

# **Guide to Eligibility Determination for Refugee Status**

**March, 2023**

(Partially revised in December, 2023)

**Immigration Services Agency of  
Japan**

※The original version is in Japanese and the English translation is provisional and for reference purposes.

## Introduction

It has been more than forty years since Japan acceded to the Convention Relating to the Status of Refugees (the Refugee Convention) and the Protocol Relating to the Status of Refugees and established a refugee recognition system. Meanwhile, Japan has been making constant efforts to ensure appropriate operation of the system.

Under such circumstances, the Expert Meeting on the Refugee Recognition System, established under the Sixth Immigration Control Policy Roundtable, recommended that normative elements of eligibility determination for refugee status should be generalized and clarified to the extent possible, as part of efforts to increase transparency of the system and bring about greater confidence in it. In response to this recommendation, creation of this document started.

The purpose of this guide is to explain the meaning of terms concerning the definition of “refugee” given in the Refugee Convention in more specific ones, as well as to summarize points to consider when determining eligibility for refugee status based on procedural precedents and court judgments in Japan.

In addition to reference on a range of documents issued by the Office of the United Nations High Commissioner for Refugees (UNHCR) and guidelines or other relevant documents published by other countries, advice were offered regarding the content of this guide under cooperation with UNHCR.

This guide is meant to help improve wide understanding about the refugee recognition system of Japan, in addition to be used for refugee recognition procedure at the Immigration Services Agency, the Ministry of Justice.

The content of this guide may be updated, as it mentions contexts that were most likely not considered at the time of conclusion of the Refugee Convention, such as persecution related to sexual minorities or gender issues, which is referred to as “new forms of persecution” in the “Results of the Study on the Direction of the Revision of the Refugee Recognition System (Report)” compiled by the Expert Meeting above.

From December 1<sup>st</sup>, 2023, a system for recognizing eligibility for complementary protection has started according to the partial enforcement of The Amendment Act of the Immigration Control and refugee Recognition Act and Special Act on the Immigration Control of inter alia, those who have lost Japanese nationality pursuant to the Treaty of Peace with Japan(Act No.56 of 2023).

“Persons under complementary protection” means those who are not refugees under the Refugee Convention but meet all requirements under the Convention

other than the requirement that the reason of having a fear of being persecuted falls under the reason stipulated in Article 1A(2) of the Convention (Article 2, item (iii)-2 of the Immigration Control and Refugee Recognition Act).

Therefore, this guide (in regard to “well-founded fear of being persecuted, for example) can be utilized for eligibility determination of persons under complementary protection

## Guide to Eligibility Determination for Refugee Status

1. Definition of “refugee”
  - (1) Who is a refugee?
  - (2) Structure of the Refugee Convention, etc.
2. Inclusion Clauses (Article 1 A (2) of the Refugee Convention)
  - (1) Persecution
  - (2) Agents of persecution
  - (3) Well-founded fear of being persecuted
  - (4) Grounds for persecution
    - A. Race
    - B. Religion
    - C. Nationality
    - D. Membership of a particular social group
      - (A) Persecution related to sexual minorities
      - (B) Persecution related to gender-based discriminatory treatment
    - E. Political opinion
  - (5) Causal link
  - (6) Being outside the country of nationality, etc.
  - (7) Protection from the country of nationality
3. Cessation Clauses (Article 1 C of the Refugee Convention)

Persons for whom international protection is no longer necessary or justified
4. Exclusion clauses (Article 1 D–F of the Refugee Convention)
  - (1) Persons who are at present receiving protection or assistance from organs or agencies of the United Nations other than UNHCR (Article 1 D)
  - (2) A person who is recognized by the competent authorities of the country in which the person has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country (Article 1 E)
  - (3) A person who has committed a serious crime outside the country of refuge, etc. (Article 1 F)

## **1. Definition of “refugee”**

### **(1) Who is a refugee?**

In Article 2, item (iii)-2 of the Immigration Control and Refugee Recognition Act (the Immigration Control Act), the term “refugee” means a refugee who falls under the provisions of Article 1 of the Convention Relating to the Status of Refugees (the Refugee Convention) or the provisions of Article 1 of the Protocol Relating to the Status of Refugees (the Protocol) and thus is subject to the Refugee Convention.

According to these provisions, the term “refugee” applies to any person who:

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail him/herself of the protection of that country (or who, not having a nationality and being outside the country of his/her former habitual residence, is unable or, owing to such fear, is unwilling to return to it) (Article 1 A (2) of the Refugee Convention).

Besides the above, the term “refugee” also applies to any person who has been considered as a refugee under the relevant provisions of international agreements preceding the Refugee Convention (Article 1 A (1) of the Refugee Convention).

### **(2) Structure of the Refugee Convention, etc.**

Article 1 of the Refugee Convention defines the term “refugee.” It consists of six sections, A to F.

Section A of Article 1 sets out requirements for refugee status (inclusion clauses). Although A (2) of Article 1 imposes a temporal limitation on eligibility for refugee status (“As a result of events occurring before 1 January 1951”), Article 1 of the Protocol has removed this limitation.

Section B of Article 1 stipulates that each Contracting State shall make a declaration to specify whether it imposes a geographical limitation (“events occurring in Europe”) on eligibility for refugee status. Japan declared that it would not impose any geographical limitation at the time of accession to the Refugee Convention.

Consequently, the term “refugee” is defined as above in Japan. Furthermore, Section C of Article 1 stipulates cases where the Refugee

Convention ceases to apply to refugees (cessation clauses), while Sections D to F of Article 1 set out cases where the status of refugee under Refugee Convention is not recognized even when the person is falling under the terms of Section A (exclusion clauses). This means that any person falling under the description in any of Sections C to F of Article 1 will not be recognized as a refugee.

## **2. Inclusion clauses (Article 1 A (2) of the Refugee Convention)**

The determination of refugee status depends on whether the applicant meets the following requirements, taking into account factors concerning the applicant and the country of his/her nationality or former habitual residence (hereinafter collectively referred to as “the country of nationality, etc.”.):

- The specific act or treatment which the applicant claims to be at risk of falls under “persecution.” [(1) Persecution, (2) Agents of persecution]
- The applicant has a “well-founded fear of being persecuted.” [(3) Well-founded fear of being persecuted]
- The “persecution” is conducted “for reasons of race, religion, nationality, membership of a particular social group or political opinion.” [(4) Grounds for persecution, (5) Causal link]
- The applicant is outside his/her country of nationality, etc. [(6) Being outside the country of nationality, etc.]
- The applicant is “unable or, owing to such fear, is unwilling to avail him/herself of the protection of that country” (the country of his/her nationality ,etc.). [(7) Protection of the country of nationality]

### **(1) Persecution**

Although there is no universally established definition of “persecution” in international law, the term “persecution,” as used in the Refugee Convention, refers to infringement or suppression of life, body or freedom or other forms of serious violations of human rights, mainly aggression or oppression deemed intolerable for ordinary persons committed in the form of infringement or suppression of life or physical freedom.

Murder and unjustifiable imprisonment may be the most typical examples, but other forms of serious violations of human rights and discriminatory

measures, such as deprivation of means of livelihood and psychological violence, can also constitute “persecution.”

