



Chapter 2: Persons of Concern to UNHCR

This Chapter

- provides an overview of the various categories of **persons who are of concern to UNHCR**.



2.1 Introduction

People who have been forcibly uprooted from their homes can be found in every region in the world. They have often lost everything — their families, communities, houses, jobs and their sense of security and belonging. UNHCR and its partners assist countries in protecting such persons collectively referred to as '**persons of concern to UNHCR**'.

Identifying who these persons of concern are is the first step towards ensuring that they are properly protected. Primarily, these include:

- asylum-seekers
- refugees
- stateless persons
- the internally displaced
- returnees



2.2 Asylum-seekers

When people seek safety in countries other than their own, they are said to be seeking asylum and are known as asylum-seekers.

Most countries expect asylum-seekers to apply to be recognised as refugees. However, even if asylum-seekers do not apply to be recognised — either because these procedures are not in place, or because the asylum-seeker is not aware of these application procedures, or because the asylum-seeker is unable or unwilling to access them — they may still be in need of international protection and of concern to UNHCR.

In particular, children in need of international protection but who do not receive proper support and guidance are often unable to access or understand complicated asylum processes. In other situations, women, children and men who are trafficked but may also be in need of international protection may also be physically barred by their ‘exploiters’ from accessing these procedures. Asylum-seekers may also simply not be aware of the formal asylum procedures. Governments must take proactive measures to ensure that such persons are identified at an early stage and provided with an opportunity to seek safety. UNHCR and other humanitarian agencies should provide the necessary support to governments in this endeavour.



2.2.1 Rejected asylum-seekers

Asylum-seekers found not to be in need of international protection are refused refugee status. Thereafter, they are not normally of concern to UNHCR. However, if countries reject asylum-seekers who, in UNHCR’s view are refugees, they would remain of concern to UNHCR. UNHCR may subsequently choose to recognise them as refugees under its own mandate or take steps to ensure they are protected.



2.3 Refugees

The *1951 Refugee Convention* defines the term “refugee” as a person who has a **well-founded fear of persecution** for one or more of the following five reasons (also known as “*convention grounds*”):

- **race**
- **religion**
- **nationality**
- **membership of a particular social group**
- **political opinion**

A refugee must be outside the country of her/his nationality, and unable or, owing to such fear, unwilling to avail herself/himself of the protection of that country. If the person does not have a nationality, it must be established that s/he fears persecution in the country of habitual residence.

Refugees, like all other persons, have a **right to family unity**. As a result, family members and dependants of a refugee will normally be recognised as refugees. They have the same rights and entitlements as other recognised refugees. It is also possible that individual family members — including the husband/wife and children of a refugee — are refugees in their own right.

Box B



The refugee definition explained: the Inclusion Clause

- There is no universally accepted definition of 'persecution' in the context of the *1951 Refugee Convention*. Persecution consists of human rights abuses or other serious harm, often, but not always, perpetrated in a systematic or repetitive way. Rape, domestic violence, unlawful detention and torture are some examples of human rights abuses. While discrimination may not, in the normal course, amount to persecution, particularly egregious forms of discrimination certainly will. Further, a persistent pattern of discrimination will usually, on cumulative grounds, amount to persecution.
- In determining whether an individual has a well-founded fear of being persecuted, it is necessary to consider the individual's state of mind as well as the objective situation that gave rise to the person's fear. There must also be a link between the well-founded fear of persecution and one of the five '*convention grounds*' – race, religion, nationality, membership of a particular social group and political opinion.
 - 'Race' as a convention ground is understood in its widest sense to include all kinds of ethnic groups that are referred to as 'races' in common usage.
 - Persecution for reason of 'religion' may assume various forms, including prohibition of membership in a religious community or prohibition of worship in private or public. Serious discriminatory measures imposed on persons because they practice/do not practice a religion or because they belong/do not belong to a particular religious community may also be persecutory.
 - 'Nationality' as a ground for persecution refers not only to citizenship, but also to membership of an ethnic or linguistic group. Occasionally, it may overlap with the convention ground of 'race'.
 - A 'particular social group' is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience, or the exercise of one's human rights.
 - 'Political opinion' as a ground for persecution implies that a person holds an opinion that is not tolerated by the authorities, and that this opinion has come or most probably will come to the notice of the authorities. An 'imputed' political opinion may arise when the authorities attribute political beliefs or actions to an individual.

