

The refugee concept under international law

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Pursuant to its legal responsibilities as custodian of the international refugee protection regime, and in response to queries from United Nations Member States, UNHCR offers the following observations on who is a refugee as a matter of international law.

Refugees

Under international law, refugees are persons outside their countries of origin who are in need of international protection because of a serious threat to their life, physical integrity or freedom in their country of origin as a result of persecution, armed conflict, violence or serious public disorder.¹

The need for international protection arises because they are unable to avail themselves of the protection of their own country against these threats.

International refugee law derives from a range of treaties (universal and regional), rules of customary international law, general principles of law, and national laws and standards. The 1951 Convention relating to the Status of Refugees² and its 1967 Protocol³ laid the foundation upon which subsequent regional instruments have built, including the 1969 OAU Convention,⁴ the 1984 Cartagena Declaration,⁵ the EU Qualification Directive⁶ and other relevant instruments of the EU asylum *acquis communautaire*, and the 1966 Bangkok Principles.⁷ Collectively, this body of law, complemented by international human rights law, makes up the international refugee protection regime under which UNHCR exercises its [mandate](#) responsibilities.⁸

More specifically, and for the sake of clarity, individuals fleeing across borders for the following reasons would be refugees according to the 1951 Convention definition:

- persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion;⁹
- armed conflict, which may be rooted in and/or conducted along lines of race, ethnicity, religion, politics, gender or social group divides;¹⁰
- violence perpetrated by organized gangs,¹¹ traffickers,¹² 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;¹³
- disasters (including drought or famine) where they are linked to situations of persecution or armed conflict rooted in racial, ethnic, religious, or political divides, or disproportionately affect particular groups.¹⁴

Additional grounds can be found in regional instruments, such as being outside the country due to ‘events seriously disturbing public order’. The circumstances that underlie these grounds in a particular situation may equally give rise to refugee status under the 1951 Convention.

Others 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 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 change,¹⁵ but who are not refugees.¹⁶ In such situations, a need for international protection would reflect the inability of the country of origin to protect against serious harm.

Complementary protection mechanisms¹⁷ and temporary protection or stay arrangements¹⁸ have proven important tools to ensure that international protection is provided in these circumstances, including under international human rights law.

UNHCR, on the basis of its international protection expertise, has consistently advised States in this regard.

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 Persons¹⁹ and the 1961 Convention on the Reduction of Statelessness²⁰ provide valuable legal tools for their protection.²¹

Status determination

The determination of refugee status is a legal or administrative process by which a government or UNHCR, according to its mandate, determines whether a person seeking international protection is considered a refugee under international, regional or national law. Such determinations can be made on an individualized basis or through group-based mechanisms (such as prima facie recognition or the provision of temporary protection). Stateless determination is equally grounded in international law, and refers to the process of determining whether a person is stateless.

This process is distinct from reception arrangements that seek to identify, screen and refer new arrivals to appropriate services. These arrangements should apply equally to all arrivals, regardless of status.

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¹ 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.

² *Convention Relating to the Status of Refugees* (28 July 1951) 189 UNTS 137, (1951 Convention), <http://www.refworld.org/docid/3be01b964.html>.

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

⁴ The 1969 OAU Convention refugee definition set out at Article I 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.’ *Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa* (10 September 1969) 1001 UNTS 45, <http://www.refworld.org/docid/3ae6b36018.html>.

⁵ Conclusion 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.’ *Cartagena Declaration on Refugees*, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>.

⁶ 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 December 2011, OJ L 337.

⁷ Asian-African Legal Consultative Organization (AALCO), Bangkok Principles on the Status and Treatment of Refugees, 31 December 1966 (final text adopted 24 June 2001).

⁸ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), <http://www.refworld.org/docid/3ae6b3628.html>. UNHCR, *Note on the Mandate of the High Commissioner for Refugees and his Office*, October 2013, <http://www.refworld.org/docid/5268c9474.html>.

⁹ Article 1A of the 1951 Convention.

¹⁰ 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, <http://www.refworld.org/docid/583595ff4.html>.

¹¹ See Conflict and Violence Guidelines, above n 10, as well as UNHCR, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*, 31 March 2010, www.refworld.org/docid/4bb21fa02.html.

¹² 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.

¹³ 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.

¹⁴ 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]’.

¹⁵ 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>.

¹⁶ 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.

¹⁷ 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.

¹⁸ See UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, February 2014 (“TPSA Guidelines”), www.refworld.org/docid/52fba2404.html.

¹⁹ *Convention Relating to the Status of Stateless Persons* (28 September 1954) 360 UNTS 117, <http://www.refworld.org/docid/3ae6b3840.html>.

²⁰ *Convention on the Reduction of Statelessness* (30 August 1961) 989 UNTS 175, <http://www.refworld.org/docid/3ae6b39620.html>.

²¹ UN General Assembly resolutions 3274 (XXIV) and 31/36 designate UNHCR as the body to examine the cases of persons who claim the benefit of the 1961 Convention on the Reduction of Statelessness and to assist such persons in presenting their claims to the appropriate national authorities (Article 11). The UN General Assembly further entrusted UNHCR with a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons, through UNGA resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995. The latter endorses UNHCR’s Executive Committee Conclusion No. 78 (XLVI), *Prevention and Reduction of Statelessness and the Protection of Stateless Persons*, 20 October 1995, <http://www.refworld.org/docid/3ae68c443f.html>. See also UNHCR’s Note on the Mandate, above n 8.