



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Legal considerations on the right for refugees to hold and express political opinions in their country of asylum

Introduction

These legal considerations outline the right for refugees to hold and express political opinions in their country of asylum. They are based on international legal standards and principles, including the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1951 Convention relating to the Status of Refugees (1951 Convention) and the humanitarian and non-political character of asylum.

The right to freedom of opinion and expression

Under international human rights law, everyone has the right to hold opinions and is free to express them.¹ Freedom of opinion and expression are indispensable conditions for the full development of people and essential for any free and democratic society.² Freedom of expression in Article 19(2) ICCPR requires States parties to guarantee the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This includes political opinions³ expressed and disseminated in any shape or form.⁴

While holding opinions must be without interference, expressing them comes with certain duties and responsibilities and is not without limitations. As such, people may think the most extreme of thoughts, but giving expression to them may legitimately be restricted. Freedom of expression can be subject to restrictions, where these are provided for and clearly defined in law,⁵ and necessary to ensure respect for the rights or reputations of others, or for the protection of national security, public order (*ordre public*), public health or morals.⁶ Further, expressions of opinion that propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence are prohibited.⁷ In this regard,

¹ ICCPR, Article 19. See also regional human rights law instruments, including: Article 13 of the American Convention on Human Rights (Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, www.refworld.org/docid/3ae6b36510.html.

² UN Human Rights Committee (HRC), General Comment No. 34: Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, www.refworld.org/docid/4ed34b562.html, para. 2.

³ Human Rights Committee, General Comment No. 34, note 2 above, paras. 9 and 11.

⁴ *Ibid.*, paras. 11 and 12.

⁵ *Ibid.*, paras. 24 and 25.

⁶ ICCPR, Article 19(3) and Article 5(1).

⁷ ICCPR, Article 20. ⁷ Human Rights Committee, General Comment No. 34, note 2 above, paras. 50 to 52. UN Human Rights Committee (HRC), General Comment No. 11: Article 20 Prohibition of Propaganda for War and Inciting National, Racial or Religious Hatred, 29 July 1983, www.refworld.org/docid/453883f811.html.

States are obliged to adopt the necessary legislation prohibiting such expressions and take administrative, including penal, measures to ensure such expressions are not made.

As an exception to the general human right to freedom of expression, restrictions must be interpreted narrowly and applied cautiously, on an individual basis. Invoking a legitimate ground for restricting freedom of expression requires a State to demonstrate in a specific and individualized fashion the precise nature of the threat which is cited as justification for such a restriction, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.⁸ The UN Human Rights Committee has emphasized the high threshold to restrict criticism, particularly by citizens, of political and governance systems, public institutions and of Governments and Heads of State.⁹

For restrictions based on public order to be legitimate, they must be necessary and proportionate, requirements which are essential to ensure the functioning of society or fundamental principles on which society is founded, including respect for human rights.¹⁰ Restrictions on freedom of expression can only be justified on the basis of national security concerns, when they address a threat to the existence of the host nation or its territorial integrity or political independence against force or threat of force¹¹ or violence.¹² Restrictions on freedom of expression sought to be justified on grounds of national security are not legitimate if they are to protect interests unrelated to host State's national security, including for example, to protect the Government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology.¹³

⁸ Human Rights Committee, General Comment No. 34, note 2 above, para. 35.

⁹ *Aduayom et al v Togo*, CCPR/C/51/D/422424/1990, UN Human Rights Committee (HRC), 12 July 1996, para. 7.4, in which the HRC observed, 'that the freedoms of information and of expression are cornerstones in any free and democratic society. It is in the essence of such societies that its citizens must be allowed to inform themselves about alternatives to the political system/parties in power, and that they may criticize or openly and publicly evaluate their Governments without fear of interference or punishment, within the limits set by article 19, paragraph 3'; and *Bodroziv v Serbia and Montenegro*, CCPR/C/85/D/1180/2003, UN Human Rights Committee (HRC), 23 January 2006, para. 7.2, in which the HRC observed, 'that in circumstances of public debate in a democratic society, especially in the media, concerning figures in the political domain, the value placed by the Covenant upon uninhibited expression is particularly high'.

¹⁰ UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4, www.refworld.org/docid/4672bc122.html, Principle 22.

¹¹ *Ibid.*, paras. 29 to 31. See also Article 19, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, 1 October 1995, www.refworld.org/docid/4653fa1f2.html, Principle 2.

