



Refugees and Displaced Persons

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Introduction

Who is a Refugee?

People who are forced to flee their homes due to persecution, whether on an individual basis or as part of a mass exodus due to political, religious, military or other problems, are known as *refugees*. The definition of a refugee has varied according to time and place, but increased international concern for the plight of refugees has led to a general consensus. As defined in the [1951 United Nations Convention Relating to the Status of Refugees](#) (the Refugee Convention), a refugee is defined as a person who

"owing to a 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 nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country or return there because there is a fear of persecution..."

While the definition in the Refugee Convention has been used by international organizations such as the United Nations, the term continues to be misunderstood and is often used inconsistently in every day language. Media stories, for example, often confuse refugees with people migrating for economic reasons ("economic migrants") and persecuted groups who remain within their own country and don't cross an international border ("internally displaced persons").

The reasons for persecution must be because of one of the five grounds listed in article 1 A(2) of the Refugee Convention: race, religion, nationality, membership of a particular social group or political opinion. Persecution based on any other ground will not be considered.

Race is used in the broadest sense and includes ethnic groups and social groups of common descent.

Religion also has a broad meaning, including identification with a group that tends to share

common traditions or beliefs, as well as the active practice of religion.

Nationality includes an individual's citizenship. Persecution of ethnic, linguistic and cultural groups within a population also may be termed persecution based on nationality.

A *particular social group* refers to people who share a similar background, habits or social status. This category often overlaps with persecution based on one of the other four grounds. It has applied to families of capitalists, landowners, homosexuals, entrepreneurs and former members of the military.

Political opinion refers to ideas not tolerated by the authorities, including opinions critical of government policies and methods. It includes opinions attributed to individuals (*i.e.*, the authorities think a person has a certain political opinion) even if the individual does not in fact hold that opinion. Individuals who conceal their political opinions until after they have fled their countries may qualify for refugee status if they can show that their views are likely to subject them to persecution if they return home.

Definitions come into play when countries and organizations attempt to determine who is and who is not a refugee. Asylum seekers—that is, those who are seeking refugee status in another country-- normally need to establish individually that their fear of persecution is well-founded and undergo a legal procedure in which the host country decides if she or he qualifies for refugee status. However, during a mass exodus, it may not be possible for a host country to carry out individual screening. In such circumstances, particularly when civilians are fleeing for similar reasons, a 'group' determination of refugee status may be declared, whereby each civilian is considered a refugee, in the absence of evidence to the contrary.

International law recognizes the right to seek asylum, but does not oblige states to provide it. Nations at times offer 'temporary protection' when they face a sudden mass influx of people and their regular asylum systems would be overwhelmed. In such circumstances people can be speedily admitted to safe countries, but without any guarantee of permanent asylum. Thus 'temporary protection' is helpful to both governments and asylum seekers in specific circumstances. Yet it only complements and does not substitute for the wider protection measures offered by the Refugee Convention.

Refugee protection and assistance organizations generally promote three "durable solutions" to the fate of refugees:

- *Voluntary repatriation*: refugees are able to return to their home country because their lives and liberty are no longer threatened;
- *Local integration*: host governments allow refugees to integrate into the country of first asylum; and
- *Resettlement in a third country*: repatriation is unsafe and the first-asylum country refuses local integration.

Most of the world's refugees wait for durable solutions for their predicament. While most have been granted provisional or temporary asylum in neighboring countries, they are not able to

regularize their status or integrate. Their rights to move and work are often highly restricted, and educational and recreational opportunities are often nonexistent or severely lacking. These refugees may also be subject to attack, either by local security forces or by cross-border incursions from the country of origin.

A special category are people who may have been forced to flee their homes for the same reasons as refugees but they have not crossed an international border. These people are called *internally displaced persons*. By the end of 2000, there were approximately 11.5 million refugees around the world who had fled their countries for a variety of reasons and an even greater number of internally displaced persons, between 20 - 25 million, who had abandoned their homes for similar reasons. Increasingly the majority of current conflicts in the world involve disputes between political or ethnic groups within countries rather than wars between countries. Given this trend, the number of persons caught up in conflicts in their own countries and forced to leave their homes is likely to increase.

