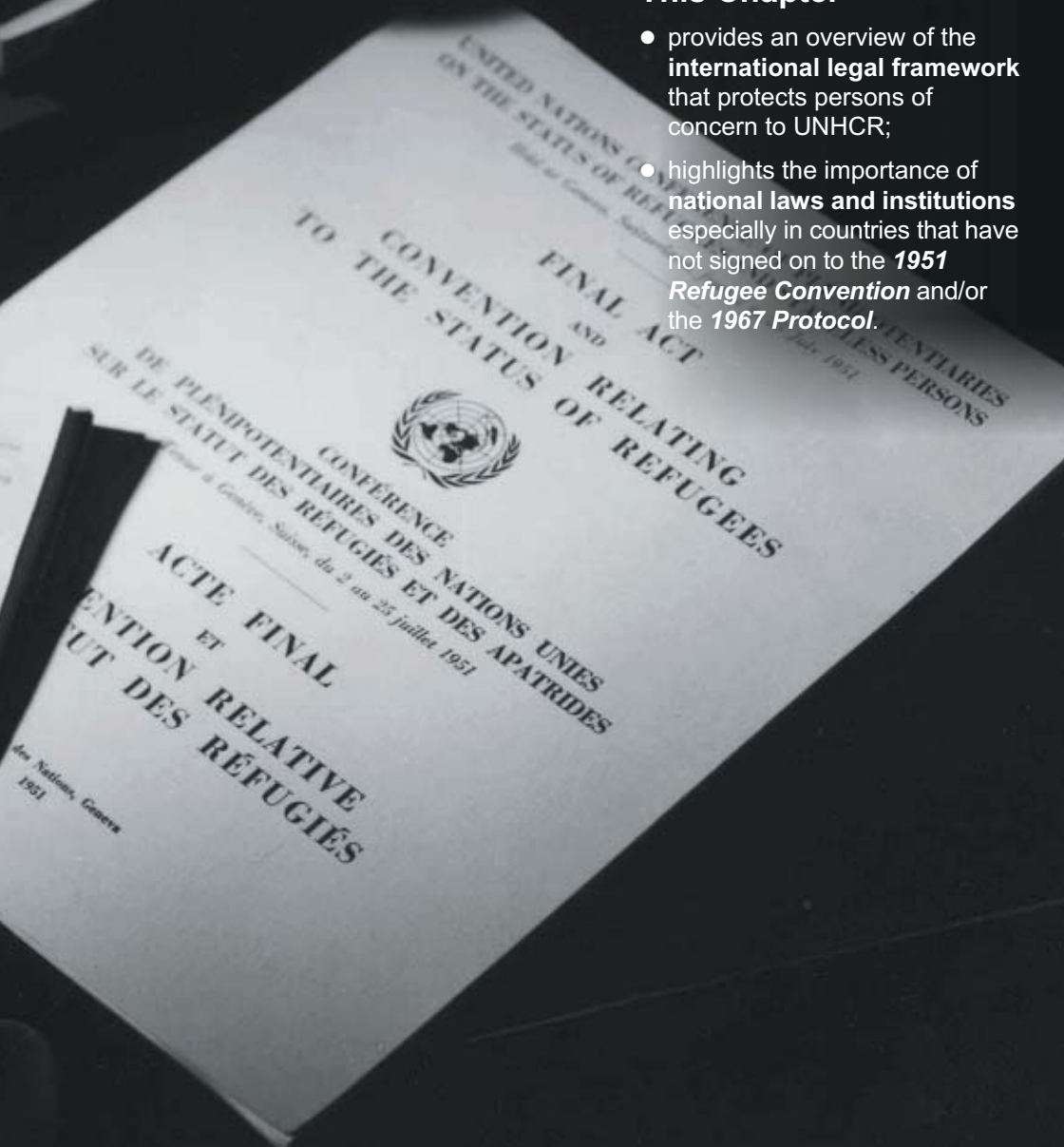




# Chapter 3: The Legal Framework

## This Chapter

- provides an overview of the **international legal framework** that protects persons of concern to UNHCR;
- highlights the importance of **national laws and institutions** especially in countries that have not signed on to the **1951 Refugee Convention** and/or the **1967 Protocol**.



### 3.1 Introduction

Women, men, girls and boys of concern to UNHCR have often survived serious human rights violations. They may have been tortured, raped, arbitrarily detained sometimes not even recognised as citizens of any country. To ensure that their specific concerns are addressed and that they do not face any further human rights abuses, it is essential to understand the legal framework that can protect them. Understanding this framework also assists in ensuring that humanitarian operations are designed to improve the quality of protection available to them.



