

Protecting Refugees: questions and answers

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Who is a Refugee?

A refugee is 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 ... "

– *The 1951 Convention relating to the Status of Refugees*

Protecting refugees is the core mandate of UNHCR. This booklet answers some of the most commonly asked questions about refugees themselves and how the agency attempts to help them. Who, for instance, can qualify as a refugee and on what grounds? Can people be excluded and why? – a particularly sensitive issue given the international preoccupation with terrorism. What rights does a refugee enjoy and what obligations? What is the role of governments and of UNHCR itself? It also explores related issues including the development of 'temporary protection', the future of millions of so-called internally displaced persons and statelessness.

How are refugees protected?

Governments normally guarantee the basic human rights and physical security of citizens. But when civilians become refugees this safety net disappears. UNHCR's main role in pursuing international protection is to ensure that states are aware of, and act on, their obligations to protect refugees and persons seeking asylum. However, it is not a supranational organization and cannot be considered as a substitute for government responsibility.

Countries may not forcibly return (refoulement) refugees to a territory where they face danger or discriminate between groups of refugees. They should ensure that refugees benefit from economic and social rights, at least to the same degree as other foreign residents of the country of asylum. For humanitarian reasons, states should allow a spouse or dependent children to join persons to whom temporary refuge or asylum has been granted. Finally, states have an obligation to cooperate with UNHCR.

What rights does a refugee have?

A refugee has the right to safe asylum. However, international protection comprises more than physical safety. Refugees should receive at least the same rights and basic help as any other foreigner who is a legal resident, including freedom of thought, of movement, and freedom from torture and degrading treatment.

Economic and social rights are equally applicable. Refugees should have access to medical care, schooling and the right to work.

In certain circumstances when adequate government resources are not immediately available, such as the sudden arrival of large numbers of uprooted persons,

international organizations such as UNHCR provide assistance. This may include financial grants, food, tools and shelter and basic infrastructure such as schools and clinics. With projects such as income-generating activities and skill training programmes, UNHCR makes every effort to ensure that refugees become self-sufficient as quickly as possible.

What are the obligations of a refugee?

Refugees are required to respect the laws and regulations of their country of asylum.

Who decides who is a refugee?

Governments establish status determination procedures to decide a person's legal standing and rights in accordance to their own legal systems. UNHCR may offer advice as part of its mandate to promote refugee law, protect refugees and supervise the implementation of the 1951 Refugee Convention. The agency advocates that governments adopt a rapid, flexible and liberal process, recognizing how difficult it often is to document persecution.

UNHCR's 57-member Executive Committee sets non-binding guidelines that may be useful in this respect and the agency's "Handbook on Procedures and Criteria for Determining Refugee Status" is an authoritative interpretation of the 1951 Convention. In countries which are not party to international refugee instruments but who request UNHCR's assistance, the agency may determine a person's refugee status and offer its protection and assistance.

Are persons fleeing war or war-related conditions such as famine and ethnic violence refugees?

The 1951 Geneva Convention, the main international instrument of refugee law, does not specifically address the issue of civilians fleeing conflict, though in recent years major refugee movements have resulted from civil wars, ethnic, tribal and religious violence.

However, UNHCR considers that persons fleeing such conditions, and whose state is unwilling or unable to protect them, should be considered refugees. Regional instruments such as Africa's OAU Convention and the Cartagena Declaration in Latin America support this view.

Some countries, particularly in western Europe, argue that civilians fleeing generalized war or who fear persecution by non-governmental groups such as militias and rebels, should not be given formal refugee status. It is UNHCR's view that the origin of the persecution should not be decisive in determining refugee status, but rather whether a person deserves international protection because it is not available in the country of origin.

Who helps the internally displaced

Internally displaced persons (IDPs) flee their homes for the same reasons as refugees, but remain within their own country and are thus subject to the laws of that state. In

some crises, and though it does not have a specific mandate in this area, UNHCR assists several million, but not all of the estimated 20-25 million IDPs worldwide.

These operations are initiated at the request of the U.N. Secretary-General or the General Assembly, with the consent of the country involved and have included recent crises in the Middle East, the Balkans, Africa and Afghanistan.

Must every refugee undergo individual status determination?

People who apply for refugee status normally need to establish individually that their fear of persecution is well-founded. However, during a mass exodus such as occurred from Kosovo or Africa's Great Lakes, it may not be possible to carry out individual screening. In such circumstances, particularly when civilians are fleeing for similar reasons, it may be appropriate to declare 'group' determination of refugee status, whereby each civilian is considered as a refugee, *prima facie* – in other words, in the absence of evidence to the contrary.

