

Civilian and Humanitarian Character of Asylum – Questions and Answers

1) **The character of asylum is civilian and humanitarian. What does this mean?**

- Asylum (or refuge) is of a peaceful, civilian, and humanitarian nature. Normally, asylum is granted only to civilians who flee to other countries seeking protection from war, conflicts, generalised violence, and persecution.
- Refugee camps should be free from arms and fighters or combatants as required by the laws of South Sudan and international laws.
- Fighters or combatants are not civilians. Civilians are individuals who are not members of an armed group. Fighters or combatants cannot ask for asylum unless they permanently renounce violence and give up their weapons. This must be verified by the authorities of the Government of South Sudan.
- Fighters or combatants shall not have access to refugee camps nor benefit from humanitarian assistance. The protection, humanitarian assistance and services delivered to asylum seekers and refugees are meant only for civilians who are seeking or have been granted asylum.
- Asylum-seekers and refugees may be sanctioned and punished by the South Sudan and international laws, if they are involved in illegal activities such as:
 - o Militarised political activities or activities that involve use of arms;
 - o Setting up and operating military coordination offices inside and outside the refugee camps;
 - o Organising militarised-political rallies, military trainings, awarding of ranks/military certificates inside and outside the refugee camps;
 - o Installing armed or military facilities/structures inside or outside the refugee camps;
 - o Voluntarily joining armed or militarised political groups;
 - o Forcibly recruiting others into armed or militarised political groups
- No matter what position that a refugee has in his/her community (e.g. Community leaders, Umdas, Community Watch Group, Sheikhs, etc.), no refugee can be involved in any militarised political or armed activities, whether it is inside or outside the camps. For instance, it is prohibited to keep/store any ammunition and weapons. To organise or recruit people for armed groups, either inside or outside camps, is not permitted.

2) **It is critical to maintain the civilian and humanitarian character of asylum. Why?**

- The presence of fighters, combatants, and any other armed elements as well as any activity carried out by them inside or in the proximity of the refugee camps are a threat to the safety and security of all refugees and their host communities. It is essential to protect the refugees, the host communities and the area they live in from any source of violence and insecurity.
- If the peaceful, civilian and humanitarian characteristic of the asylum is not respected, the personnel and assets of the government bodies may also be at risk from violence, or they may not be seen as being neutral. This will cripple the government bodies' ability to ensuring the safety and security of not only the refugees but also of the humanitarian organisations who are providing services and assistance in the camps.

- If the service and assistance providers cannot operate safely in the refugee camps, they will not be able to deliver the services and assistance to the refugees. As a consequence, the refugees might end up having little or no access to food, water, health, sanitation, education, shelter, livelihood, and more.

If the Refugee Camps are not weapon-free, it is the refugees who will suffer the most!

- The law enforcement bodies (e.g. the Police) and civilian authorities (e.g. the CRA - Commission for Refugee Affairs) are responsible and present in the refugee camps in order to ensure the safety and protection of refugees. Everybody who is living and working in the camps, including the refugee leadership and the humanitarian organisations, are expected to cooperate with the national authorities. This is critical to maintain law and order, and the safety of the refugees in the camps, in accordance with the national and international laws.
- The presence and activities of militarised and armed groups inside and nearby the camps, may prevent other people who are still fleeing and need international protection, from reaching the area. This will block them from getting to safety, asking for asylum and obtaining protection.

3) Does the presence of armed elements, fighters or combatants among refugees or nearby refugee camps put refugees, host communities and humanitarian organisations at risk?

Yes, the presence and activities of people who are involved in armed or militarised activities threatens everybody's safety, security and wellbeing.

○ **What kind of risks?**

- Refugees are not safe and they face abuse and violence, including sexual and gender-based violence. Refugees are at greater risk of experiencing violence, harassment, exploitation, and forced recruitment. Women and girls are at particular risk of experiencing violence. The vulnerabilities of other individuals with specific needs such as people living with disabilities and the elderly are further worsened.
- Any kind of military activity, including the presence of fighters or combatants, the setting up of military facilities or the presence of any kind of weapons or arms in the refugee camps, may make that camp a target of other parties. This can result in an attack on the camp by armed groups or individuals who are opponents of those in the area. These attacks may be launched from within or beyond the borders of South Sudan.
- These serious safety concerns and security threats have direct impacts mainly on refugees and the surrounding host communities, who are also not safe and can face similar violence and abuse as refugees do. The humanitarians delivering assistance are also at risks of violence.
- Unless there will be safety and security, humanitarian organisations cannot deliver the assistance to refugees in camps.
- If a refugee is found to be involved in any activity that is against the civilian character of the refugee camps, this may have a direct and negative impact on his/her refugee status and his/her staying in South Sudan.

