

**REFUGEE LAW
INITIATIVE**

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(Suspected) Criminality and the Asylum Seeker

**Codification of Exclusion from Protection on Criminality and
National Security Grounds in the Global South**

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Exclusion from Protection

Article 1F provides the 1951 Refugee Convention shall not apply to any person with respect to whom there are 'serious reasons for considering' has:

- a) committed a crime against peace, war crime or crime against humanity;
- b) committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee, or;
- c) been guilty of acts contrary to the purposes and principles of the United Nations.

Article 33(2) provides that protection from *refoulement* may not be claimed by:

'a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.'

Domestic and regional codification in GN:

- Inclusion of 'terrorism' within Article 1F(c)
- Determining Article 1F(b) 'serious' crime with reference to length of sentence
- Narrowing Article 1F(b) temporal and geographical limitations
- Additional exclusion/revocation grounds drawn from Article 33(2) host State security concerns



**What about the rest of
the world ... ?**

Latin America

Regional approach

- Right to 'seek and be granted' asylum enshrined in regional human rights instruments
- No concerns about potential criminality of refugees in 1984 Cartagena Declaration or related regional refugee instruments
- Jurisprudence and reports of the Inter-American regional human rights system emphasises refugees as victims of crime, and in particular organised crime as a driver of displacement

Domestic codification

Art 1F(a) – trend towards ensuring international crimes are defined with reference to international instruments the State has ratified

Art 1F(b) – some attention to classification of crime. No expansive codification tendencies except

- Brazil – includes participation in terrorist acts or drug trafficking
- Peru – refers to crimes committed 'inside or outside the national territory'

Art 1F(c) – one reference to purposes and principles of OAS; no reference to acts of terrorism

Art 33(2) – only 6 of the countries reviewed include loss of protection from *refoulement*.

Revocation: Most countries make provision for revocation or cessation on Art 1F grounds, and Ecuador, Brazil and Honduras also on Art 33(2) grounds

Africa

Regional approach

1981 African Charter of Human and Peoples' Rights

- Art 12 - Right to 'seek and obtain' asylum and protection from / due process in expulsion
- Art 23(2) – States to ensure that refugees do not engage in subversive activities, and territories not used as bases for subversive or terrorist activities

Regional jurisprudence demonstrate State concerns about refugees as security threat

1969 OAU Refugee Convention

- Art I(5) – Art 1F grounds of exclusion plus additional ground: I(5)(c) 'acts contrary to the purposes and principles of the OAU'
- Art I(4) – new grounds of cessation including (f) serious non-political crime *after* admission as refugee, and (g) infringing purposes and objectives of OAU Convention
- Art III - Prohibition of 'subversive activities'
- No Art 33(2) security exception to *non-refoulement*

Domestic codification

Art 1F(a) – trend towards ensuring international crimes are defined with reference to international instruments the State has ratified

Art 1F(b) – 4 States tie serious crime to domestic criminal standards. 1 with reference to 3 year sentence (Cape Verde).

- South Africa and Kenya include crimes committed in host State *after* admission as refugee

Art 1F(c) - South Africa and South Sudan stipulate that 'no exercise of a human right recognised under international law may be regarded as being contrary to the objects and principles of the United Nations'

Art I(5)(c) - One of most extensively implemented provisions

- 18 States refer to AU; also Arab League (Sudan); OAU Convention (Mozambique)

David James Cantor and Farai Chikwanha, 'Reconsidering African Refugee Law', IJRL (2019) 31(2-3), 182-260.

Africa

1969 OAU Convention

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Domestic codification (continued)

Art I(4)(g)-(f) – relatively minimal incorporation

Art III - implemented on either a general or a specific basis by 28 States, though substantial diversity in the specific terms used and consequences of breach

- Significant number of States use national security grounds to cease or revoke refugee status or as an additional ground of exclusion
- Some countries make provision for revocation or cessation on Art 1F / I(5)(c) grounds

David James Cantor and Farai Chikwanha, 'Reconsidering African Refugee Law', *IJRL* (2019) 31(2-3), 182-260.

Middle East

Regional approach

1966 AALCO Bangkok Principles on Refugees (revised 2001)

- Art 2: States have 'right to grant or to refuse asylum'
- Art I(7): Art 1F grounds of exclusion but narrows by:
 - omits chapeau requirement;
 - includes temporal and geographical limits for all grounds
- Art III(1): Art 33(2) exception to non-refoulement but States should grant provisional asylum
- Art XI: prohibition of subversive activities or activities against P+P of UN

1994 LAS Arab Refugee Convention (not in force)

- Art 2: Exclusion where 'been convicted of':
 - having committed a war crime, a crime against humanity or a terrorist crime
 - a serious non-political crime outside country
- Art 12: prohibition of terrorist or subversive activity

Domestic codification

Qatar - Law No. 11 of 2018

Art 3 exclusion – similar to Art 1F (omits chapeau and crime against peace)

Art 11 – prohibits refugee political activity

Art 13 – expulsion where:

- Art 3 exclusion grounds (committed before or after asylum granted)
- engaged in political activity
- threat to national security or public order

Turkey

2013 Law on Foreigners and International Prot

Art 64 – Exclusion where:

- strong evidence to believe guilty of Art 1F offences
- evidence committed 'inhuman acts' outside of Turkey prior to international protection claim
- public order / public security threat exclusion from subsidiary protection

2014 Temporary Protection Regulation

- Art 8 – extensive exclusion provisions

Thank You