There are also cases in which measures, disadvantages, etc. that may not amount to “persecution” on their own constitute “persecution” in conjunction with each other.

Prosecutions and punishments implemented in accordance with legal procedures normally do not constitute “persecution,” while arbitrary or discriminatory prosecutions, punishments and undeserved punishments can constitute “persecution.”

### **(Points to consider on investigation)**

#### **<Viewpoints for determination>**

- The applicant's situation and other factors need to be considered when judging whether the specific act or treatment falls under persecution or not. For example, persons in socially vulnerable situations may tend to feel their pain more intensely. It is thus necessary to judge whether the expected pain of the applicant is deemed intolerable on the assumption that ordinary persons are in such vulnerable situation as well.
- When judging whether measures, disadvantages, etc. that do not amount to “persecution” on their own can constitute “persecution” in conjunction with each other, it is necessary to consider the frequency and length of time each factor has occurred, how they can affect the applicant, and so on. The entities imposing these factors are not necessarily the same.

#### **<Persecution related to draft or military service>**

- International law does not prohibit states from imposing compulsory military service on their citizens for military purposes. Therefore, it is not persecution for a state to draft its citizens and oblige them to perform military service.  
Nevertheless, when the military service is too rigorous in terms of its content or length, for example, when performing the military service can put someone at risk of being abused, obliging the person to perform such military service can be regarded as persecution.
- Prosecution or punishment by the government for draft-evasion or desertion of military service does not in itself constitute persecution.

However, arbitrary or discriminatory prosecution, punishment or undeserved punishment can constitute persecution.

A fear of persecution is not well founded in principle when the person can avoid draft or military service by performing non-punitive alternative service (e.g., community service) or paying a realistic exemption fee even if the prosecution or punishment constitutes persecution since it can be said that there is a reasonable means of evading persecution such as prosecution or punishment.

- Being drafted for a non-state armed group can also constitute persecution depending on the method of drafting (for example, mobilization of child soldiers, or being forced or kidnapped), content of military service (for example, service that can lead to infringement or suppression of life of the one performing the service), or the treatment the person would be subject to by refusing to be drafted or perform the service.

## **(2) Agents of persecution**

Although agents of persecution are normally state authorities, non-state actors (political party stakeholders, antigovernment groups, religious communities, ethnic groups, criminal syndicates, groups exercising effective control over specific regions, local community members, family members, individuals, etc.) can also be agents of persecution.

- \* For more information about the protection of the country of nationality, which needs to be considered when the applicant claims that agent of persecution is a non-state actor, see “2 (7) Protection of the country of nationality.”

## **(3) Well-founded fear of being persecuted**

To constitute a “well-founded fear of being persecuted”, there needs to be an objective situation in which an ordinary person would have a fear of persecution if that person were put in the same situation as the applicant to show that the fear is well-founded, in addition to a subjective situation where the applicant has a fear of being persecuted.

This means that although “well-founded fear of being persecuted” does not require the applicant to be actually persecuted, an abstract risk of persecution alone will not suffice; there needs to be a real risk of

persecution, which will be judged based on the specific situation of each applicant.

Furthermore, there can be cases in which the applicant cannot be regarded as having a well-founded fear of being persecuted if the situation of the applicant indicates that reasonable means of evading persecution are available. At the same time, however, means that involve any change in the innate or immutable characteristics, religious beliefs, political beliefs, characteristics as sexual minority, acceptance of a forced marriage, etc. will not be regarded as reasonable means available to the applicant.

When the agent of persecution is a non-state actor, the need to consider the possibility of internal flight may arise. When the fear of being persecuted is limited to a specific part of the country of nationality, etc. and the applicant can safely and legally flee to another part of the same country where the feared harm cannot materialize and can reasonably be expected to settle in the destination of relocation, in other words when an internal flight alternative is possible, the person cannot be regarded as having a well-founded fear of being persecuted.

### **(Points to consider on investigation)**

#### **<General analysis>**

- Whether the applicant meets the requirement should be determined through comprehensive analysis of all personal circumstances concerning the applicant and general circumstances in the country of nationality, etc.
- Personal circumstances refer not only to the applicant's attributes, activities, personal history, and whether the applicant is in a vulnerable position, etc. but also to the surrounding conditions of the person, including factors concerning members of the local community to which the person belongs.
- In some cases, when the applicant is recognized as being at risk of persecution due to specific attributes (for example, being under threat of ethnic cleansing, in which harm can be caused to members of a specific ethnic group solely because they belong to the group), detailed circumstances of individual applicant do not need to be considered.

#### **<How to make determination for each case>**

- What constitutes a real risk of persecution will be assessed case by case. For example, where there is an abstract risk that an applicant is at risk of being persecuted by general application of a law in the country of nationality, etc., to determine whether there is a real risk, it is necessary to examine whether application of the law can put the applicant at a real risk of being persecuted by taking into account factors such as how the law is actually applied and whether those in the same or similar situations as the applicant are actually being persecuted. Since “actually being persecuted” is not a requirement, actual prosecution or issuance of an arrest warrant, etc. based on the law for the applicant are not necessarily needed.
- When the applicant is individually identified by an agent of persecution due to his/her attributes or activities, that can be a positive factor in assessing whether the person meets the requirement of “well-founded fear of being persecuted”. Nevertheless, the absence of the factor does not in itself directly mean that the applicant is not at risk of being persecuted.
- When assessing the risk of persecution for reasons of antigovernment activities, etc., comprehensive analysis needs to be undertaken by examining the personal circumstances of the applicant, such as the applicant’s position in the antigovernment or other organization to which the person belongs, what activities have been carried out, and the presence/absence of past persecution, and analyzing them with information about the country of origin, for example, how the agent of persecution has dealt with individuals with such conditions.
- Generally speaking, those who are in leadership positions in antigovernment activities or who have a strong influence over others are considered to be at greater risk of being persecuted than those who are not. As mentioned above, however, the level of risk of persecution depends not only on the personal circumstances of the applicant but also on the responses of the agent of persecution and other factors. This means that even those who are neither in leadership positions nor have a strong influence may be at risk of being persecuted in the same way. Therefore, being neither in a leadership position nor having a strong influence does not in itself suffice to indicate that the applicant does not meet the requirement; it should be noted that being in such a position in

antigovernment or other activities is nothing more than one of the factors that should be taken into consideration.

- When any family member of the applicant is recognized as being at risk of persecution for any of the grounds stipulated in the Refugee Convention, it is necessary to note that the applicant may be regarded as sharing the same political opinion, etc. on grounds of being a family member and be put at risk of being persecuted as well.
- When the applicant has been persecuted in the past, the frequency, number of times and nature of the persecution are important factors to consider in assessing whether the person meets the requirement. At the same time, however, even if the applicant has never been persecuted or has only been persecuted once in the past, that does not in itself directly mean that the person does not meet the requirement.
- With respect to an applicant who has resided in an area of armed conflict, a fear that the applicant may be involved in armed conflict by returning the area can be a factor contributing to constitute well-founded fear concerning the applicant.