4) What are the roles and responsibilities of the Government of South Sudan?

- The Government of South Sudan decides whether or not a person is a refugee according to national and international refugee laws. South Sudan provides international protection to refugees, and allows refugees to enter its territory and provides physical safety and security to refugees.
- The Government of South Sudan is in charge of the safety and security of the refugees. It is also in the power and responsibility of the Government to uphold the civilian character of asylum including refugee camps.
- The Government of South Sudan ensures the security and safety of refugees and humanitarians.
- Several civil, law enforcement and security structures of the Republic of South Sudan are tasked to fulfill their responsibilities in different sectors. These are, among others, the Commissioner for Refugee Affairs (which reports to the Ministry of Interior), the South Sudan Police Service, the South Sudan Military, the State Administration, the County Administration, the Payam Administration.
- South Sudan's security structures (e.g. the police and the national army) and civilian authorities enforce the national laws. This includes arresting and prosecuting anybody who violates the law. Identifying, screening, and removing fighters or combatants from the refugee communities and the surrounding areas falls within their power and obligation.
- If combatants and fighters are identified among refugees or asylum-seekers who are already in the country or in the refugee camps, the Government of South Sudan starts the process to review the situation to deny, withdraw or cancel refugee status of the individual involved, according to its national laws and procedures. The Commissioner for Refugee Affairs is in charge of coordinating the process with other government bodies. UNHCR monitors the process and provides advice and guidance to the government bodies to make sure that the process respects national and international standards of human rights and refugees' rights and obligations.

5) What mechanism does South Sudan have to maintain the civilian and humanitarian character of asylum including refugee camps?

- South Sudan has legal and organisational mechanisms. In particular, the CRA has adopted a 'Standard Operating Procedure' (SOP) to identify and process combatants and fighters in and around the refugee communities. This SOP has been adopted in accordance with the Refugee Act, 2012 and its 2017 Regulations.
- Under this SOP, the Government of South Sudan has arranged various structures and steps in making sure that the refugee camps and surrounding areas are kept free from arms, weapons, fighters, combatants and other armed elements. Full implementation of the SOPs is underway.
- UNHCR provides expertise, guidance and advice to support the CRA in implementing the SOP within the international principles and standards.
- UNHCR does not decide on whether a refugee or an asylum-seeker is a combatant/fighter. Nor does UNHCR get involved in identifying, separating or arresting such people. It is the Government of South Sudan who has such powers and responsibilities.

6) What is the role of Humanitarian organisations?

- The Humanitarian organisations provide protection and assistance to refugees, like healthcare, education and water, shelter. The security and safety of the humanitarians are paramount to be able to deliver protection and assistance to refugees.
- UNHCR coordinates the protection and assistance activities provided to asylum seekers and refugees by the Republic of South Sudan, other UN agencies (such as WFP, UNICEF, FAO), and the humanitarian partner organisations (e.g. RI, WVI, DRC, HDC, JRS, AAHI, IRC, MSF, LWF, ACROSS, ACTED, ADRA, CARE, SP, SC, UMCOR, and other partners).
- UNHCR and other UN agencies provide expert advice, guidance, and support to the Government on how to maintain law and order and the peaceful, civilian, and humanitarian character of asylum in the camps. Such advice and support are provided in accordance with international principles and standards of human rights, including refugee rights.

7) Who determines the refugee status of an asylum seeker? How is it done?

- The Government of South Sudan determines the refugee status of people seeking asylum on its territory.
- The determination is done under a process which is managed by the Commissioner for Refugee Affairs (CRA), the Refugee Eligibility Committee (REC), and the Refugee Appeals Board (RAB).
- The CRA leads this process, coordinating all relevant civil administration, security bodies and inter-governmental bodies involved, as per the Refugee Act, 2012, its 2017 Regulations and, if necessary, the Standard Operating Procedure regarding the civilian character of asylum.

8) Who determines whether a refugee is a fighter or combatant?

