin during his or her absence. A person may also become a refugee 'sur place' as a result of his or her own actions, such as associating with refugees already recognized, or expressing his or her political views in his or her country of residence or joining a group in the country of asylum.<sup>34</sup> That said, where persons are already benefiting from other legal means to remain in the country of asylum, they would not ordinarily need to rely on prima facie recognition.

### D. Role of registration

32. Registration is an important aspect of strategies for group-based processing, such as prima facie recognition of refugee status.<sup>35</sup> While noting that the type and extent of data collected will vary depending on the situation,<sup>36</sup> 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 nationality or group(s) benefiting from prima facie recognition, and/or their reasons for flight.
33. Appropriate questions need to be established during registration to be able to identify any contrary evidence, including potentially excludable individuals;<sup>37</sup> and referral mechanisms would need to be in place for those files that ought to be channelled to regular RSD.
34. Where there are indications of evidence to the contrary, persons may be referred to a more enhanced registration process to gather more information, or, into regular refugee status determination procedures to assess adequately credibility, eligibility and/or exclusion issues on an individual basis. 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 information. This will have the benefit of facilitating a review

---

<sup>33</sup> UNHCR, Handbook, para. 196.

<sup>34</sup> UNHCR, Handbook, paras. 94-96.

<sup>35</sup> See UNHCR ExCom, 'Registration of Refugees and Asylum-Seekers', 5 October 2001, Conclusion No. 91 (LII), available at: <http://www.unhcr.org/3bd3e1d44.html>, (hereafter 'ExCom Conclusion on Registration'), para. (a).

<sup>36</sup> UNHCR, 'Handbook for Registration', September 2003, available at: <http://www.refworld.org/docid/3f967dc14.html>, pages 21, 30, 32, 41 and 53: 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.

<sup>37</sup> See UNHCR, Mass Influx Exclusion Guidelines, paras. 51-53. See, paragraphs 14-18 of these Guidelines.

of eligibility for refugee status and possible cancellation at a later stage, when individual processing becomes feasible and/or operational.<sup>38</sup>

#### **E. Decision to end the prima facie approach**

35. Prima facie recognition of refugee status is appropriate as long as the readily apparent circumstances prevailing in the country of origin or former habitual residence justifying refugee status continue to exist. The decision to determine refugee status on a prima facie basis 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 continually monitored.
36. When circumstances change, careful consideration of ending the prima facie approach would need to be undertaken. Such reviews however should be guided by the situation in the country of origin, while recognising the need for consistency and stability in refugee status approaches<sup>39</sup> and to reduce anxiety among the refugee population.
37. As with the decision to grant refugee status on a prima facie basis, the decision to end this approach rests with the responsible authority in the country of asylum and should be governed by law. It would be advisable to constitute a committee to deliberate on the ending of the prima facie approach. Prior consultation with UNHCR may be useful.
38. The decision to end the prima facie approach to the situation at hand 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, clearly setting out the cut-off date. It should be made clear in any such decision that the ending of the prima facie approach does not affect the refugee status of those having been granted status under this approach [their status would cease only in accordance with Article 1C of the 1951 Convention], nor the right of new asylum-seekers to apply for asylum individually. A sample of a decision to end the prima facie approach is found at Annex C.

#### **F. Prima facie approach within individual procedures**

39. Although these Guidelines have focused on the group application of a prima facie approach, it is acknowledged that a certain number of States apply such an approach within individual procedures. In the context of individual procedures, a prima facie approach may also be described as a simplified or accelerated procedure based on the manifestly founded nature of a class of claims.<sup>40</sup> It operates to provide an ‘evidentiary benefit’<sup>41</sup> to each member of the group in the form of accepting certain objective facts. This is to be contrasted with ordinary RSD procedures in which the facts of each individual case, including facts from the country of origin, are ascertained and accepted separately.

---

<sup>38</sup> See UNHCR, Mass Influx Exclusion Guidelines, paras. 54–55.

<sup>39</sup> ExCom Conclusion, ‘Extraterritorial Effect of Refugee Status’, 17 October 1978, Conclusion No. 12 (XXIX), para. (b), available at <http://www.refworld.org/docid/3ae68c4447.html>.

<sup>40</sup> It may also be known as “expedited positive” processing, or similar nomenclature.

<sup>41</sup> 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.



## Annex A: Model Decision to adopt a prima facie approach for large-scale influxes

### *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 granted refugee status on 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.
3. Any such persons and members of their families are granted refugee status recognition pursuant to [*Article 1A(2) of the 1951 Convention/1967 Protocol and/or regional refugee definition*] and [*relevant national law*] and shall enjoy the rights and benefits as refugees.
4. This decision to recognise 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*].
5. Where there is evidence that any persons may have committed acts that bring them within the scope of Articles 1F of the 1951 Convention, they shall have their cases assessed individually in regular procedures.

[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*], any member of [*insert description of the group*] who fled from [*country of origin or in the case of stateless, country of former habitual residence*] arriving in [*country of asylum*] on or after [*date*] due to [*circumstances*] and who shares the characteristics of other similarly situated persons which are readily apparent, will be considered a refugee on a prima facie basis.
2. Any person who arrived in [*country of asylum*] from [*country of origin or former habitual residence*] prior to [*date*] and is unable or unwilling to return to [*country of origin*] due to [*circumstances*] will also benefit from prima facie recognition as refugees.
3. Any such refugees will be granted prima facie recognition pursuant to Article 1A(2) of the 1951 Convention [*and/or regional refugee definition and relevant national law*] and shall have the persons the rights and benefits under [*regional refugee and/or relevant national law*], including the right to derivative status for family members.
4. Any decision to recognise 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*].
5. Where there is any evidence that any refugees recognised on a prima facie basis may have committed acts that bring them within the scope of Articles 1E or 1F of the 1951 Convention, the relevant national law provisions relating to exclusion from refugee status will apply.

[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 [*No. x of x date*] made by [*relevant authority*] to recognise 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 from [*name country of origin*] from applying for asylum. Asylum-seekers arriving from [*name country of origin*] after the [*insert effective date*] are to be assessed within the regular refugee status determination procedures, on an individual basis.

[signature]  
[stamp]  
[date]