12 million refugees in 2001 Ten largest groups [*]

COUNTRY OF ORIGIN	MAIN COUNTRIES OF ASYLUM	REFUGEES
Afghanistan	Iran / Pakistan	3,809,600
Iraq	Iran	554,000
Burundi	Tanzania	530,100
Sudan	Uganda / Ethiopia / D.R. Congo / Kenya / Central African Rep.	489,500
Angola	Zambia / D.R. Congo / Namibia	470,600
Somalia	Kenya / Yemen / Ethiopia / USA / United Kingdom	439,900
Bosnia-Herzegovina	Yugoslavia / Croatia / Slovenia	426,000
Democratic Rep. Congo	Tanzania / Congo / Zambia/ Rwanda / Burundi	392,100
Viet Nam	China / USA	353,200
Eritrea	Sudan	333,100

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Rights at Stake

Prohibition of the forced return of a refugee is called *nonrefoulement* and is one of the most fundamental principles in international refugee law. This principle is laid out in Article 33 of the [Convention Relating to the Status of Refugees](#), which says that no state "shall expel or return ('refouler' in French) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality,

membership of a particular social group or political opinion."

Some countries detain asylum seekers upon arrival, during the asylum process or while waiting for deportation (*refoulement*). Asylum seekers may have already suffered imprisonment and torture in the country from which they have fled. Therefore, the consequences of detention may be particularly serious, causing severe emotional and psychological stress. Article 31 of the Refugee Convention says that refugees should not be penalized for having entered a country illegally if they have come directly from a place where they were in danger and have made themselves known to the authorities. Therefore, asylum seekers should not be detained for being in possession of forged identity papers or for destroying identity or travel documents.

Articles 12 - 30 of the Refugee Convention set out the rights which individuals are entitled to once they have been recognised as Convention refugees:

- All refugees must be granted identity papers and travel documents that allow them to travel outside the country
- Refugees must receive the same treatment as nationals of the receiving country with regard to the following rights:
 - Free exercise of religion and religious education
 - Free access to the courts, including legal assistance
 - Access to elementary education
 - Access to public relief and assistance
 - Protection provided by social security
 - Protection of intellectual property, such as inventions and trade names
 - Protection of literary, artistic and scientific work
 - Equal treatment by taxing authorities
- Refugees must receive the most favourable treatment provided to nationals of a foreign country with regard to the following rights:
 - The right to belong to trade unions
 - The right to belong to other non-political nonprofit organizations
 - The right to engage in wage-earning employment
- Refugees must receive the most favourable treatment possible, which must be at least as favourable to that accorded aliens generally in the same circumstances, with regard to the following rights:
 - The right to own property
 - The right to practice a profession
 - The right to self-employment
 - Access to housing
 - Access to higher education
- Refugees must receive the same treatment as that accorded to aliens generally with regard to the following rights:
 - The right to choose their place of residence
 - The right to move freely within the country
 - Free exercise of religion and religious education
 - Free access to the courts, including legal assistance
 - Access to elementary education

- Access to public relief and assistance
- Protection provided by social security
- Protection of intellectual property, such as inventions and trade names
- Protection of literary, artistic and scientific work
- Equal treatment by taxing authorities

Key assistance agencies

The following organizations play key roles in assisting and protecting refugees worldwide:

United Nations High Commissioner for Refugees. The United Nations High Commissioner for Refugees (UNHCR) was created in 1951 to assist in the international protection of refugees. The organization's primary objective is to ensure that all persons can exercise the right to seek asylum and find safe refuge in another state, and to return home voluntarily. One of the agency's pressing tasks is to encourage governments to adopt fair and flexible processes to promote just and effective refugee law. When UNHCR was first established, material aspects of refugee relief (e.g., housing, food) were seen to be the responsibility of the government that had granted asylum. As many of the world's more recent major refugee flows have occurred in less developed countries, however, UNHCR has acquired the additional role of coordinating material assistance for refugees and returnees. Although this was not UNHCR's original mandate, coordination of material assistance has become one of its principal functions alongside protection and the promotion of solutions. The **International Organization of Migration** (IOM) assists with the return of rejected asylum seekers and refugees referred by UNHCR.

International Committee of the Red Cross. The International Committee of the Red Cross (ICRC) is an independent humanitarian organization that acts as a neutral entity in assisting and protecting victims of war, from providing medical care to victims to arranging exchanges of family messages. As members of the civilian population, displaced persons benefit from ICRC protection and assistance activities including the protection of civilians; visits to detainees; medical assistance; food aid; and restoration of family links between persons separated by war. The ICRC does not have a general mandate to provide protection and assistance to internally displaced persons. Over the years, however, it has provided limited assistance to certain groups of internally displaced persons. The ICRC is considered well placed to provide such help given its experience in humanitarian and crisis situations. These operations have been carried out at the request of the UN Secretary-General or the General Assembly, at the request of the country involved.