<Evaluation of the applicant's behavior before seeking asylum>

- Generally speaking, following facts can serve as negative factors in assessing whether the applicant meets the requirement: the applicant stayed in the country of nationality, etc. for an unnecessarily long period of time despite his/her fear of persecution; the applicant voluntarily returned to the country of nationality, etc. after leaving it (irrespective of whether the person returned to the country before or after his/her arrival in Japan); the applicant went through another country where he/she could seek asylum before his/her arrival in Japan but passed through the country without seeking doing so; or the applicant did not immediately seek asylum after arrival in Japan.

At the same time, however, the presence of these facts does not in itself suffice to indicate that the applicant does not meet the requirement; it is necessary to examine whether there are reasonable grounds for these facts by considering each applicant's situation, etc.

- Even if the applicant has been working illegally in Japan or has sent money to his/her country of nationality, etc. from Japan, such facts do not necessarily contradict his/her subjective fear of persecution. At the

same time, however, if there are circumstances suggesting that the applicant has entered Japan to find employment, not to flee from persecution (for example, if the applicant has solely been working in Japan for a long period of time without seeking asylum and hides this fact on purpose), such facts can serve as negative factors in assessing whether the applicant meets the requirement.

- When the agent of persecution is a state authority of the country of nationality, etc., the facts that the applicant has had a passport or other travel document issued in his/her name or has had such document renewed, or has legally departed from the country by following official procedures, are generally considered to suggest that the state authority is not paying particular attention to the applicant as a target of persecution and also that the applicant does not have subjective fear about coming into contact with the state authority. Therefore, such facts can serve as negative factors in assessing whether the applicant meets the requirement.

At the same time, however, presence of these facts alone does not suffice to indicate that the applicant does not meet the requirement and such facts are nothing more than part of the factors that should be taken into consideration (For example, in some countries, there is insufficient coordination between investigating/prosecuting authorities and immigration authorities. When this is the case, even if an arrest warrant or other order has been issued, the applicant could depart from the country by following official procedures or by unlawful means, such as bribing an immigration official. There are also cases in which the applicant has opted to legally leave the country as a means of flight while hiding his/her political opinions that could put the applicant at risk of being persecuted).

<Evaluation of evidence, etc.>

- When evaluating documents created by the applicant's family members or acquaintances living in the country of nationality, etc., for example, documents stating that it would be dangerous for the applicant to return to the country, it is necessary to note that these people are likely to have incentive to provide statements to support what the applicant claims and accordingly assess the credibility of what is stated in the

documents by examining the concreteness of the statements in the documents, whether there is evidence to support them, and so on.

<Consideration about Internal Flight alternative>

- Generally speaking, when the agent of persecution is a state authority, the fear of being persecuted prevails the whole territory of the country of nationality, etc. Therefore, there is no need to consider the possibility of internal flight from persecution unless there are exceptional circumstances.
- Even if the agent of persecution is a non-state actor, there may be a high possibility that the fear of being persecuted prevails the whole territory of the country of nationality, etc. in the case where the authorities of the country encourage, condone, or acquiesce persecutory acts by the non-state actor in all parts of the country. In such the case, the fear of persecution cannot be denied on the grounds that an internal flight alternative is possible.
- When assessing whether an internal flight alternative is available, it is necessary to consider whether the applicant can escape from persecution by fleeing to another part of the same country where the feared harm cannot materialize (whether there is any fear that the agent of persecution might chase the applicant to the destination of internal flight), whether the applicant can receive effective protection from the country of nationality by fleeing to the region, and whether there is any fear that the applicant might face new persecution in the destination of internal flight.
- Even if the applicant can escape from persecution or receive effective protection from the country of nationality in the destination of internal flight, the fear of persecution cannot be denied on the grounds that an internal flight alternative is available when the escape/protection from the persecution may not be sustained for long or the applicant is unwilling to receive protection from the country of nationality in the destination of internal flight for objectively rational reasons.
- When relocation to and resettlement in the destination of internal flight may bring serious consequences (for example, difficulty of securing livelihood or accessing necessary medical care) to the applicant, fleeing to such a region cannot be regarded as a rational alternative and the fear

of persecution cannot be denied on the grounds that an internal flight alternative is available. At the same time, however, internal flight to the region cannot be evaluated as irrational merely on the grounds of a post-relocation decline in living standards or financial situation. It can be judged that an internal flight alternative is available unless there are additional factors contributing to making it irrational.

- When assessing whether relocation to and resettlement in a destination of internal flight is a rational alternative, it is necessary to consider the personal circumstances of the applicant in a comprehensive manner, for example, the person's ethnicity, cultural and religious backgrounds, family relationships, residential history, persecution suffered in the past and its psychological consequences, and so on.

#### **(4) Grounds for persecution**

##### **A. Race**

The term "race," as a ground for persecution, refers not only to a group of people sharing biological characteristics, such as skin color and hair texture, but also to what is normally categorized as an "ethnic group," characterized by cultural, linguistic, religious and other elements.

Persecution for reasons of membership of a particular ethnic group can be persecution on multiple grounds stipulated in the Refugee Convention, such as "race" and "nationality."

##### **(Points to consider on investigation)**

- Racial discrimination is one of the most severe violations of human rights and could be an important element in determining whether a specific act amounts to "persecution."

##### **B. Religion**

The term "religion," as a ground for persecution, refers not only to a religion such as Christianity, Islam or Buddhism, but also to a sect within a religion, irreligion or atheism. Furthermore, it is not limited to a religion that is organized or involves institutionally established religious activities like a traditional religion.

For example, persecutions on religious grounds are mainly perpetrated for the following five reasons: 1) the person belongs to, or is regarded to belong to, a specific religious community, 2) the person publicly or privately performs religious acts, 3) the person acts as a religious leader or educator, 4) the person has abandoned a specific religion or has converted to another religion, or 5) the person does not believe in a specific religion.

The term “religion” as a ground for persecution, may overlap with other grounds, such as the term “membership of a particular social group”.

**(Points to consider on investigation)**

- Religious convictions and beliefs, and lifestyles based on these convictions are considered to be closely related to people’s personalities and identities. As such, even if those who have a fear of being persecuted on the grounds of their faith in a particular religion can avoid the persecution by converting to a different religion, denying their faith in the religion, or pretending to believe in other accepted religions, it does not mean that their fear of persecution can be denied.
- Circumstances that have arisen after the applicant left the country of nationality, etc. (for example, any change in the religion the applicant believes in, the person’s style of faith and religious activities, and nature and severity of persecution against the religion in the country) should also be considered when assessing whether the applicant may be persecuted after returning to the country.
- When the applicant claims to have a fear of persecution because of the religion to which the person has converted, comprehensive analysis should be carried out not only by examining the personal factors of the applicant, such as whether the applicant is likely to proactively express his/her faith after returning to the country based on past religious practices, but also by looking into the country of origin information, such as how the agent of persecution tends to deal with people with such factors.

## **C. Nationality**

The term “nationality,” as a ground for persecution, can also refer to

membership of an ethnic or linguistic group.