How does UNHCR distinguish between a refugee and an economic migrant?

An economic migrant normally leaves a country voluntarily to seek a better life. Should he or she elect to return home, they would continue to receive the protection of their government. Refugees flee because of the threat of persecution and cannot return safely to their homes in the prevailing circumstances.

May governments deport persons who are found not to be refugees?

Persons who have been determined, under an equitable procedure, not to be in need of international protection are in a situation similar to that of illegal aliens, and may be deported. However, UNHCR does urge that protection be granted to people who come from countries devastated by armed conflicts or generalized violence. The agency also advocates that rejected asylum seekers be granted the right to a review before being deported.

Can a draft evader be a refugee?

Every country has the right to ask its citizens to bear arms in periods of national emergency. However, citizens should have an equal right to conscientious objection. In cases where the option of conscientious objection is not observed, or where a conflict violates international norms, draft evaders who fear persecution on political or other grounds may be eligible for refugee status.

Can a criminal be a refugee?

A criminal who has received a fair trial for a common law offense and who flees his country to escape jail is not necessarily a refugee. However, a person accused of these or other non-political crimes, whether innocent or guilty, may also be persecuted for political or other reasons, and is thus not necessarily excluded from refugee status. Furthermore, people convicted of the 'crime' of political activism may well be refugees.

Can a war criminal be a refugee?

Persons who have participated in war crimes and violations of international humanitarian and human rights law – including the crime of terrorism – are specifically excluded from the protection accorded to refugees.

In practice, especially during a mass exodus, it is sometimes difficult to separate persons suspected of serious human rights violations from bona fide refugees especially for a humanitarian organization such as UNHCR which is neither a police force or a judicial body. In the 1990s, for instance, known violators were living in the huge refugee camps for Rwandans established in surrounding countries.

The most viable solution is to provide support initiatives such as the international tribunals for Rwanda and the former Yugoslavia, to bring war criminals to justice. UNHCR is obligated to share with these and other relevant U.N. organizations pertinent facts on such issues while sensitively handling information which refugees have confidentially divulged to field staff.

Can a soldier be a refugee?

A refugee is a civilian. A person who continues to pursue armed action against his or her country of origin from the country of asylum cannot be considered a refugee.

Can women facing persecution because they refuse to comply with social constraints be refugees?

Women, like men, may be persecuted for political, ethnic or religious reasons. In addition, someone fleeing discrimination or severe persecution for her failure to conform to strict social codes has grounds to be considered for refugee status. Such persecution may emanate from a government authority or, in the absence of adequate government protection, from non-state actors. Sexual violence, such as rape, may constitute persecution.

Such discrimination should have consequences that are significantly prejudicial. A woman who fears attack for her refusal to wear a chador or other restrictive clothing, or because of her desire to choose her own spouse and live an independent life, may qualify to be a refugee.

In 1984, the European Parliament determined that women facing cruel or inhumane treatment because they seemed to transgress social mores should be considered a particular social group for the purposes of determining refugee status. The United States and Canada have exhaustive guidelines relating to gender-based persecution, and there has been similar progress in Germany, the Netherlands and Switzerland.

Can a woman who fears that she, or her infant daughter, will be genitally mutilated claim refugee status?

In France, the Netherlands, Canada and the United States, it has been officially recognized that genital mutilation represents a form of persecution and that this can be a basis for refugee status. In one case, a woman who feared persecution in her country

because of her refusal to inflict genital mutilation on her infant daughter was recognized as a refugee.

Is a person who fears persecution because of sexual orientation eligible for refugee status?

Homosexuals may be eligible for refugee status on the basis of persecution because of their membership of a particular social group. It is the policy of UNHCR that persons facing attack, inhumane treatment, or serious discrimination because of their homosexuality, and whose governments are unable or unwilling to protect them, should be recognized as refugees.

What is temporary protection?

Nations at times offer 'temporary protection' when they face a sudden mass influx of people, as happened during the conflicts in the former Yugoslavia in the early 1990s and later in Kosovo, when 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' can work to the advantage of both governments and asylum seekers in specific circumstances. But it only complements, and does not substitute for the wider protection measures, including refugee asylum, offered by the Convention.