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International and Regional Instruments for Protection

International legal instruments take the form of a *treaty* (also called agreement, convention, protocol) which may be binding on the contracting states. When negotiations are completed, the text of a treaty is established as authentic and definitive and is "signed" to that effect by the representatives of states. There are various means by which a state expresses its consent to be bound by a treaty. The most common are ratification or accession. A new treaty is "ratified" by those states who have negotiated the instrument. A state which has not participated in the negotiations may, at a later stage, "accede" to the treaty. The treaty *enters into force* when a pre-determined number of states have ratified or acceded to the treaty.

When a state ratifies or accedes to a treaty, that state may make *reservations* to one or more articles of the treaty, unless reservations are prohibited by the treaty. Reservations may normally be withdrawn at any time. In some countries, international treaties take precedence over national law; in others, a specific law may be required to give an international treaty, although ratified or acceded to, the force of a national law. Practically all states that have ratified or acceded to an international treaty must issue decrees, amend existing laws or introduce new legislation in order for the treaty to be fully effective on the national territory.

Many international treaties have a mechanism to monitor the implementation of the treaty. The Refugee Convention does not have such a body that monitors state obligations and commitments towards asylum seekers.

The following international and regional treaties determine standards for the protection of refugees and displaced persons:

UNITED NATIONS

Universal Declaration of Human Rights (1948) (article 14)

The first international document that recognizes the right to seek and enjoy asylum from persecution.

Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) (article 44, 70)

This treaty protects refugees during war. Refugees cannot be treated as "enemy aliens".

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1) (1977) (article 73)

"Persons who, before the beginning of hostilities, were considered as stateless persons or refugees ... shall be protected persons..., in all circumstances and without any adverse distinction."

Convention Relating to the Status of Refugees (1951)

This was the first international agreement covering the most fundamental aspects of a refugee's

life. It spelled out a set of human rights that should be at least equivalent to freedoms enjoyed by foreign nationals living legally in a given country and in many cases those of citizens of that state. It recognized the international scope of refugee crises and necessity of international cooperation -- including burden-sharing among states -- in tackling the problem. This was the first international agreement covering the most fundamental aspects of a refugee's life. It spelled out a set of human rights that should be at least equivalent to freedoms enjoyed by foreign nationals living legally in a given country and in many cases those of citizens of that state. It recognized the international scope of refugee crises and necessity of international cooperation -- including burden-sharing among states -- in tackling the problem. As of 1 October 2002, 141 countries had ratified the Refugee Convention.

International Covenant on Civil and Political Rights (1966) (article 2, 12, 13)

The main international treaty on civil and political rights stipulates that states should ensure the civil and political rights of all individuals within its territory and subject to its jurisdiction (article 2). The Covenant also guarantees freedom of movement and prohibits forced expulsion.

Protocol Relating to the Status of Refugees (1967)

Removes the geographical and time limitations written into the original Refugee Convention under which mainly Europeans involved in events occurring before 1 January 1951 could apply for refugee status.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (article 3)

Article 3 (2) states that a consistent pattern of gross and massive violations of human rights are circumstances which a state should take into account when deciding on expulsion. The monitoring body of this convention, the Committee Against Torture, has established some fundamental principles relating to the expulsion of refused asylum seekers. It offers important protection to refugees and their right not to be returned to a place where they fear persecution.

Convention on the Rights of the Child (1989) (article 22)

Article 22 of this convention stipulates that "States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee ... shall ... receive appropriate protection and humanitarian assistance in the enjoyment of ... rights.... States Parties shall provide ... cooperation in ... efforts ... to protect and assist such a child and to trace the parents or other members of the family of any refugee child ... for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child ... deprived of his or her family environment...."

Declaration on the Elimination of Violence against Women (1993)

Recognizes the particular vulnerability of refugee women.

Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the status of refugees

This handbook is widely accepted by practitioners and most governments as an authoritative

interpretation of the Refugee Convention.