As mentioned in Section A. “Race” above, “nationality” and “race (ethnicity)” may occasionally overlap with each other in the context of grounds for persecution. At the same time, “nationality” and “political opinion” may also overlap with one another because a conflict between ethnic or linguistic groups can be combined with political movements.

Persecution for reasons of “nationality” includes persecution suffered by stateless people in the country of their habitual residence on the grounds of statelessness.

#### **D. Membership of a particular social group**

A specific group of people can be recognized as “a particular social group” when members of the group share at least one of the following four characteristics that make them perceived as a group in society or distinguish them from other persons in their country: 1) an innate and immutable characteristic, 2) a characteristic that is impossible or extremely difficult to be changed because it is closely linked to personality or identity to the same extent as the other Refugee Convention grounds (race, religion, nationality and political opinion), 3) a characteristic that is so fundamental to human dignity so that group members should not be compelled to forsake it, and 4) a past temporary or voluntary status that is unchangeable because it relates to historical fact.

It is unnecessary that the members of the group to which an applicant belongs know each other or associate with each other as a group. In addition, the scale and the number of members of the group are not relevant elements in assessing eligibility.

It is also unnecessary that all members of the group face a real risk of being persecuted in order to establish the existence of a well-founded fear of being persecuted based on the grounds of “membership of a particular social group.”

The term “membership of a particular social group” may overlap with other grounds, such as “race,” “religion,” “nationality” or “political opinion.”

#### **(Examples of “membership of a particular social group”)**

The following are examples of applicants who have been fallen under

“membership of a particular social group” although “membership of a particular social group” is not limited to these:

(Characteristics related to family or blood relationship)

- A person who belongs to a powerful family conflicting with the regime of the country of origin
- A family member of a person who belongs to a group opposing an armed antigovernment organization
- A child of a local influential figure targeted by an extremist group
- A family member of a deserter in a country where such member can be tortured and arbitrarily arrested
- A minor child supported by parents engaged in political activities as pro-democracy supporters

(Characteristics related to past activities)

- A person engaged in educational support activities for girls
- A member of a humanitarian assistance group whose activities were obstructed by an armed antigovernment organization through detention and interrogation of members, etc.

(Characteristics related to gender etc.)

- A homosexual person in a country where homosexual acts are subject to legal punishment.
- A woman who is forced to submit to female genital mutilation (FGM)
- A woman who is subject to a forced marriage

## **(A) Persecution related to sexual minorities**

Sexual minorities can be recognized as a “membership of a particular social group” stipulated in the Refugee Convention.

### **(Points to consider on investigation)**

<Viewpoints for determination>

- Not all sexual minorities have stereotypical appearances or demonstrate stereotypical behaviors, or have established strong identities. Therefore, it is inappropriate to rely on fixed ideas or assumptions such as that sexual minorities have stereotypical appearances and demonstrate stereotypical behaviors and accordingly determine that an applicant does not belong to sexual

minorities simply because the person's appearance or behavior is not aligned with the stereotypes.

- Even an applicant who claims fear of persecution for being a sexual minority may feel shame or fear about coming out about his/her circumstances. This means that it is normally inappropriate to deny the credibility of the applicant's claim about his/her circumstances or fear of persecution merely on the grounds that the person has not clarified his/her circumstances or has not claimed fear of persecution at an early stage of the procedures.

<How to make determination in specific terms>

- When the applicant's country of nationality, etc. has any law that punishes acts of certain sexual minorities, an abstract danger based only on the existence of the law is in itself not enough; it is necessary to establish a real risk that the applicant may be punished or persecuted in accordance with the law by examining specific circumstances, such as how the law has been actually applied and whether people with the same circumstances as the applicant have actually been punished or persecuted in accordance with the law.
- It is so fundamental to human dignity that an applicant belongs to a certain sexual minority. An applicant should not be compelled to change or abandon his/her circumstances, irrespective of whether he/she has openly disclosed them. Therefore, even if he/she may be able to evade persecution by controlling or hiding their circumstances or daily activities relevant to them (for example, exchanges with people with the same or similar circumstances, dating with partners or cohabitations with partners, or daily life behaviors including cloth-dressing), it is inappropriate to demand that he/she should do so. If there is a real risk that an applicant may be persecuted on the grounds of any of these activities, the applicant can be accepted as having a well-founded fear of being persecuted.
- When there are circumstances in any part of the applicant's country of nationality, etc. that prevent sexual minorities from being subject to persecution or discriminatory treatment, for example, as the result of social or political changes in the environment

surrounding such people in some urban areas of the country, and the applicant can be reasonably expected to flee to such a region, an internal flight alternative may be considered possible. In this case, that situation can serve as a negative factor in assessing whether the applicant has a well-founded fear of being persecuted.

- Persecution related to sexual minorities can be also on the grounds that an applicant with such circumstances is regarded as against social or cultural norms in the country of nationality, etc. This means that such persecution may be on the grounds other than “membership of a particular social group” (i.e., “religion” or “political opinion”). For example, depending on the nature of the case, even when it cannot be regarded as persecution against sexual minority, it can be evaluated as persecution for reasons of “political opinion” that an applicant is persecuted for being recognized as a human rights activist as a result of expressing his/her opinion to defend the rights of sexual minority.
- When an applicant claims to a fear of being persecuted by a non-state actor for being sexual minority and the country of nationality has a law that punishes certain acts relevant to sexual minority, that law can normally be a factor suggesting that the applicant cannot receive protection from the country of nationality. In addition, even if the law is abolished or any positive measure is taken to protect sexual minority in question, such change cannot be regarded as directly leading to protection from the country of nationality and it is necessary to be analyzed how the change affects the applicant’s fear of being persecuted based on individual circumstances.

## **(B) Persecution related to gender-based discriminatory treatment**

Individuals who belong to groups subject to infringement or suppression of life, body or freedom, or other forms of serious violations of human rights (for example, physical invasion or violence, such as FGM), based on traditional or cultural norms or customs in their countries of nationality, etc. for reasons of gender can be recognized as having a well-founded fear of

being persecuted on the grounds of membership of a particular social group.

**(Points to consider on investigation)**

- FGM is an infringement of life and body and amounts to persecution.
- There are many different forms of gender-based discriminatory treatment. Even if a specific act does not in itself constitute persecution, it can trigger persecution depending on how traditional and cultural norms and customs are practiced in the country of nationality, etc.
- How traditional and cultural norms and customs are practiced in the country of nationality, etc. can vary between different parts of the country. This means that in examining whether the applicant can reasonably be expected to flee to another part of the same country where the feared harm cannot materialize, it is also necessary to consider factors unique to specific gender (for example, if the applicant is a single woman, would it even be possible for her to live in the destination of internal flight?).
- Persecution related to gender can be caused on the grounds of going against social or cultural norms in the applicant's country of nationality, etc. As such, the applicant's certain acts can be regarded as reflecting his/her religious convictions or political opinions that are not tolerated by agent of persecution. Therefore, there may be cases in which persecution that is not gender-based can be on the grounds of other than "membership of a particular social group" ("religion" or "political opinion") depending on the nature of the case.
- Even if the applicant's country of nationality has a law that prohibits gender-based persecution committed in line with traditional or cultural norms or customs, the person can be deemed to be lacking the protection of the country as long as the authorities of the country lack the intention or ability to enforce the law and the country thus cannot actually stop such persecution perpetrated by non-state actors.