While 'gender' is not, in itself, a 'convention ground', it is widely accepted that the refugee definition, properly interpreted, covers gender-related claims. Gender-related claims may include, among other things, acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and discrimination against homosexuals.

- A person may be **unable** to avail of the protection of his/her country when, for instance, a country may be unable to extend proper protection in a state of war, civil war, or other grave disturbance. A person may also refuse to accept (being **unwilling**) the protection of her/his country when, for instance, s/he has well-founded fear of persecution in this country.

Under **UNHCR's mandate**, two categories of persons may qualify for refugee status: (1) persons who meet the criteria of the refugee definition contained in the UNHCR Statute which is nearly identical to the *1951 Refugee Convention*, and (2) persons outside their country of origin who are unable to return owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalised violence or events seriously disturbing public order.

The refugee definition provided by the *1951 Refugee Convention* has also been built upon by regional instruments — in particular the **OAU Convention Governing the Specific Aspects of Refugee Problems in Africa** (1969) and in Latin America by the **Cartagena Declaration on Refugees** (1984).

The **OAU Convention** includes the definition found in the *1951 Refugee Convention* but goes further in including persons compelled to leave their country '*owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole or his country of origin or nationality*'.

Similarly, the **Cartagena Declaration** reiterates the refugee definition found in the *1951 Refugee Convention* and further defines the term to also include persons who flee their country '*because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order*'. While the Cartagena Declaration is not, in itself, a legally binding instrument, countries in the region have incorporated it in their national laws, while others use it to guide them in protecting refugees.



2.3.1 Exclusion from international refugee protection

Under certain conditions, persons who meet the criteria for recognition as refugees are nevertheless denied the protection of the *1951 Refugee Convention*. This is the case for the following categories:

- **Persons who are not entitled to the benefits of the 1951 Refugee Convention:** The *1951 Refugee Convention* denies international refugee protection to individuals who are receiving protection or assistance from a UN agency other than UNHCR. In today's context, this applies to certain groups of Palestinian refugees who are inside the area of operations of the *United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)*. If such persons are outside the area of operations of UNRWA, they may be entitled to the protection of the *1951 Refugee Convention*.
- **Persons who are not in need of international refugee protection:** The *1951 Refugee Convention* provides for denial of refugee status to persons who have taken up regular or permanent residence in a country that has given them a status whereby they effectively enjoy the same rights and have the same obligations as nationals of that country.
- **Persons who are considered undeserving of international refugee protection:** The *1951 Refugee Convention* envisages exclusion from international refugee protection of persons considered not to deserve such protection on account of their having committed certain serious crimes or heinous acts. This applies to persons who are responsible for war crimes, crimes against humanity or crimes against peace. Similarly, those who have committed serious non-political crimes or acted against the purposes and principles of the United Nations cannot benefit from refugee status.



Box C



The refugee definition explained: the Exclusion Clauses

- War crimes involve serious violations of the laws or customs of war including, but not limited to, grave breaches of the 1949 Geneva Conventions such as wilful killing, torture, inhumane treatment, rape, enforced prostitution, unlawful detention or deportation of persons who have not or are no longer taking part in hostilities, and the destruction or appropriation of property protected under the 1949 Geneva Conventions. War crimes can be committed by civilians or by military personnel.
- Crimes against humanity are inhumane acts that include, but are not limited to, murder, extermination, genocide, enslavement, deportation, imprisonment, torture, rape and other forms of sexual violence, when committed as part of a widespread or systematic attack directed against the civilian population. Crimes against humanity can occur in peace time as well as during war.
- Crimes against peace include the planning, preparation, initiation, or waging of a war of aggression or a war that is in violation of international treaties, agreements or assurances.
- A serious non-political crime is one that is considered serious in most jurisdictions and that is predominantly motivated by non-political reasons, such as personal gain. Crimes that are politically motivated but that cause indiscriminate harm to civilians and/or are disproportionate to the alleged political purpose, would also be considered non-political for the purposes of the exclusion clause of the *1951 Refugee Convention*.
- The purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the United Nations Charter. They relate to the fundamental principles that govern relations between States and to the international community in general. Only serious acts which have an impact on international peace, security and peaceful relations between States can fall within this category.