International and national laws provide the basis for all activities undertaken by countries and humanitarian agencies to protect such persons. The main sources of these laws addressed in this chapter are:

- international refugee law
- international human rights law
- international humanitarian law
- national laws

## 3.2 International Refugee Law

The **Convention relating to the Status of Refugees** of 28 July 1951 sets out the principles upon which the regime of international protection for refugees is built. It established the main rights and obligations of refugees as well as the treatment to which they are entitled by the country of asylum.

In 1967, the Convention was strengthened by a **Protocol** that made the provisions of the 1951 treaty applicable to a broader range of refugee situations. The *1967 Protocol* removes the geographic and time limitations written into the *1951 Refugee Convention* which had effectively limited the scope of international refugee protection to refugees in Europe in the aftermath of the Second World War.



### 3.2.1 The **1951 Refugee Convention**

The *1951 Refugee Convention* and its *1967 Protocol* contain the following basic protection principles:

- Refugees should not be returned to a country where their life or freedom would be threatened. This is the principle of **non-refoulement**. (See Chapter 4 for more information on *non-refoulement*).
- Refugees can, subject to certain guarantees, only be expelled from a country of asylum if their presence is a **serious threat to national security or public order**.
- There should be **no discrimination** in the protection offered to women, men, girls and boys because of their race, religion, nationality or gender.
- Refugees should **not be penalised for entering or being present in a country illegally** as long as they make their presence known to the authorities without delay.
- Refugees are **required to conform to the laws and regulations** in the country of asylum.
- Since **protecting refugees is a humanitarian activity**, it should not become a cause of tension between countries.
- **Governments should cooperate with UNHCR** in protecting refugees.
- **International co-operation is essential** for finding solutions to the problems of refugees.

The *1951 Refugee Convention* also addresses the issues of refugees' right to documentation, access to work, public education, access to the courts, freedom of movement, freedom to practice their religion, among other concerns.



### 3.2.2 Regional protection instruments

The 1969 **OAU Convention Governing the Specific Aspects of Refugee Problems in Africa** and the 1984 **Cartagena Declaration** are two regional instruments that focus on refugee protection.

International refugee law does not address all problems relating to the protection of refugees. However, international refugee law, together with human rights law and international humanitarian law, provide a comprehensive framework to protection persons of concern to UNHCR, including the internally displaced.



### 3.3 International Human Rights Law

Human rights and the protection of uprooted people are linked in a number of ways. An understanding of human rights is therefore essential to fully grasp UNHCR's protection mandate.

- International human rights law is the basis for refugee law. **Article 14 of the Universal Declaration of Human Rights** of 10 December 1948 provides that *all persons should have the right to seek and to enjoy asylum from persecution in other countries*. The Universal Declaration of Human Rights is a not a binding legal text. However, over time, some of its provisions have acquired the status of customary international law binding on all countries. Many of its provisions have been incorporated into binding international and regional human rights instruments as well as national laws and constitutions.

- Serious human rights violations, such as arbitrary detention, sexual or physical violence, and torture are often the cause for people to flee their homes. **Respecting human rights is important for preventing and resolving situations of forced displacement.**
- **International human rights apply to all persons, including those who are uprooted in their own country as well as in another country.** They are entitled to be treated in accordance with international human rights standards to ensure that they are safe from physical violence and have access to, among other things, medical treatment and education, during displacement. In situations of internal displacement, the use of human rights instruments is particularly important given that there is no international legal instrument concerning the protection of the internally displaced.
- **International human rights law also complements international protection,** particularly with regard to the treatment to which uprooted people are entitled. These instruments provide specific regulations for the treatment of women, men, girls and boys. Many of UNHCR's protection guidelines draw upon the standards established by international human rights law. These guidelines provide practical advice on how to apply human rights standards to benefit persons of concern to UNHCR.



### 3.3.1 Human rights and the protection of women and girls

International human rights law provides a framework for the protection of all persons — women, men, girls, and boys. However, national laws and practices often discriminate against women and girls. For instance, women and girls may face more difficulties in receiving an education, getting a job, receiving proper medical assistance, being able to vote, taking part in the political processes in a country or retaining or changing their nationality.

The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** was adopted in 1979. It requires governments to, among other things, ensure that laws and socio-economic and cultural practices in their countries do not discriminate against women.



### 3.3.2 Human rights and the protection of children

Children — especially separated and unaccompanied children — have specific rights in addition to the universal rights enjoyed by all. Their best interests must be taken into consideration at all times. Their right to participate in decisions that affect them must always be respected and they should not be discriminated against at any time. It is also important to note that girls and boys may have different concerns.