## **E. Political opinion**

The term “political opinion,” as a ground for persecution, includes not only typical political opinions, such as an opinion calling for a change of government or political system reform in the country of nationality, etc., but also opinions about problems related to the systems of a country, government or society. In addition, such a political opinion does not necessarily need to be based on membership of a political party or other group and can be a personal opinion.

To establish a fear of persecution for reasons of political opinion, it is normally essential that an applicant should have his/her political opinion recognized by an agent of persecution, or that an agent of persecution should regard an applicant as having a certain political opinion even though the person does not have the political opinion in reality. The important thing is the viewpoint of the agent of persecution.

These political opinions do not necessarily need to be clearly expressed; there are also cases in which an applicant has his/her political opinion recognized by an agent of persecution or is regarded to have a certain political opinion because of their behavior, like that the applicant is neutral or indifferent to the agent of persecution.

The term “political opinion” as a ground for persecution, may overlap with other grounds, such as “race,” “religion,” “nationality” or “membership of a particular social group.”

### **(Points to consider on investigation)**

- When assessing whether the applicant is regarded by the agent of persecution as having a certain political opinion, it is necessary to consider not only the applicant’s own statements about their political opinion, and acts and activities based on that opinion, but also objective evidence supporting the statements, information about the country of origin, etc. to reflect the objective circumstances of the applicant.
- The applicant need not demonstrate that his/her political opinion has been perceived by the authorities by the time the person left the country of nationality, etc. in order to establish a fear of being persecuted after returning to the country. This is because there may

be cases in which the applicant was hiding his/her political opinion while living in the country of nationality, etc., feeling it was dangerous to express his/her political opinion, and had his/her political opinion perceived by the agent of persecution, or became regarded by the agent of persecution as having the political opinion, after leaving the country.

- Circumstances that have arisen after the applicant left the country of nationality, etc. (for example, any change in the applicant's political opinion or behaviors or activities based on the opinion, or evaluation of the applicant's political opinion by the agent of persecution) should also be considered when assessing whether the applicant may be persecuted for reasons of political opinion after returning to the country.

## **(5) Causal link**

There needs to be a causal link between “fear of being persecuted” and at least one of the grounds for persecution, i.e. “race, religion, nationality, membership of a particular social group or political opinion.”

Even when an agent of persecution is a non-state actor and none of the grounds for persecution stipulated in the Refugee Convention apply to the persecution perpetrated by the non-state actor, the above “causal link” requirement can be satisfied with a causal link between the ground for persecution and lack of protection from the country of nationality. That is the case where a lack of protection from the country of nationality is recognized on any of the grounds for persecution stipulated in the Refugee Convention. However, it is essential that the lack of intention to grant protection to the applicant by the country of nationality should be objectively demonstrated. Even if the country of nationality lacks the ability to prevent the persecution in this case, that fact alone will not suffice to constitute the causal link between the ground for persecution and lack of protection from the country of nationality.

If there is a fear of being persecuted for at least one of reasons of “race, religion, nationality, membership of a particular social group or political opinion,” a causal link can be established even when the persecution is also associated with other reasons.

## **(6) Being outside the country of nationality, etc.**

In the most typical case of being outside the country of nationality, etc., an applicant has fled his/her country of nationality, etc. because of a fear of persecution. Besides this, there are also cases in which a fear of persecution has arisen after an applicant left his/her country of nationality, etc. as a result of a change in the situation of the country or the applicant (for example, expression of political opinion or religious conversion).

### **(Points to consider on investigation)**

- If a new circumstance has arisen after the applicant left the country of nationality, etc. and it has been created by the applicant, it may possibly have done with the intention of obtaining refugee status. In this case, it is important to make a careful assessment from the perspective of whether the applicant could actually be persecuted by returning to the country while taking into consideration whether the new circumstance is or can be known by any agent of persecution (how the behavior of the applicant will be perceived by the agent of persecution).
- When the applicant has created a new circumstance with the sole or main intention of qualifying for applying for protection as a refugee, fear of persecution is normally not recognized. This includes the case where the circumstance has been created clearly with that intention and the applicant's return to their country of nationality, etc. is unlikely to cause any major adverse impact. In these circumstances, it is still important to carefully examine the results the applicant's return to the country can bring and accordingly assess whether the person has a fear of being persecuted.

## **(7) Protection from the country of nationality**

An applicant needs to be "unable or, owing to such fear (owing to a well-founded fear of being persecuted), unwilling to avail him/herself of the protection of that country (country of his/her nationality)."

When the persecution is conducted by a state actor in an applicant's country of nationality, it is normally impossible for the applicant to seek

protection from the country.

On the other hand, when the persecution is conducted by a non-state actor, the applicant may meet this requirement if the country of nationality refuses to give effective protection to the person facing the persecution (including through fomenting, neglecting to address, or tolerating the persecution) or is unable to provide effective protection to the person.

When an applicant is a stateless person, the person needs to be “unable or, owing to such fear (owing to a well-founded fear of being persecuted), unwilling to return to it (country of their former habitual residence).” In this regard, the Refugee Convention does not include particular provisions concerning the protection that a stateless applicant can receive from the country of his/her former habitual residence. This is because it is normally considered impossible for a stateless applicant to seek protection from the country of their former habitual residence.

#### **(Points to consider on investigation)**

<Protection from the country of nationality as general administrative measures>

- The embassy or consulate of the applicant’s country of nationality may assist the applicant with protection of physical safety, property, etc., issue a passport, certificates and other necessary documents or extend the expiration dates of such documents for the applicant, and give the applicant permission to enter the territory of the country, etc. and so on. These are examples of protection that his/her country of nationality can provide as general administrative measures. Even when the applicant has received such protection, however, it does not necessarily indicate that there is a protection from the country of nationality.

\* See “2 (3) Well-founded fear of being persecuted.”

<Effective protection from the country of nationality in the case of being persecuted by a non-state actor>

Here are things to consider when assessing whether the country of nationality is refusing or unable to provide effective protection to the applicant:

- If the country of nationality does not have any criminal law that punishes persecution by a non-state actor or has no intention or ability to enforce such law (through investigation, prosecution, punishment, etc.), or it is deemed impossible for the applicant to seek protection from

the country, a lack of effective protection from the country of nationality can be established.

However, it is not realistic for the country of nationality to take measures to eliminate all possibilities of persecution on its people by non-state actors. Therefore, a lack of effective state protection cannot be established merely on the grounds that such exhaustive measures have not been taken.

- For example, if the applicant is regarded to be hostile to an armed antigovernment organization and is accordingly at risk of being persecuted by that organization, a lack of effective protection from the applicant's country of nationality can be established when the country is unstable as that organization is active in virtually all parts of the country, and the governance capacity of the state government has declined significantly.
- When the protection of the applicant's country of nationality is not sustainable or is discriminatory (for example, when it does not provide protection to a specific ethnic group), a lack of effective protection from the country of nationality can be established.
- When the applicant does not (or is not willing to) seek effective protection from his/her country of nationality even if he/she can expect to receive it and that behavior is not deemed objectively rational, a lack of effective protection from the country of nationality cannot be established.