Guiding principles on Internal Displacement

A set of 30 recommendations for the protection of internally displaced persons. The Guiding Principles define who the internally displaced are, reiterates the large body of international law already in existence protecting a person's basic rights and outlines the responsibilities of states. It is made clear that internally displaced persons have the right to leave their country, seek asylum and be protected against forcible return to their homeland.

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AFRICAN UNION (FORMERLY ORGANIZATION OF AFRICAN UNITY, OAU)

Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)

Accepted the definition of the 1951 Refugee Convention and expanded it to include people who were compelled to leave their country not only as a result of persecution but also owing to: external aggression, occupation, foreign domination or events seriously disturbing public order. This definition is a wider definition than the one found in the UN Refugee Convention and adapts the definition to the reality of the developing world. The African Union's definition also recognizes non-state groups as perpetrators of persecution and it does not demand that a refugee shows a direct link between herself or himself and the future danger. It is sufficient that the refugee considers the harm sufficient to force her/him to abandon their home.

African Charter on the Rights and Welfare of the Child (1990) (article 13)

This treaty stipulates special provisions of refugee children that are unaccompanied by parents or guardians.

COUNCIL OF EUROPE

Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (article 3, 4, 5, 6, 8, 9, 10, 13, 14, 16)

The European Convention on Human Rights does not contain any right to asylum and it makes no direct reference to asylum seekers or refugees. A very important case by the European Court of Human Rights (*Soering v. the United Kingdom*, 1989), however, established that states were indeed responsible, in certain instances, for the well being of individuals in other countries. The case concerned article 3 of the European Convention that "No one shall be subjected to torture or inhuman or degrading treatment or punishment". In recent years the European Court has again stressed the unconditional nature of the prohibition against ill-treatment and established the principle that a state wishing to deport even an individual found guilty of a serious criminal offence or constituting a threat to national security must first make an independent evaluation

of the circumstances the individual would face in the country of return. Although article 3 is most often called upon to protect asylum seekers and refugees, other articles may also be invoked to ensure that their human rights are respected. In particular article 4 (prohibition of forced or compulsory labour), article 5 (deprivation of liberty), article 6 (right to a fair and impartial hearing "within a reasonable time"), article 8 (respect for private and family life), article 9 (right to freedom of thought, conscience and religion), article 10 (right to freedom of expression), article 13 (right to the grant of an effective remedy before a national authority) and article 16 (no restrictions on political activity of aliens) can offer substantial protection.

ORGANIZATION OF AMERICAN STATES (OAS)

Cartagena Declaration on Refugees (1984)

The refugee definition of the Cartagena Declaration builds upon the OAU adding to it the threat of generalized violence; internal aggression; and massive violation of human rights. Unlike the definition in the refugee convention by the African Union, however, a refugee must show a link between herself or himself and the real risk of harm; all applicants must demonstrate that "their lives, safety or freedom have been threatened". This demand is similar to the UN Refugee Convention, which requires individuals to show that they risk persecution as a particular individual rather than in general. Although not formally binding, the Cartagena Declaration has become the basis of refugee policy in the region and has been incorporated in to the national legislation of a number of States.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belem do Para" (1994) (article 9)

Takes into account of the vulnerability of women and girls to violence by reason of, among others, their race or ethnic background or their status as: migrants, refugees or displaced persons.

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National Protection and Service Agencies

The 1951 Refugee Convention does not force a state to admit a refugee, that is to grant asylum. It is clear that there is a gap here between the individual's right to seek asylum and the state's discretion in providing it. As a result of this ambiguous state of affairs, government's practice in granting asylum varies widely, both in terms of the procedure they use for determining refugee status and the actual legislation that is applied. States can ask the UNHCR for assistance in determining refugee status.

A majority of states that have ratified the Refugee Convention have not adopted domestic

legislation to implement this treaty. Nonetheless, many of these countries have provided protection to massive numbers of individuals fleeing persecution. Although this action has saved many lives, it has rarely been accompanied by procedures for individually determining refugee status. As a result, refugees in these countries are often uncertain as to their status and rights, and have no guarantee that they will not be arbitrarily returned. Approximately one-third of the states that have ratified the Refugee Convention have enacted domestic legislation to implement the treaty. Although the details of the legislation vary a great deal from state to state, there are certain common elements arising out of the commitments of the Refugee Convention and as a result of the procedures recommended by the UNHCR.