Temporary protection should not be prolonged, and after a reasonable period of time UNHCR advocates that people benefiting from this should be given the right to claim full refugee status. Those rejected should, nonetheless, be allowed to remain in a country of asylum until it is safe to return.

What does UNHCR do to protect refugees from physical assault?

Refugees, especially the elderly, women and children, are often vulnerable to violence. Rape, in particular, is a common element in the pattern of persecution that drives refugee families from their homes, as civilians increasingly become the deliberate targets of sectarian warfare. Civilians may also be sexually assaulted during their flight and on arrival in their country of asylum, by officials, locals, or other refugees.

UNHCR field staff attempt to prevent conditions that may encourage such assaults, offering victims special care and ensuring a proper legal follow-up which could include trials for suspected perpetrators. Preventive measures include improving camp layout or upgrading basic facilities such as lighting and walls and encouraging refugees to institute night patrols.

How can unaccompanied children find their families?

An unaccompanied minor is one "who is separated from both parents and for whose care no person can be found who by law or custom has primary responsibility." The number of unaccompanied child refugees varies widely, but often comprise 2 to 5 percent of a refugee population.

UNHCR works with other agencies such as the Red Cross, UNICEF and Save the Children, to ensure that unaccompanied children are identified and registered, and their families traced. In the Rwandan crisis in the mid 1990s, an estimated 67,000 children were reunited with their families.

What is UNHCR's policy on resettlement?

Voluntary repatriation is the preferred long-term solution for the majority of refugees. However, because of an ongoing threat of persecution or other reasons, some civilians cannot repatriate and are unable to live permanently in their country of asylum. In those circumstances, resettlement in a third country may be the only feasible option.

Can refugees request resettlement in a specific country?

In normal circumstances, no. But in the interests of family reunification, refugees may request resettlement in countries where their close family members are living.

Which countries maintain a resettlement quota?

Of the 189 member states of the U.N., only a handful establish annual resettlement quotas, including Australia, Canada, Denmark, Finland, New Zealand, Norway, Sweden, the Netherlands and the USA. Other countries may consider submissions from UNHCR on a case by case basis, normally because of family reunion or strong cultural links.

Why are quotas not always filled by UNHCR?

Governments are not always ready to adapt their quotas to rapidly changing needs, and often establish them in response to domestic interest groups, targeting specific nationalities. Resettlement countries may also turn down cases such as families with pressing medical problems, who may be more costly in terms of welfare payments, or who may have limited ability to integrate rapidly. In general, although some countries do accept difficult to place hardship cases, most resettlement countries prefer educated refugees with strong family and cultural links, an intact family structure, and a high likelihood of rapid integration. Such families may not always correspond to the pressing protection cases which UNHCR attempts to resettle.

Are there asylum guidelines on stowaways or people rescued at sea?

Shipmasters have an obligation under international law to rescue any persons in distress at sea. In some cases, such as the exodus of Vietnamese boat people, such persons were asylum seekers. Clandestine stowaways may also be asylum seekers.

Persons rescued at sea should be disembarked at the next port of call, where they should be admitted, at least on a temporary basis, pending resettlement. Some flag states of rescuing ships have provided guarantees of resettlement for persons rescued at sea.

There is no binding international convention relating to stowaway asylum seekers and their reception varies very widely. UNHCR advocates that, wherever possible,

stowaways should be allowed to disembark at the first port of call, where their refugee status may be determined by the local authorities. If a port state does not allow a stowaway to disembark, and the ship's next port of call is in a state where the stowaway's life is threatened, then the action is tantamount to forcible return (refoulement).

In such cases, UNHCR officials try to arrange an on board interview and if the asylum seeker is found to be a refugee, they assist in finding a permanent solution – usually third country resettlement.

What does UNHCR do to prevent statelessness?

The right to a nationality is widely recognized in international law and constitutes a status from which other rights may derive. However, several million people worldwide probably remain stateless especially in some countries of the former Soviet Union. The problem may be particularly acute among children of parents of mixed origin, or who are born in a country other than their parents' country of origin, since they do not necessarily gain citizenship of the place where they are born.

There are several international documents which deal with the issue including the 1948 Universal Declaration of Human Rights, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness which underlines that a person may not be deprived of nationality on racial, ethnic, religious or political grounds. It sketches out measures to prevent statelessness resulting from the transfer of territory; and establishes rules for the granting of nationality to persons born in a country who would otherwise be stateless. The U.N. General Assembly has entrusted UNHCR with overseeing the Convention.