<Protection from a country of nationality when the applicant has more than one nationality>

- Generally speaking, states are responsible for protection of their own peoples, and more than one country may provide protection to people with multiple nationalities. This means that even if the applicant has a well-founded fear of being persecuted in one of the countries of nationality and cannot receive protection from that country, it is still necessary to examine whether the person can seek protection from another country of nationality.

### **3. Cessation clauses (Article 1 C of the Refugee Convention)**

#### **Persons for whom international protection is no longer necessary or justified**

Once a person's status as a refugee has been determined, it is maintained unless the person falls under the terms of Article 1 C of the Refugee Convention.

Refugee status will cease where Article 1 C applies. This is based on the consideration that people with refugee status should no longer be granted international protection when it is no longer necessary or justified as a result of their own acts or changes in the situations of their countries of nationality, etc.

The burden of proof concerning the applicability of Article 1 C to an applicant lies on the administrative authorities.

When a foreign national residing in Japan who has been recognized as a refugee turns out to fall under the terms of any of provisions (1) to (6) of Article 1 C, the person's refugee status is revoked in accordance with the procedures provided for by Ministry of Justice order according to Article 61-2-7, paragraph (1), item (ii) of the Immigration Control Act.

Article 1 C applies to a person who has already been recognized as a refugee, and not to an applicant who has not been recognized as a refugee. This does not mean that an applicant can be recognized as a refugee even if they fall under the terms of Article 1 C; Rather it means that people who fall under the terms of Article 1 C should not be recognized as refugees in the first place.

Although refugee status is normally granted by the Minister of Justice through an administrative disposition that recognizes refugee status, a judgment to repeal a negative administrative disposition can be understood to recognize and determine that the Refugee Convention should have applied to the applicant at the time of the disposition. The judgment is binding on the Minister of Justice (See Article 33, paragraph (1) of the Administrative Case Litigation Act). It means that the judgment makes an official determination that the applicant is a refugee defined by the Refugee Convention, which is a prerequisite for application of Article 1 C. As such, when a judgment has been made and finalized to repeal a negative administrative disposition on the grounds that the person is eligible for refugee status, the person should be recognized as a refugee unless the person falls under the terms of Article 1 C as a result of any change in circumstances arising after the administrative disposition.

### **(Points to consider on investigation)**

#### **<Points to consider as to Article 1 C (1)>**

- Article 1 C (1) stipulates that the Convention shall cease to apply if a person has voluntarily re-availed themselves of the protection of the country of their nationality.
- Article 1 C (1) applies to refugee who is currently living outside the country of his/her nationality and has voluntarily re-availed him/herself of the protection of that country.
- The term “voluntarily,” means “of their own free will,” where the free will is not suppressed by interference or detention. It is of course that “spontaneously” is included in “voluntarily.” However, even if a person is simply persuaded into doing something, rather than taking initiative and acting spontaneously (proactively), it can be said that the person voluntarily does it as long as the person acts on his/her own free will.
- “Protection of the country of their nationality” means, in specific terms, issuance of passport, extension of the expiration date on a passport, etc. Although Article 1 C (1) can apply to whom these administrative measures have actually been taken, it is also necessary to consider whether the applicant has had a passport issued or has had their passport renewed with intention to re-avail him/herself of the protection of the country of his/her nationality and other relevant factors. However, even if the applicant has had any certificate, such as a certificate of birth or marriage, issued at the embassy or other office of the country of nationality, that fact alone does not suffice to determine that the applicant intends to re-avail him/herself of the protection of the country of nationality.

#### **< Points to consider as to Article 1 C (2)>**

- Article 1 C (2) stipulates that the Convention shall cease to apply if a person who has lost his/her nationality voluntarily reacquires it.
- Article 1 C (2) applies to refugees who lost their nationalities of the countries in which they are recognized as having a well-founded fear of being persecuted when they voluntarily reacquire them.
- Even if a nationality is automatically granted as a result of enforcement of a law, Article 1 C (2) applies only when the person explicitly or implicitly

accepts it. Furthermore, if the person is given an option to refuse to be granted the nationality based on the law and reacquires the nationality as a result of not exercising the option despite the fact that the person is fully aware of the option, the person can be recognized as voluntarily reacquiring the nationality.

<Points to consider as to Article 1 C (3)>

- Article 1 C (3) stipulates that the Convention shall cease to apply if a person has acquired a new nationality, and enjoys the protection of the country of his/her new nationality.
- Article 1 C (3) is a provision about cases in which a refugee, who used to have or has a nationality, has acquired a nationality of another country or a refugee, who was originally stateless, has acquired a nationality of a country, It applies to such a refugee who currently enjoys the protection of the country of his/her new nationality.
- If a person whose refugee status has ceased by the application of Article 1 C (3) claims to have a fear of being persecuted in the country of his/her new nationality, it is necessary to determine his/her eligibility for refugee status again in light of his/her relationship with the country.

<Points to consider as to Article 1 C (4)>

- Article 1 C (4) stipulates that the Convention shall cease to apply if a person has voluntarily re-established him/herself in the country which he/she left or outside which he/she remained owing to fear of persecution.
- Article 1 C (4) applies to a refugee who has voluntarily returned to his/her country of nationality, etc. in which he/she has been recognized as having a well-founded fear of being persecuted and does not fall under (1) or (2) of Article 1 C.
- “Has voluntarily re-established him/herself in the country which he/she left or outside which he/she remained” refers to having based him/herself in the country and satisfying the conditions for living there on a permanent basis, which does not include temporary return to the country.

<Points to consider as to Article 1 C (5)>

- Article 1 C (5) stipulates that the Convention shall cease to apply if a person can no longer continue to refuse to avail him/herself of the protection of the country of his/her nationality because the circumstances in connection with which the person has been recognized as a refugee have ceased to exist. However, this paragraph does not apply to a refugee falling under Article 1 A (1) of the Refugee Convention who is able to invoke compelling reasons arising out of previous persecution for refusing to avail him/herself of the protection of the country of nationality.
- Article 1 C (5) applies to a refugee who can no longer refuse to avail him/herself of the protection of their country of nationality because the circumstances in connection with which the person has been recognized as a refugee have ceased to exist as the result of changes in the situation of his/her country of nationality. The term “changes in the situation,” as used here, refers to fundamental, stable and durable changes in the situations of the country of nationality, and “the protection of his/her country of nationality” refers to effective and available protection.
- Cessation of refugee status based on Article 1 C (5) requires the “changes in the situation,” as mentioned above, to be confirmed in an objective and verifiable way. In this regard, large-scale and spontaneous repatriation of refugees may be an indicator that such changes are occurring or have occurred in the country of their nationality. At the same time, however, such return of refugees could also generate another tension or other new circumstances in the country. As such, it is necessary to carefully consider these factors.
- When the “changes in the situation” of the person’s country of nationality are occurring or have occurred only in some parts of the country while the circumstances in connection with which the person has been recognized as a refugee still exist in many parts of it, such changes cannot be regarded as being of a fundamental nature, and Article 1 C (5) thus does not apply.
- Even if the situation of a refugee’s country of nationality has changed to such an extent that circumstances in connection with which the person has been recognized as a refugee can be said to have ceased to exist, the person’s refugee status should, as an exception, not be ceased in accordance with the proviso to Article 1 C (5) as long as the refugee falls

under Article 1 A (1) and is able to invoke “compelling reasons arising out of previous persecution” for refusing to avail him/herself of the protection of the country of nationality.