2.3.2 Others not in need of international protection

Migrants who leave a country voluntarily, seeking a better life and who can return to their country without fear of persecution are not refugees. Similarly, people fleeing natural disasters are not refugees. There may be situations where individuals — including those who are smuggled or trafficked — who left their country voluntarily or who were coerced into leaving their country, are in need of international protection after they arrive in another country

Since refugee status is civilian and humanitarian in character, **persons who continue to pursue armed activities** cannot be considered to be refugees.

Persons who participated in armed conflict but have genuinely and permanently renounced military activities may be considered as refugees if they fulfil the criteria of the refugee definition and do not come within the scope of an exclusion clause.

2.3.3 Cessation of refugee status

Refugee status is temporary in nature. It remains valid until it is established that international protection is no longer necessary or justified. The *1951 Refugee Convention* contains an exhaustive list of the circumstances under which refugee status may cease.

Refugee status ceases if a refugee voluntarily acts in a manner that demonstrates that s/he has re-availed herself/himself of the protection of a country of origin (or former habitual residence). It will also cease when a refugee acquires a new nationality and enjoys the protection of that country.

Further, refugee status may cease when there have been fundamental, stable and lasting changes in the country of origin (or former habitual residence) that no longer justify the need for international protection. Even if these 'ceased circumstances' exist, compelling reasons arising out of previous persecution may justify the need for continued international protection for some refugees. For instance, it may be unreasonable to expect survivors of torture to return to their country even if the situation has improved dramatically.



2.3.4 Recognising refugees

Countries normally establish procedures to formally recognise refugees. 'Convention refugees' is a term often applied to those refugees recognised by countries based on the refugee definition provided in the *1951 Refugee Convention*.

In some situations, UNHCR recognises refugees in accordance with its **mandate**. This normally happens in countries that have not established a procedure to determine refugee status or in countries where the asylum procedures are not functioning properly.

Refugee status may be decided on an individual or a group basis under the *1951 Refugee Convention*, under regional refugee instruments, or by UNHCR under its mandate. If large numbers of people have fled persecution or conflict, they are often considered as refugees on a *prima facie* basis. This is a practical measure to allow refugees to receive international protection without the formality of undergoing individual refugee status determination.

2.4 Stateless persons

A stateless person is one who is not considered to be a national by any state under its laws. A stateless person can also be a refugee when, for example, s/he is forced to leave her/his country of habitual residence because of persecution. However, not all stateless persons are refugees, and not all refugees are stateless.





2.4.1 Some causes of statelessness

Sometimes governments do not realise that they are creating stateless persons. This may happen when the laws of two countries conflict with each other and a person does not qualify as a national of either country with which s/he is associated.

For instance, in some countries, if a man or woman marries a foreigner, s/he loses her/his nationality and is expected to take on the nationality of the spouse. But there is no guarantee that the country of the spouse will grant her/him citizenship. The laws of many countries discriminate against women with regard to nationality issues.

In other situations, a child born in a foreign country may not be recognised by the country of birth because the parents are foreigners. At the same time, the country of his/her parents may not recognise the child because the birth occurred outside its territory.

Countries may also arbitrarily revoke or deny citizenship to certain individuals or groups because of their ethnicity, religion, gender, race, or other reasons. Failure to register birth in some countries may result in statelessness.

2.4.2 Some effects of statelessness

Since stateless persons do not have the protection of any country, they often lack access to education, jobs, and health care. Many cannot register their marriage or the birth of their children or acquire identification or travel documents. Often, they have no sense of belonging or identity.

Statelessness can sometimes create instability within a country and may even result in conflict and the displacement of people.

2.4.3 UNHCR and stateless persons

Because refugee and statelessness problems sometimes overlap and may be linked, the UN General Assembly mandated UNHCR to work to prevent statelessness and to act on behalf of stateless persons.

UNHCR assists stateless persons in resolving their legal problems, obtaining documentation, and eventually restarting their lives as citizens of a country. UNHCR also provides technical and legal advice to governments on nationality issues, including assistance in drafting and implementing nationality legislation designed to prevent and resolve situations of statelessness.

