



UNHCR

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

Persons in need of international protection

International protection

The need for **international protection** arises when a person is outside their own country and unable to return home because they would be at risk there, and their country is unable or unwilling to protect them. Risks that give rise to a need for international protection classically include those of persecution, threats to life, freedom or physical integrity arising from armed conflict, serious public disorder, or different situations of violence. Other risks may stem from: famine linked to situations of armed conflict; natural or man-made disasters; as well as being stateless.¹ Frequently, these elements are interlinked and are manifested in forced displacement.

The concept of international protection is central to UNHCR's responsibilities, as outlined in its Statute of 1950.² Specifically, the Statute provides that the High Commissioner '*acting under the authority of the General Assembly, shall assume the function of providing international protection ... and of seeking permanent solutions for the problem of refugees.*'³ In addition, Paragraphs 3 and 9 of the Statute provide for the further evolution of the functions and activities of UNHCR.⁴ Since 1950, the General Assembly and, to some extent, the Economic and Social Council (ECOSOC), in conjunction with corresponding State practice and treaty law,⁵ have further expanded UNHCR's competency in matters of international protection, underscoring UNHCR's authority to declare which individuals or groups may be of concern to the Office.

Convention refugees and regional definitions

Refugees are, by definition, in need of international protection, being outside their country of origin because of serious threats against which the authorities of their home country cannot or will not protect them. Left unprotected, they seek protection from a country of refuge, and from the international community. It is this vital need for international protection that most clearly distinguishes this category from others crossing international borders.

Refugees are broadly understood to include all persons outside their countries of origin who are in need of international protection because of a serious threat to their life, physical

¹ Stateless persons who have fled conflict or persecution are entitled to international protection as refugees, as well as to recognition and protection as stateless persons. Stateless persons in a migratory context are entitled to recognition and protection under the 1954 Convention relating to the Status of Stateless Persons.

² Statute of the Office of the United Nations High Commissioner for Refugees ("Statute"), 14 December 1950, annexed to A/RES/428(V).

³ Statute, paragraph 1.

⁴ Paragraph 9 of the Statute stipulates that the High Commissioner should engage in such additional activities as the General Assembly may determine, subject to resources available. Furthermore, the High Commissioner is required to follow policy directives given to him by the General Assembly or the ECOSOC, pursuant to paragraph 3 of the Statute.

⁵ Over the years, the full scope of international protection has been elaborated in corresponding State practice, treaty law, various international and national legal instruments, judicial decisions, as well as standards expressed in General Assembly resolutions and the Conclusions of UNHCR's Executive Committee.

integrity or freedom in their country of origin as a result of persecution, armed conflict, violence or serious public disorder.⁶

Individuals who meet the refugee definition under international, regional, or domestic laws, or under UNHCR's mandate, are entitled to international protection.

The **1951 Refugee Convention** and its 1967 Protocol remain the key international instruments for refugees. UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status⁷ and Guidelines on International Protection⁸ provide guidance on interpreting and applying the 1951 Convention refugee definition,⁹ reflecting State practice and issued in accordance with UNHCR's supervisory responsibility.¹⁰

The drafters of the 1951 Refugee Convention and its 1967 Protocol intended these instruments to be interpreted and implemented, in order to meet evolving refugee-protection challenges and secure for refugees the 'widest possible exercise of [their] fundamental rights and freedoms'.¹¹ Over the years, it has been accepted that individuals fleeing across borders due to, for example, the following reasons may be refugees according to the 1951 Convention definition:

- armed conflict, which may be rooted in and/or conducted along lines of race, ethnicity, religion, politics, gender or social group divides;¹²
- violence perpetrated by organized gangs,¹³ traffickers,¹⁴ and other non-State actors, against which the State is unable or unwilling to protect;
- persecution on the basis of sexual orientation or gender identity;¹⁵