- The proviso to Article 1 C (5) is a provision mainly for people like Jewish people who were relentlessly persecuted by the Nazis, and stipulates that a person continues to enjoy refugee status if that person was persecuted so severely in the past that it is deemed reasonable for the person to be unwilling to return to the country of nationality, etc. for psychological reasons despite the fact that the person is no longer at risk of being persecuted at all.

<Points to consider as to Article 1 C (6)>

- Article 1 C (6) stipulates that the Convention shall cease to apply if a person has no nationality and is able to return to the country of his/her former habitual residence because the circumstances in connection with which the person has been recognized as a refugee have ceased to exist. However, this does not apply to a refugee falling under Article 1 A (1) of the Refugee Convention who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his/her former habitual residence.
- Article 1 C (6) applies to a stateless person who has become able to return to the country of their former habitual residence because the circumstances in connection with which the person has been recognized as a refugee have ceased to exist as the result of changes in the situation of the country of his/her former habitual residence.
- The provisions in Sections C (5) and (6) of Article 1 should be thought of as a pair. “The circumstances in connection with the person has been recognized as a refugee have ceased to exist” in (6) should be interpreted in the same way as the same words in (5).

#### **4. Exclusion clauses (Article 1 D–F of the Refugee Convention)**

##### **(1) Persons who are at present receiving protection or assistance from organs or agencies of the United Nations other than UNHCR (Article 1 D)**

As the Refugee Convention does not apply to a person who is currently receiving the protection or assistance of a United Nations agency other than the United Nations High Commissioner for Refugees (UNHCR) in accordance with the first paragraph of Article 1 D of the Refugee Convention, he/she should not be granted refugee status under the Convention. At present, the first paragraph of Article 1 D only applies to refugees from Palestine who fall under the protection or assistance of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

At the same time, Article 1 D is based on the premise that persons who are at present receiving protection or assistance from UNRWA substantially fall under the definition in Article 1 A (2). As such, once the protection or assistance of UNRWA has ceased, these persons are recognized as refugees under the Refugee Convention in accordance with the second paragraph of Article 1 D without the need to undergo examination as to whether they fall under the definition in Article 1 A (2). Even so, they can still be examined as to whether Section C (cessation clauses) of Article 1 or Section E or F (exclusion clauses) of the same article applies to them.

Applicability of Section D of Article 1 should be examined in the refugee status determination procedures.

#### **(Points to consider on investigation)**

<Assessment concerning “at present receiving protection or assistance”>

- “At present,” as used in “at present receiving protection or assistance,” refers to the time of application for refugee status, not as of July 1951, when the Refugee Convention was adopted.
- A person who falls under any of the definitions in 1) to 3) below is eligible for protection or assistance from UNRWA.
  - 1) Persons who are “Palestine refugees” within the sense of United Nations (UN) General Assembly Resolution 194 (III) of 11 December 1948 and subsequent UN General Assembly Resolutions (who, as a result of the 1948 Arab-Israeli conflict, were displaced from that part of

Mandate Palestine which became Israel, and who have been unable to return there)

2) Persons who are “displaced persons” within the sense of UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 and subsequent UN General Assembly resolutions (who, as a result of the 1967 Arab-Israeli conflict, have been displaced from the Palestinian territory occupied by Israel since 1967 and have been unable to return there)

3) All persons born to Palestine refugees, defined in 1) above, or displaced persons, defined in 2) above (including descendants who were born outside of and who have never resided in UNRWA’s areas of operation)

- The protection and assistance of UNRWA are provided only in certain areas of the Middle East: Jordan, Lebanon, the Syrian Arab Republic, the West Bank (including East Jerusalem) and Gaza.
- Being registered by UNRWA or possessing UNRWA documentation as someone qualifying for protection or assistance from UNRWA would serve as conclusive proof of falling within the scope of eligibility for the protection or assistance of UNRWA. In the absence of such relevant proof, however, assessment may rely on other evidence to this effect, including the applicant’s own statement or other relevant documentation, for example.

<Assessment concerning “when such protection or assistance has ceased”>

- “When such protection or assistance has ceased” refers to when an applicant has objective reasons for preventing him/her from (re)availing him/herself of UNRWA’s protection or assistance (specifically, 1) to 4) below).

1) Termination of the mandate of UNRWA or UNRWA itself

2) Inability of UNRWA to fulfil its mandate (either protection or assistance)

3) Threat to the applicant’s life, physical integrity, security or liberty or other serious protection-related reasons present in the UNRWA’s area of operation in which the applicant has lived (Examples of general security threats would include armed conflict or other situations of violence, and threats of a more individualized nature would include sexual or gender-based violence, torture, inhuman or degrading treatment or punishment, human trafficking and exploitation, forced

recruitment, severe discrimination, or arbitrary arrest or detention.)

4) Practical, legal and/or safety barriers preventing the applicant from (re)availing him/herself of the protection or assistance of UNRWA (Practical barriers include obstacles which prevent access to UNRWA areas of operation because of border closures. Legal barriers include absence of documentation allowing the individual to travel to, enter, or reside in the relevant UNRWA areas of operation. Safety barriers include dangers en route such as minefields or factional fighting, preventing the applicant from being able to return safely.)

- It is inappropriate to determine whether “protection or assistance has ceased” based on whether the applicant has voluntarily left UNRWA’s areas of operation or whether the applicant has left the areas for personal reasons (for example, for academic or work purposes). An assessment needs to be made of whether the person is able to (re)avail him/herself of the protection or assistance of UNRWA.
- When the applicant refuses to (re)avail him/herself of the protection or assistance of UNRWA merely for personal reasons, the situation cannot be recognized as “when such protection or assistance has ceased.”
- Even if it has become difficult for the applicant to continue to reside in the same area due to armed conflict, the situation cannot be recognized as “when such protection or assistance (from UNRWA) has ceased” as long as the person is able to access and receive protection or assistance from UNRWA in other part of the same country or territory. However, it cannot be expected that the applicant should flee to a different area or territory where the person has no previous connection.

**(2) A person who is recognized by the competent authorities of the country in which the person has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country (Article 1 E)**

The Refugee Convention does not apply to a person who is recognized by the competent authorities of the country in which the person has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country in accordance with Article 1 E of the Convention even if the person may fall under the definition of a refugee

under the Convention because such a person is considered not to be deserving of international protection.

In elaborating Section E of Article 1, the drafters of the Refugee Convention had principally in mind ethnic German (German people who have returned to Germany because of persecution or for other reasons after residing outside the country but do not have the nationality of Germany). However, the scope of application of this section is not necessarily limited to these people.