UNHCR encourages countries to accede to two international instruments relating to statelessness:

- the *1954 Convention relating to the Status of Stateless Persons*, which aims to ensure a basic standard of treatment for all stateless persons; and
- the *1961 Convention on the Reduction of Statelessness*, which aims to avoid all future cases of statelessness.

2.5 The Internally Displaced

The internally displaced are people who have been forced to flee their homes as a result of armed conflict, situations of generalised violence, violations of human rights, or natural or human-made disasters. While the problems of refugees and the internally displaced are often similar and interlinked, unlike refugees who have crossed an international border, the internally displaced remain uprooted **within their own country**.

There are over 25 million internally displaced persons living in some 50 countries around the world. Very often, their own governments are unable or unwilling to protect them. In these circumstances, the internally displaced need the protection and support of international humanitarian agencies.

2.5.1 The Guiding Principles on Internal Displacement

In 1998, the United Nations adopted the *Guiding Principles on Internal Displacement*. Based on standards enumerated by human rights, refugee law and international humanitarian law, the Guiding Principles provide a framework to prevent internal displacement and to protect and find solutions for those who have been displaced. While the Guiding Principles are not binding, some countries have incorporated them in their national laws, thus binding themselves to their implementation.

2.5.2 UNHCR and the internally displaced

UNHCR has been supporting governments in protecting and assisting internally displaced persons since 1972.

UNHCR works alongside other UN, governmental and non-governmental agencies in a **collaborative response** to protect and assist persons who have been internally displaced as a result of armed conflict, situations of generalised violence and violations of human rights. Members of the collaborative response address the issue of internal displacement on the basis of their respective mandates and expertise.

Where a collaborative response is used to protect the internally displaced, UNHCR takes a lead to ensure that protection issues (including return of the internally displaced), camp co-ordination and emergency shelter issues are effectively addressed.



2.6 Returnees

UNHCR works to ensure that uprooted women, men, girls and boys can voluntarily return to their homes in safety and with dignity. Upon return, they and their families should have access to shelter, food, medical care, education, a livelihood, and the judicial system — just like any other citizen.

In many situations, UNHCR and its partners continue to work with returnees in their country of origins until they are successfully reintegrated into their communities.















Further Reading





Electronic copies of these documents in English have been provided in the accompanying Protection Induction Programme CD-ROM. Click on the 'Library' button to access them.





Asylum-seekers and Refugees

-  *Refugees by numbers*, UNHCR, September 2004.
-  *Protecting Refugees: Questions and Answers*, UNHCR, October 2005.
-  *Self-Study Module 2: Refugee Status Determination. Identifying who is a Refugee*, UNHCR, 1 September 2005.
-  *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UNHCR, second edition, January 1992.
-  *Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, UNHCR, HCR/GIP/02/01 of 7 May 2002.
-  *Guidelines on International Protection No. 2: "Membership of a Particular Social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, UNHCR, HCR/GIP/02/02 of 7 May 2002.
-  *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses)*, UNHCR, HCR/GIP/03/03 of 10 February 2003.
-  *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, UNHCR, HCR/GIP/03/04 of 23 July 2003.
-  *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, UNHCR, HCR/GIP/03/05 of 4 September 2003.
-  *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, UNHCR, HCR/GIP/04/06 of 28 April 2004.
-  *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*, UNHCR, HCR/GIP/06/07 of 7 April 2006.
-  *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*, UNHCR, 1 September 2005.

Stateless Persons

-  *The World's Stateless People: Questions and Answers* UNHCR, April 2004.
-  *Nationality and Statelessness: A Handbook for Parliamentarians*, Inter-Parliamentary Union and UNHCR, 2005.

The Internally Displaced

-  *Internally Displaced Persons: Questions and Answers*, UNHCR, September 2004.
-  *Guiding Principles on Internal Displacement*, United Nations, document E/CN.4/1998/53/Add.2 of 1998.
-  *Internally Displaced Persons: The Role of the United Nations High Commissioner for Refugees*, EC/50/SC/INF.2 of 20 June 2000.
-  *Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for UN Humanitarian and/or Resident Coordinators and Country Teams*, Inter-Agency Standing Committee, September 2004.

