

Legal considerations on refugee protection for people fleeing conflict and famine affected countries

1. Introduction

Humanitarian crises are unfolding that are linked to a mix of conflict, the effects of climate change and drought, creating internal and cross border displacement. Food insecurity and famine are both consequences of these crises and are further exacerbating their impacts.

Acute food insecurity, including famine, can often be seen as a manifestation of fragile governance structures and institutional weakness, i.e. the inability of the state to ensure equitable access to affordable food. Conflict and violence can impede physical and economic access to food, particularly through the disruption of livelihoods and markets. Political systems and choices influence access to affordable food, and consequently the development and extent of famine conditions. Particularly in conflict-affected and other polarized societies, political ideologies and social and ethnic divides can determine – and impede – access to food.

This note sets out key legal considerations relevant for the protection of people fleeing conflict and famine affected countries, by outlining the applicability of the 1951 Convention Relating to the Status of Refugees¹ and its 1967 Protocol² (1951 Convention) as well as the broader refugee criteria included in the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Convention).³ In addition, reference is made to complementary and temporary forms of protection.

2. Refugee protection

People displaced solely by famine in many cases are not refugees under the 1951 Convention.⁴ However, where famine is linked to situations of armed conflict and violence people would fall with the refugee criteria of the 1951 Convention.

As a consequence of armed conflict and violence government institutions may collapse, vital services may be disrupted and food insecurity and famine may ensue. Situations of armed conflict and violence may be rooted in, motivated or driven by, and/or conducted along lines of race, ethnicity, religion, politics, gender or social group divides, or may impact people based on these factors.⁵ For example, whole ethnic or religious communities may be disproportionately affected by food insecurity or famine that is the consequence of the

¹ *Convention Relating to the Status of Refugees* (28 July 1951) 189 UNTS 137 (1951 Convention), <http://www.refworld.org/docid/3be01b964.html>.

² *Protocol Relating to the Status of Refugees* (31 January 1967) 606 UNTS 267 (1967 Protocol), <http://www.refworld.org/docid/3ae6b3ae4.html>.

³ *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* (10 September 1969) 1001 UNTS 45 (1969 OAU Convention), <http://www.refworld.org/docid/3ae6b36018.html>.

⁴ EXCOM, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, para. 10, <http://www.refworld.org/docid/47fd49d.html>.

⁵ UNHCR, *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions*, 2 December 2016, HCR/GIP/16/12, para. 19, <http://www.refworld.org/docid/583595ff4.html>.

conflict, establishing a connection between their well-founded fear of persecution and one or more reasons mentioned in the 1951 Convention definition of a refugee.⁶

The 1969 OAU Convention would also be applicable in cases where displacement is caused by famine. A specific purpose of the 1969 OAU Convention is to provide refugee protection in specific humanitarian situations. The broader refugee criteria included in Article I(2) of the 1969 OAU Convention protect people who are compelled to seek refuge as a result of “events seriously disturbing public order in either part or the whole” of the country of origin. In particular when the famine is the result of armed conflict, violence or other state conduct, the object and purpose of the broader refugee criteria validate such an interpretation.⁷

3. Complementary and temporary forms of protection

Ensuring access to international protection for people who are forcibly displaced across international borders as a result of famine, but who do not fall within the criteria for refugee status, is best achieved by promoting the use of complementary protection mechanisms.

Further, and without prejudice to refugee protection or complementary forms of protection, temporary protection or stay arrangements may be used as a practical tool to assist people displaced by humanitarian crises, particularly when the host country is experiencing large-scale influxes of people or when the situation in the country of origin is fluid or unclear.⁸

4. Conclusion

People displaced by the humanitarian crises linked to a mix of the consequences of conflict, public disorder, the effects of climate change, and drought are in need of international protection. Based on the manner in which these crises are unfolding, they qualify as refugees within the meaning of the 1951 Convention or the 1969 OAU Convention, or, when they do not fall within the criteria for refugee status, they should be granted a complementary protection status where applicable under national law. Without prejudice to their right to apply for refugee protection and be granted refugee status, at a minimum, they should not be returned to their countries of origin and should have a legal basis to stay for a defined period of time on the basis of temporary stay arrangements, with a possibility to renew this arrangement where relevant and necessary.

**UNHCR
5 April 2017**

⁶ *Ibid.*, para. 33.

⁷ *Ibid.*, paras. 48, 50 and 56 to 59.

⁸ UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014, <http://www.refworld.org/docid/52fba2404.html>.