The term “the rights and obligations which are attached to the possession of the nationality of that country,” as used in Article 1 E, refers to a legal status that is largely equivalent to that of nationals of the country in which the person has taken residence, more specifically, virtually all rights and obligations that are attached to the nationals of that country other than those derived from nationality (for example, the right to vote and be elected). These rights should include the rights granted to the nationals to allow them to re-enter (return to) and stay in the country. In particular, it is important that the person should be protected against deportation from the country of residence as with its nationals.

Applicability of Article 1 E should be examined in the refugee recognition procedure. The burden of proof concerning the applicability of Article 1 E to an applicant lies on the administrative authorities.

### **(3) A person who has committed a serious crime outside the country of refuge (Article 1 F) etc.**

The Refugee Convention does not apply to any person with respect to whom there are serious reasons to believe that the person has committed a crime or other act set out in Article 1 F of the Convention, and refugee status will not be granted to the person.

The purpose of Article 1 F is to prevent individuals who have committed crimes or other acts stipulated in this section from abusing the protection system based on the Refugee Convention in order to avoid their legal accountability for their acts by not granting them opportunities to receive international protection. Given the possible consequences of application of Article 1 F, this section needs to be applied with utmost care.

While both F (a) and (c) of Article 1 apply irrespective of when or where the person has committed a crime or other act set out in them, F (b) applies only when the person has committed a serious crime stipulated in it “outside

the country of refuge prior to his/her admission to that country as a refugee.” The words “prior to his/her admission to that country as a refugee” should refer to before entry into Japan.

**(Points to consider on investigation)**

<Burden and standard of proof in determination concerning applicability of Article 1 F>

- The applicability of Article 1 F will be examined in the refugee recognition procedure. The burden of proof concerning the applicability of Article 1 F to an applicant normally lies on the administrative authorities. Where, however, there is any fact such as that the applicant has been indicted by an international criminal tribunal, the burden of proof is reversed, creating a rebuttable presumption of applicability of Article 1 F.
- Determining applicability of Article 1 F to an applicant does not necessarily require the fact the applicant has been indicted or convicted of a crime or other act stipulated in this section.

<The applicant's individual responsibility for a crime or other act stipulated in Article 1 F>

- To apply Article 1 F, the administrative authorities need to provide evidence pointing towards the applicant's individual responsibility for involvement in a crime or other act covered by the section. However, the fact that the person was at some point a senior member of a government involved in the crime or other act or a member of an organization involved in the illegal act of violence does not in itself entail individual responsibility for the crime or other act.
- To determine whether the applicant has individual responsibility, it is necessary to consider a comprehensive range of factors, such as the level of involvement in the crime or other act, more specifically, whether, and how much, the applicant has been involved in it, as well as the individual's position, influence, roles, etc. in the organization if the crime or other act has been committed by an organization.
- When the applicant was legally obliged to obey a superior's orders, was unaware of the unlawfulness of the order, and the order itself was not manifestly unlawful, or when there are reasonable ground that the

applicant had no alternative but to commit the crime or other act in order to avoid a threat of imminent death, or of serious bodily harm, to him/herself or another person, the applicant's individual liability for the crime or other act may not be established, which can lead to inapplicability of Article 1 F.

<Evaluation of disappearance of punitive authority or regret concerning a crime or other act stipulated in Article 1 F>

- The application of Article 1 F is still considered justified even when the applicant has served a penal sentence for the crime or other act stipulated in Article 1 F, or a pardon or amnesty, has taken place. Furthermore, any expression of regret shown by the applicant about the crime or other act, rehabilitation, etc. also cannot affect the applicability of Article 1 F.

<Points to consider as to Article 1 F (a)>

- Article 1 F (a) applies to a person who has committed a crime against peace, a war crime, or a crime against humanity.
  - The following are examples of "the international instruments drawn up to make provision in respect of such crimes (a crime against peace, a war crime, or a crime against humanity)" in Article 1 F (a):
    - The 1945 Charter of the International Military Tribunal (the London Charter)
    - The 1948 Convention on the Prevention and Punishment of the Crime of Genocide
    - The four 1949 Geneva Conventions
    - The 1977 Additional Protocols to the 1949 Geneva Conventions
    - The Statutes of the International Criminal Tribunals for the former Yugoslavia (1993) and Rwanda (1994)
    - The 1998 Rome Statute of the International Criminal Court
- (Note) The Rome Statute of the International Criminal Court contains provisions about genocide (Article 6), crimes against humanity (Article 7) and war crimes (Article 8).
- The term "war crimes" refers mainly to grave breaches of the Geneva Conventions (for example, killing or other acts against persons or property protected under the Conventions, or intentionally directing

attacks against civilian people or civilian objects).

- The term “crimes against humanity” means murder or other acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

<Points to consider as to Article 1 F (b)>

- Article 1 F (b) applies to a person who has committed a serious non-political crime. In determining whether a particular offence is sufficiently serious, not only Japanese but also international standards should be referred circumstances are relevant. Internationally, factors like the nature of the criminal act, the individual’s level of involvement in the act, the actual harm inflicted, the form of procedure used to prosecute the crime, and whether most jurisdictions in the world would consider it a serious crime, should be taken into account, in addition to the nature of the penalty that has actually been or is going to be imposed.
- It is up to each Contracting State to determine what kinds of crimes fall under what Article 1 F (b) calls “a serious non-political crime” while taking the above into consideration. In Japan, for example, a non-political criminal act that is subject to death penalty, life imprisonment, or imprisonment with or without work for not less than three years in accordance with Japanese law is regarded as a serious non-political crime.
- In determining whether an offence is a political crime, regard should be given to whether it has been committed out of genuine political motives, whether there is a causal link between the crime committed and its alleged political purpose, whether the political element of the offence outweighs its nature as a crime, and so on.
- An unlawful seizure of an aircraft (hijacking) does not constitute a political crime in principle, given the seriousness of the consequences of such an act, even if its objective contains a political element.
- Article 1 F does not apply to a refugee who has been proved innocent even if he/she had been indicted or convicted of crimes stipulated in Article 1 F (b).

<Points to consider as to Article 1 F (c)>

- Article 1 F (c) applies to a person who has been guilty of acts contrary

to the purposes and principles of the United Nations. “The purposes and principles of the United Nations” are set out in Articles 1 and 2 in Chapter I (Purposes and Principles) of the Charter of the United Nations. Specifically, they are to maintain international peace and security, the sovereign equality of states, the respect for human rights and for fundamental freedoms, and so on.

- Article 1 F (c) only applies to activities that attack the very basis of the international community’s coexistence (for example, crimes capable of affecting international peace, security and peaceful relations between States, as well as serious and sustained violations of human rights).
- Article 1 F (c) applies to a person who is in positions of power or influence in States or State-like entities and appear capable of playing important roles in acts contrary to the purposes and principles of the United Nations committed by the States or State-like entities. Even if an applicant is not in such a position, Article 1 F (c) may apply as long as the applicant’s individual liability is established for a crime or other act stipulated in Article 1 F (c).