- It is the Government of South Sudan who has the ultimate legal power and responsibility to determine whether an asylum-seeker or a refugee is a fighter or combatant.
- For this purpose, South Sudan has legal and organisational mechanisms. In particular, the CRA has adopted a 'Standard Operating Procedure' (SOP) to identify and process combatants and fighters in and around the refugee communities.
- Under this SOP, the Government of South Sudan has arranged a legal process to be implemented by various structures and steps in order to screen, identify, separate and prosecute fighters, combatants and other armed elements among asylum-seekers and refugees.

9) Do refugees have only rights or also obligations in South Sudan?

- Refugees in South Sudan have both rights and obligation, as indicated by the international refugee law and the national refugee law (Refugee Act, 2012).
 - o **What are my rights as an asylum seeker or a refugee?**
- You have the right to be physically and legally protected. This includes your right to receive documents about your status and identity, and to have access to justice, get live-saving

and basic assistance and services (such as food, shelter, health, and education) in South Sudan. You shall not be discriminated against just because you are an asylum-seeker or a refugee.

- **What are my obligations as an asylum seeker or refugee?**

- You shall respect and abide by the laws and regulations of South Sudan. **You are not above the law.**
- If you violate South Sudan's any laws and regulations, you will face the law of South Sudan. **No impunity to perpetrators is admitted, no matter what his/her role is within the community! Your being a refugee or asylum-seeker in South Sudan does not mean that you can violate South Sudan's laws.**
- Remember, your refugee status and the permission to stay in South Sudan is on condition that you respect and abide by all the laws and procedures of South Sudan that are relevant to asylum-seekers and refugees.

- **What are my obligations as asylum-seekers or refugees in maintaining the civilian character of asylum?**

- You shall not get involved in any armed, military or militarised political activities inside or outside refugee camps, nor across the borders.

You shall help in raising awareness in your community on what activities are allowed, what is considered illegal, and what are the consequences of breaking the law.

- You should advise your family members, relatives, friends and other refugees to not get involved in any armed or militarised political activities inside and outside the refugee camps, nor across the borders.
- You have to cooperate with the government authorities, UNHCR and its partner organisations to maintain law and order in the camps, enhancing the safe delivery of protection and assistance.
- You can actively monitor the situation and bring to CRA and UNHCR's attention any armed and militarised political activities that are happening. This helps decreasing the risk of insecurity in the camp and the surrounding areas. You can do it also through confidential channels.

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activities compromising the civilian character of refugee camps have a direct and negative impact on refugee status and continued stay in South Sudan for the people involved.

10) What are the consequences if a refugee is found to be a fighter or combatant?

If the Government of South Sudan receives reliable report or information (based on which the Government establishes, in accordance with the SOP and the relevant national laws and regulations) that an asylum-seeker or a refugee is a combatant or a fighter:

- South Sudanese Government authorities will separate the alleged fighter/combattant from the rest of the refugee community;

- South Sudanese law enforcement agencies will arrest and detain the alleged fighter/combatant;
- The alleged fighter/combatant will be treated accordingly and, when proven through the legal process established in line with the laws, will lose the “civilian” status;
- The alleged fighter/combatant will not be entitled to humanitarian assistance or other services provided to asylum seekers and refugees;
- The alleged fighter/combatant will be denied asylum (if asylum-seeker) or (if already registered as a refugee) will lose the refugee status, and the right to refugee protection in South Sudan;
- Those who are denied asylum or lose the refugee status, will face immigration and/or other laws which deal with nationally or internationally punishable offences.

11) What are the consequences to family members or dependents of an asylum-seeker or a refugee who is found to be a fighter or combatant?

- If an asylum-seeker or refugee is found (through the established legal process) to be a combatant or fighter, this normally does not affect any rights or entitlements of his/her family members or dependents. Such family members or dependents continue to enjoy their rights as asylum-seeker or refugee **except if** any of them is also found to have been involved in the prohibited activities such as:
 - o Militarised political activities or activities that involve use of arms;
 - o Setting up and operating military coordination offices inside and outside the refugee camps;
 - o Organising militarised-political rallies, military trainings, awarding of ranks/military certificates inside and outside the refugee camps;
 - o Installing armed or military facilities/structures inside or outside the refugee camps;
 - o Voluntarily joining armed or militarised political groups;
 - o Forcibly recruiting others into armed or militarised political groups

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The possession of arms is a crime in South Sudan and is punishable with imprisonment for a period up to 10 years or with fine or with both (Section 72 – South Sudan Penal Act 2008).