⁶ See UN General Assembly, *Note on International Protection*, 7 September 1994, A/AC.96/830, www.refworld.org/docid/3f0a935f2.html. UNHCR's refugee-protection mandate, per Article 6A(ii) of its Statute, originally covered '[a]ny person who ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality [or habitual residence, for those without nationality] and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country.' For subsequent General Assembly resolutions extending the High Commissioner's competence, see eg GA res 3143 (XXVIII), 14 Dec 1973; GA res 1673 (XVI), 18 Dec 1961; GA res 2294 (XXII), 11 Dec 1967; ECOSOC res 2011(LXI), 2 Aug 1976, endorsed by GA res 31/35 of 30 Nov 1976; GA res 36/125, 14 Dec 1981; GA res 44/150, 15 Dec 1988; GA res 48/118, 20 Dec 1993.

⁷ *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, www.refworld.org/docid/4f33c8d92.html.

⁸ Available at www.refworld.org/rsd.html, under 'UNHCR RSD Handbook and Accompanying Guidelines'. The guidelines cover, inter alia, gender-related persecution, 'membership of a particular social group', religion-based refugee claims, the application of the refugee definition to victims of trafficking and persons at risk of being trafficked, asylum claims by children, claims based on sexual orientation or gender identity, claims related to military service, and claims related to situations of armed conflict and violence.

⁹ Note that recent Guidelines have, in addition to considering the 1951 Convention, also provided guidance on the interpretation and application of the refugee criteria contained in regional refugee instruments (discussed below), in particular the 1969 OAU Convention and the 1984 Cartagena Declaration. See notably *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 ("Conflict and Violence Guidelines"), www.refworld.org/docid/583595ff4.html.

¹⁰ See notably paragraph 8(a) of the Statute, in conjunction with Article 35 of the 1951 Refugee Convention and Article II of its 1967 Protocol.

¹¹ 1951 Refugee Convention, Preamble.

¹² See Conflict and Violence Guidelines, above n 9.

¹³ See Conflict and Violence Guidelines, as well as UNHCR, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 31 March 2010, www.refworld.org/docid/4bb21fa02.html.

¹⁴ UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006, HCR/GIP/06/07, www.refworld.org/docid/443679fa4.html.

¹⁵ UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, www.refworld.org/docid/50348afc2.html.

- disasters (including drought or famine), for instance where they are linked to situations of armed conflict rooted in racial, ethnic, religious, or political divides, or disproportionately affect particular groups.¹⁶

The 1951 Convention and its Protocol are complemented by **regional refugee instruments**, such as the 1969 OAU Convention,¹⁷ the 1984 Cartagena Declaration,¹⁸ the EU Qualification Directive¹⁹ and other relevant instruments of the EU asylum *acquis communautaire*, and the 1966 Bangkok Principles.²⁰ Moreover, **complementary protection mechanisms**²¹ and **temporary protection or stay arrangements**²² have proven important tools to ensure that international protection is provided to those who need it.

Together, these provide the global legal framework for international refugee protection. The refugee definitions set out in some of these regional instruments build upon the 1951 Convention definition, by including specific reference to a number of objective circumstances which those concerned have fled, such as ‘events seriously disturbing public order’ or ‘internal conflicts’. However, it must be borne in mind that, whether or not one of these regional definitions applies to a particular situation or person,²³ a person fleeing such circumstances is considered a refugee under UNHCR’s mandate.²⁴ Further, a person fleeing such circumstances may often qualify as a refugee under the 1951 Convention definition, in line with UNHCR’s interpretative guidance.²⁵

UNHCR recognizes that as a result of incomplete or inconsistent application of the 1951 Refugee Convention and these other relevant legal frameworks, **implementation gaps** have arisen. Where this is so, the most pressing need is to work towards fuller and more robust implementation of the agreed international framework for international protection. It is important to recall that all persons who meet the refugee criteria under international law are refugees for the purposes of international law, whether or not they have been formally recognized as such.

¹⁶ See UNHCR, *Legal considerations on refugee protection for people fleeing conflict and famine affected countries*, 5 April 2017, www.refworld.org/docid/5906e0824.html. People fleeing famine linked to armed conflict, violence or other State conduct may in addition be refugees under the 1969 OAU Convention criteria, which protect those 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]’.