¹² Johannesburg Principles, note 11 above, Principle 6. UN Human Rights Committee, *Keun-Tae Kim v. Republic of Korea*, CCPR/C/64/D/574/1994, 4 January 1999, www.refworld.org/docid/3f588eff7.html.

¹³ Johannesburg Principles, note 11 above, Principle 2(b). A further non-exhaustive list of expressions not considered to constitute a threat to national security is provided in Principle 7(a), including expressions that: (i)

Refugees' right to freedom of opinion and expression

Refugees are equally entitled to hold opinions and freely express them as outlined above. According to Article 5 of the 1951 Convention relating to the Status of Refugees (1951 Convention) any rights and benefits granted to refugees by the country of asylum under other instruments, including human rights law instruments, shall not be impaired.¹⁴

The right of refugees to express their opinions, including political opinions, can be restricted as it can for everyone else.¹⁵ As outlined above, restrictions must be necessary, serve a legitimate purpose and be provided for and defined in law. Under the 1951 Convention, refugees are explicitly required to conform to the laws and regulations of the country in which they find themselves and to measures taken for the maintenance of public order.¹⁶ Where refugees do not conform to lawful measures restricting their freedom of expression, they may be held accountable under the normal and non-discriminatory application of host country's domestic laws and regulations in accordance with international standards.

Freedom of opinion and expression go to the heart of refugee protection. The 1951 Convention provides international protection to people who have a well-founded fear of being persecuted by reference to five protected grounds, including political opinion. The underlying rationale of the 1951 Convention is to allow persons to live their lives free from fear of persecution because of, inter alia, their political opinions. This applies as much in the country of origin of the refugee as it does in the country of asylum.

The humanitarian and non-political character of asylum

Refugees, fearing persecution in their country of origin because of their political opinion, frequently seek to continue their opposition against the regime at home from the sanctuary of foreign soil. In such situations, refugees enjoy the right to freedom of opinion and

advocate non-violent change of government policy or the government itself; (ii) constitute criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials; (iii) constitute objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes; (iv) are directed at communicating information about alleged violations of international human rights standards or international humanitarian law.

¹⁴ 1951 Convention, preambular paras. 1 and 2. UN Human Rights Committee (HRC), General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986, www.refworld.org/docid/45139acfc.html, paras. 1, 2 and 7.

¹⁵ ICCPR, Article 2(1), in conjunction with 1951 Convention, Articles 5 and 7(1). R Mandal, *Political Rights of Refugees*, November 2003, UNHCR Legal and Protection Policy Research Series, PPLA/2003/04, www.refworld.org/docid/3fe820794.html, paras. 11 and 21.

¹⁶ 1951 Convention, Article 2.

expression pursuant to human rights law, which may only be restricted pursuant to law as set out above.

Such opposition may become a source of tension between the asylum State and the country of origin.¹⁷ The grant of asylum is a peaceful and humanitarian act, which no other State may consider unfriendly.¹⁸ However, the grant of asylum should not jeopardize the sovereignty, political independence, territorial integrity and national unity or disrupt the political, economic and social stability of another State, including the country of origin.¹⁹ Limitations on the exercise of rights by refugees to safeguard against these risks, including as related to disruption of political stability in the country of origin, would need to be in line with international law, and would thus only be justified where a refugee, having been granted asylum, propagates war or advocates national, racial or religious hatred that rises to the level of constituting incitement to discrimination, hostility or violence. The host State is required to take measures preventing the refugee from undertaking such conduct. This is so, not only because such propaganda and advocacy is prohibited under international law,²⁰ but also because it affects the humanitarian and non-political character of asylum if left unaddressed.²¹

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06 March 2020

¹⁷ S Corliss, 'Asylum State Responsibility for the Hostile Acts of Foreign Exiles', IJRL (1990) 182.

¹⁸ UN General Assembly, *Declaration on Territorial Asylum*, 14 December 1967, A/RES/2312(XXII), www.refworld.org/docid/3b00f05a2c.html, preamble. ExCom Conclusion No. 94 (LIII) 2002, preamble. 1969 OAU Convention, Article II(2).

¹⁹ UN General Assembly, *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States.*, 9 December 1981, A/RES/36/103, www.refworld.org/docid/3b00f478f.html, Article II(2b), '[t]he duty of a State to ensure that its territory is not used in any manner which would violate the sovereignty, political independence, territorial integrity and national unity or disrupt the political, economic and social stability of another State...'

²⁰ ICCPR, Article 20.

²¹ Corliss, note 17 above, 183.