

## The Baseline Requirements for IPA Application

### 5.1 Introduction

The possibility of an IPA arises when the claimant's well-founded fear of persecution is localized within part of a country. Because the core requirement for refugee status is met, any limits must be narrowly construed. But what factors determine whether an IPA is a reasonable or proportionate limit on refugee status?

This chapter and the two that follow address the substantive and procedural criteria for IPA practice. The discussion begins by establishing baseline requirements. At a minimum, Article 33 of the Refugee Convention precludes removal to an immediate or foreseeable risk of persecution—including any risk that may have emerged following the claimant's original flight.

The threat of severe harm *not* inflicted for reasons of race, religion, nationality, political opinion or social group would similarly make a proposed IPA unsafe for the refugee claimant. As UNHCR explains, the 'safety' (or 'relevance') prong of the IPA analysis includes 'a serious risk to life, safety, liberty or health, or one of serious discrimination ... *irrespective of whether or not there is a link to one of the Convention grounds*'.<sup>1</sup> Consideration of non-Convention threats can be justified in several ways. First, conditions in the IPA may compel the claimant to return to an established risk of persecution. Removal in these cases creates a risk of indirect *refoulement*. Second, poor human rights standards suggest that the state could or would not protect the claimant against any residual risks of persecution. A weak government unable to meet the basic needs of its citizens is unlikely to suppress more targeted threats. Finally, claimants for whom return to an IPA is unsafe are still, under Article 1A(2), outside their country of origin 'owing to' a well-founded fear of persecution.

UNHCR emphasizes that this baseline safety assessment includes, but is *not restricted to*, threats that give rise to a *non-refoulement* obligation under human rights law. The cumulative application of *non-refoulement* guarantees in this context is consistent with a systemic approach to international law (Article 31(3)(c) VCLT).<sup>2</sup> The most prominent trigger for *non-refoulement* is a real risk of torture,

1 UNHCR, *Guidelines on International Protection: 'Internal Flight or Relocation Alternative' within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* para 20. Emphasis added.

2 See, generally, Violeta Moreno-Lax, 'Systematizing Systemic Integration: "War Refugees", Regime Relations, and a Proposal for a Cumulative Approach to International Commitments'.

inhuman or degrading treatment or punishment upon return to the country of origin.<sup>3</sup> This basis for *non-refoulement* will be the core of the discussion that follows.

In addition, other factors may render the IPA insecure from the perspective of the individual claimant. As Hathaway and Foster explain, the question is ‘whether *this* applicant—given who he is, what he believes, and his essential make-up—would in fact be exposed to the risk of return to the place of origin if required to accept an IPA in lieu of his presumptive entitlement to asylum abroad.’<sup>4</sup> Poor physical security, lack of housing or livelihood opportunities, barriers to family reunification or religious existence may be relevant. The extended concept of *non-refoulement* presented in this chapter (including direct and indirect *refoulement* within the country of origin) is summarized in Table 4.

TABLE 4 Baseline criteria for IPA application

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Effective protection from persecution	<i>Article 33 RC</i>
Absence of serious harm	<i>Article 33 RC (indirectly)</i>
	1) Non-refoulement guarantees in human rights instruments: <i>Article 3 CAT, Articles 6 and 7 ICCPR, Article 3 ECHR, Article 37 CRC, flagrant breaches of other rights</i>
	2) Other factors that render the IPA substantially insecure for the claimant (poor physical security, lack of housing or livelihood opportunities, barriers to family reunification or religious existence)

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3 See, most prominently, Article 3 of the Convention against Torture, Article 7 of the International Covenant on Civil and Political Rights, and Article 3 of the European Convention on Human Rights. Torture, inhuman and degrading treatment is also prohibited by Article 5 of the UDHR; Article xxvi of the American Declaration of the Rights and Duties of Man (‘cruel, infamous or unusual punishment’); 4 Article 5(2) of the American Convention on Human Rights; 5 Article 5 of the African Charter on Human and Peoples’ Rights; Article 17(2)(a) of the African Charter on the Rights and Welfare of the Child 7; and Article 13(c) of the Arab Charter on Human Rights. See also UN General Assembly resolution A/RES/68/156 of 18 December 2013, recalling the fact that international courts and tribunals have confirmed the prohibition of torture, inhuman and degrading treatment as customary international law.

4 Hathaway and Foster, ‘Internal protection/relocation/flight alternative as an aspect of refugee status determination’ 403.