¹⁷ The 1969 OAU Convention refugee definition set out at Article 1 covers, in addition to those included in the 1951 Convention definition, ‘every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.’

¹⁸ Paragraph III(3) of the Cartagena Declaration recommends a refugee definition that covers, in addition to those included in the 1951 Convention definition, ‘persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.’

¹⁹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

²⁰ Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees*, 31 December 1966 (final text adopted 24 June 2001).

²¹ See UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, as well as ExCom, *Conclusion on the Provision on International Protection Including Through Complementary Forms of Protection*, No. 103 (LVI) of 2005.

²² See UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014 (“TPSA Guidelines”), www.refworld.org/docid/52fba2404.html.

²³ That is, by virtue of their geographical location or the State under whose jurisdiction they find themselves.

²⁴ See above n 6 and accompanying text.

²⁵ See above nn 7 and 8, and accompanying text.

Persons otherwise in need of international protection

In addition, individuals who are outside their country of origin (typically because they have been forcibly displaced across international borders) but **who may not qualify as refugees** under international or regional law, may in certain circumstances also require international protection, on a temporary or longer-term basis. This may include, for example, persons who are displaced across an international border in the context of disasters or the adverse effects of climate change²⁶ but who are not refugees.²⁷ In such situations, a need for international protection would reflect the inability of the country of origin to protect against serious harm.

In some instances, people who fear serious harms in their country of origin would—in circumstances where international refugee law is not applicable—be protected against return. States may accordingly offer protection—including leave to remain—on a humanitarian basis to persons whose own country is unable, for some period of time, to protect them against serious harms, for instance in the context of natural hazards²⁸ or public health emergencies²⁹.

Temporary protection or stay arrangements³⁰ may be particularly suited to providing flexible and speedy responses to international protection needs arising because of exceptional and temporary conditions in the country of origin, such as in the context of cross-border disaster displacement.

Stateless persons

Stateless persons are another category who do not enjoy full national protection as citizens. The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness provide valuable legal tools for their protection, but many countries where problems are most acute are parties to neither. The General Assembly has designated UNHCR as the body from which persons seeking to benefit from the provisions of the 1961 Convention may seek assistance in examining and presenting their claims to the appropriate authorities.³¹ The General Assembly has also conferred upon UNHCR a global mandate for the identification, prevention and reduction of statelessness and for the protection of stateless persons.³²

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²⁶ The Nansen Initiative *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* (“Nansen Initiative Protection Agenda”), endorsed by 109 States, aims to enhance understanding, provide a conceptual framework, and identify effective practices for strengthening the protection of cross-border disaster-displaced persons. The Agenda is available at <http://disasterdisplacement.org/the-platform/our-response>.

²⁷ Displacement in the context of disasters or the adverse effects of climate change would not usually, by itself, be grounds for refugee status. However, it should be recalled that some people fleeing in such contexts may be refugees.

²⁸ For instance, in 2010-2011, UNHCR and OHCHR jointly issued return advisories in respect of people fleeing the impacts of the 2010 earthquake, calling on States to refrain from returns to Haiti and to renew mechanisms allowing Haitians to remain outside their country. See: UNHCR and OHCHR, *Lineamientos sobre el retorno de ciudadanos haitianos*, 9 June 2011, www.refworld.org/docid/5600f60c4.html.

²⁹ For instance, in December 2014, in the context of the Ebola outbreak in a number of West African countries, UNHCR issued a paper exploring the consequences of various measures taken by States, and requesting that States take into account individual circumstances and the developing situation in Ebola-affected countries when considering forced returns. See: UNHCR, *Considerations on the Impact of Measures Relating to Ebola Virus Disease, on Persons Who Are or May Be in Need of International Protection*, 5 December 2014, www.refworld.org/docid/548014ce4.html.

³⁰ See TPSA Guidelines, above n 22.

³¹ UN GA res 3274 (XXIV), 10 Dec 1974.

³² UN GA res 61/137, 19 Dec 2006.