The **Convention on the Rights of the Child (CRC)**, adopted in 1989, establishes the standards of protection and assistance that children deserve. It is the most widely ratified international convention in the world.



## Box D



### *The United Nations Children's Fund (UNICEF)*

Children constitute about 50% of the refugees, the internally displaced and others of concern to UNHCR. UNICEF works closely with UNHCR to ensure that these children are protected against violence, exploitation, abuse and neglect by raising awareness and enhancing capacities at various levels of society and in the government. Like UNHCR, UNICEF works in a variety of settings from emergencies and areas affected by armed conflict to more stable operations.

## Box E



### *The Office of the United Nations High Commissioner for Human Rights (OHCHR)*

OHCHR works on many fronts to ensure that human rights are respected. There are two main mechanisms established by the United Nations that OHCHR oversees to ensure that countries respect human rights:

- *Charter-based mechanisms* are constituted under the UN Charter to prevent and respond to human rights violations.
- *Treaty-based mechanisms* include the various UN committees constituted to monitor the implementation of the core international human rights instruments. They are created in accordance with the provisions of the specific core human rights instrument that they monitor.

These human rights mechanisms offer avenues to address the protection concerns of refugees and other uprooted persons. UNHCR works closely with OHCHR to maximise the protection potential that these mechanisms offer.

## 3.4 International Humanitarian Law (IHL)

IHL seeks to limit the effects of armed conflict. It defines the means and methods of warfare and protects persons who have not or are no longer participating in hostilities. The most important sources of contemporary international humanitarian law are the four Geneva Conventions of 12 August 1949 and the two Additional Protocols of 8 June 1977.

IHL aims to protect all civilians, including refugees and the internally displaced caught up in armed conflict. Among other things, it ensures that refugees are not discriminated against or sent back to their countries against their will (*refouled*). It also prohibits the warring factions from forcibly displacing civilians.

IHL helps to establish the definition of a war crime. The *1951 Refugee Convention* excludes people who have committed war crimes from international refugee protection. IHL also assists in interpreting other terms such as ‘generalised violence’, ‘internal conflicts’, ‘external aggression’ and ‘circumstances that have seriously disturbed public order’ that are used by regional instruments in protecting refugees.

## Box F



### *International Committee of the Red Cross (ICRC)*

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organisation whose mission is to protect and assist victims of war and internal violence. It does so through a number of activities, including overseeing the application of international humanitarian law in situations of armed conflict.

ICRC assists refugees, the internally displaced and others of concern to UNHCR who are caught up in an armed conflict.



### 3.5 National laws

Applying the human rights and refugee-related laws of a country is an effective way to ensure that the rights of refugees are protected. In many countries, national laws incorporate principles of international protection and human rights, such as the right to life and liberty, freedom from torture, and the right not to be arbitrarily detained. These are enforced through interventions in the national courts.

National laws that protect the human rights of uprooted people are particularly important in countries that have not signed on to the *1951 Refugee Convention* or relevant international human rights instruments. In fact, they may be the only effective source of protection available to refugees and other persons of concern to UNHCR in such countries. It is worth noting, however, that national human rights and refugee laws may not always be in conformity with international human rights standards. This may result in women and children and other categories of persons being denied protection.








## 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.*







### International Refugee Law

-  *The 1951 Refugee Convention: Questions and Answers*, UNHCR, July 2003.
-  *The Convention relating to the Status of Refugees* of 28 July 1951.
-  *The Protocol relating to the Status of Refugees* of 31 January 1967.
-  *The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* of 10 September 1969.
-  *The Cartagena Declaration on Refugees* of 19-22 November 1984.

### International Human Rights

-  *Questions and Answers on International Human Rights, Humanitarian and Refugee Law*, Inter-Agency Standing Committee paper.
-  *Universal Declaration of Human Rights* of 10 December 1948.
-  *The Convention on the Rights of the Child* of 20 November 1989.
-  *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* of 25 May 2000.
-  *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* of 25 May 2000.
-  *The Convention on the Elimination of All Forms of Discrimination against Women* of 18 December 1979.
-  *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* of 6 October 1999.

### International Humanitarian Law

-  *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* of 12 August 1949.
-  *Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea* of 12 August 1949.
-  *Convention (III) relative to the Treatment of Prisoners of War* of 12 August 1949.
-  *Convention (IV) relative to the Protection of Civilian Persons in Time of War* of 12 August 1949.
-  *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)* of 8 June 1977.
-  *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)* of 8 June 1977.