These states generally offer asylum to individuals who conform to the article 1 A (2) definition of a refugee. There is room for interpretation, however. For example:

- What constitutes persecution?
- What evidence shows that a fear is well founded?
- How are the grounds for persecution defined (race, religion, nationality, membership of a particular social group, political opinion)?

Aside from government service agencies many non-governmental and volunteer organizations provide assistance to asylum seekers and refugees.

[Asylum and Refugee Resources - Legal Information](#)

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Advocacy, Educational and Training Materials

For advocates

[Chapter X: Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps](#) (in: *Training Manual on Human Rights Monitoring*, Office of the High Commissioner for Human Rights)

This chapter provides practical guidance for monitoring the rights of refugees and displaced persons in refugees camps.

[Chapter XI: Monitoring and Protecting the Human Rights of Returnees and Internally Displaced Persons](#) (in: *Training Manual on Human Rights Monitoring*, Office of the High Commissioner for Human Rights)

This chapter provides practical guidance for monitoring the rights of refugees/asylum seekers and displaced persons once they have returned to their home region/country.

Refugees and Economic, Social and Cultural Rights (International Human Rights Internship Program)

The purpose of this module is to summarize international, regional and domestic standards related to the economics, social and cultural rights of refugees. The module reviews the definition of refugee; looks at international and domestic legal standards protecting the economic, social and cultural rights of refugees; and considers the problem of forced migration.

Refugees in the UN System of Human Rights Protection (by Jacqueline Kacprzak, Helsinki Foundation for Human Rights-Poland)

This lesson plan consists of exercises related to the problems faced by refugees. Focus is on the application of the Refugee Convention and the activities of the UNHCR.

Refugee rights (by Markandu Trina, Refugee Council of Australia in: *Human Rights Defender Manual*)

Brief introduction to refugee rights with section on Who is a refugee?, Asylum, Determination systems, UNHCR, Special protection issues, Current issues.

For health professionals

Examining Asylum Seekers: A Health Professional's Guide to Medical and Psychological Evaluations of Torture (by Physicians for Human Rights)

This guide is designed specifically for medical or mental health professionals seeking to develop knowledge and skills needed to conduct clinical evaluations of asylum seekers and assess physical or psychological evidence of torture and ill-treatment. Several sections of this guidebook are based on recent international guidelines for medical/legal documentation of torture.

For humanitarian workers

IASC Training Modules on Internally Displaced Persons (Norwegian Refugee Council/Office of the UN High Commissioner for Human Rights)

Comprehensive training package on internally displaced persons. This online training program consists of several modules which, used alone or together, discuss the protection and assistance of internally displaced persons guaranteed by international law. The following modules are currently available on-line: A Definition of Internally Displaced Persons; Legal Origins and International Obligations; Protection from Displacement; Return, Resettlement, and Reintegration; and Recipients as Resources: Community Based Programming.

For teachers

[Refugee Children](#) (UNHCR)

This unit of lessons has been designed to help young students to empathize with the plight of refugee children, to become aware that children from all over the world have similar needs.

[Debate: America, Refugees and Asylum](#) (Michael Hutchison)

This lesson plan accompanies the film Well-Founded Fear (108 minutes) which offers a view into the world of the immigration authorities in the United States who have to make decisions about whether or not they grant asylum and "reveal the dramatic real-life stage where human rights and American ideals collide with the nearly impossible task of trying to know the truth". The lesson plan is in debate format and addresses background of refugee problems and its international context, refugee law and its international context, and the interpretation of laws by immigration officials.

[Opening the Door to Nonviolence. Peace Education Manual for Primary School Children](#) (Maja Uzelac)

This comprehensive teacher manual was designed by the Croatian NGO Mali Korak ("Small Step"). The manual was used with children in schools and refugee camps in multiethnic settings, at the end of the Bosnian wars.

[Packing Your Suitcase](#) (by Nancy Flowers)

This lesson activity simulates the emotional and practical decisions a refugee must face and their unforeseen consequences.

[Refugee Roleplay](#) (Amnesty International)

This lesson activity uses a roleplay where refugees and border officials express different points of view on the rights of refugees to increase students' knowledge about refugee rights.

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Other Resources

[Bibliography on Refugees](#)

[Basic Country Conditions Research](#)

[Country Documentation Resources for Refugee and Asylum Cases](#)

[Refugee and Aid Links](#)

[Links to organisations that assist refugees and displaced persons](#)

Courses and training opportunities

Source: hrea

http://www.hrea.org/index.php?doc_id=418