

BACKGROUND GUIDE

Ensuring the Safety of Asylum Seekers

The Challenge

Every day, people are forced to flee their homes due to war, violence or persecution. Once someone crosses an international border, they have the right to “seek asylum” in order to obtain protection in the country where they have found refuge. In practice, this means that they share their stories with local authorities or with a reception center managed by UNHCR who then assess whether they should receive the status of refugee. If their asylum claim is accepted, they will be recognized as a refugee. If their claim is rejected, they might return to their home country or obtain another temporary status to stay in the host country.

Everyone has the right to seek and to enjoy in other countries asylum from persecution.

– Universal Declaration of Human Rights, Article 14

Seeking asylum is a human right. Unfortunately, there are many situations in the world where people are restricted from seeking asylum. Asylum seekers might face **pushbacks at borders, discrimination, trafficking and arbitrary detention**. Asylum seekers who are able to obtain refugee status have the right to stay and be protected like other citizens in their country of refuge.

Why It Matters

The right to seek asylum is key to protecting people forced to flee their homes. It is one of the most basic and important concepts in refugee law. The right to seek asylum also comes with other important rights and obligations for States.

- **No Pushbacks at Borders:** Authorities cannot force people to return to a dangerous country.
- **No Discrimination:** All entries at the border and asylum claims should be treated fairly.
- **Safe Access:** Borders should remain open to all people forced to flee.
- **Humane Treatment:** People forced to flee should be treated with respect, receive care and they should not be detained.

How Asylum is Granted

Governments are responsible for processing claims for asylum in their country. Sometimes, in emergency situations or if the country is not prepared to process all applications, UNHCR will help register asylum claims. Asylum can be granted in several ways depending on the situation:

REFUGEE STATUS DETERMINATION

Individual asylum seekers go through a **Refugee Status Determination** procedure. This is where they share their story to help determine whether they fled due to fear of persecution based on their race, religion, nationality, membership of a particular social group, or political opinion. If the answer is yes, they will be granted asylum, meaning that they will be awarded refugee status.

PRIMA FACIE

In situations where large numbers of people flee at once, like when war breaks out, the government or UNHCR might decide to recognize everyone as “prima facie” refugees. In these cases, the refugee status determination is much faster. The authorities don’t need to conduct long interviews because they can confidently say that everyone is fleeing violence.

Example: South Sudan → Uganda: The largest group of refugees in Uganda are those fleeing war from South Sudan. Because Uganda considers that the situation in South Sudan means anyone from there is at risk of persecution or violence, South Sudanese refugees have prima facie or group refugee status. Therefore, if someone from South Sudan flees to Uganda, they don’t need to prove their individual need for status.

ALTERNATIVE FORMS OF PROTECTION

There are other types of protection statuses which people might be awarded that are not asylum or refugee status. These are usually applied in emergency cases, and only for citizens of a specific country or countries. The status is usually temporary but comes with various rights like residence permits, access to labor market and housing, medical assistance, and access to education. This allows individuals of those specific countries to gain protection and safety but it is separate from refugee status.

Challenges That Refugees & Asylum Seekers Face

People forced to flee can face many challenges on their journeys to safety. This section covers: pushbacks and forced returns, closed borders, dangerous routes, smuggling and trafficking, detention, discrimination, extended wait times, and restrictive asylum rules.

PUSHBACKS

Many countries carry out the dangerous practice of “pushbacks” and forced returns, where they turn asylum seekers away at the border or force them to return to where they came from, without allowing them to apply for refugee status. For example, this could be forcing a boat to turn around before reaching shore, or a border guard forcing someone to turn back. However, according to the [Refugee Convention](#), people cannot be forced to return to a country if their life or freedom would be at risk in their country of origin.

CLOSED BORDERS

It is important to remember that in order to claim their right to seek asylum, people forced to flee must first cross an international border. However, sometimes countries close their borders so people cannot cross and claim asylum. During the height of the Covid-19 pandemic, many countries closed their borders and restricted entry for public health reasons, preventing people from seeking asylum. Sometimes, authorities also close safe access points: this forces asylum seekers to take more dangerous routes.

DANGEROUS ROUTES

While seeking safety, many asylum seekers go through dangerous routes. A majority stay in a neighboring country, but some travel through several countries, sometimes crossing the desert or the ocean. According to international law, masters of ships have a responsibility to rescue and disembark asylum seekers to a place of safety.

When fleeing from danger on such dangerous routes, family separation may occur accidentally, or deliberately when children are given by parents to the care of other individuals, in an attempt to ensure their children's survival.

SMUGGLING AND TRAFFICKING

Human trafficking means that human beings are abducted and exploited against their will. People who are forced to flee can be an easy target for traffickers who prey on the precariousness of their situations to exploit them. **Smuggling** is voluntary, in the sense that people go to smugglers to help them travel to a new place, but it can become trafficking if the victims are exploited, for example by being held for ransom or to pay off a debt through forced labor. The threat of **sexual violence** increases significantly for displaced girls.

DETENTION

An important part of the right to humane treatment is that countries should not force asylum seekers to stay in detention (or prison-like) facilities only for the reason that they are asylum seekers. Unfortunately, in some countries, asylum seekers are detained for indefinite periods of time, or are forced to stay in prison, in poor conditions, while their case is processed.

DISCRIMINATION

People forced to flee should not be discriminated against at borders, and all applications for refugee status must be given fair consideration, regardless of race, religion, gender and country of origin. Even after crossing the border, discrimination is still a major challenge for asylum seekers. Misinformation about asylum seekers is very common, and sometimes host communities are scared of newcomers. This can lead to host communities being unwelcoming towards asylum seekers, or even worse, cases of harassment or abuse.

EXTENDED WAIT TIMES

In some situations, making an asylum claim is very quick. In others, it can take months or years for asylum seekers to find out if they will be awarded refugee status. This is extremely stressful for asylum seekers.

Most of the time, asylum seekers have the right to move around within the country while they wait. Sometimes, they are forced to wait in a detention center. Additionally, during this waiting period, in many countries asylum seekers cannot work or go to school.

RESTRICTIVE ASYLUM RULES

Most refugees stay in a country neighboring their own country. Others decide to cross several countries because the first country that they arrive in is not safe either, or to find their families or better opportunities to rebuild their lives. But some countries have created rules which don't allow people to apply for asylum if they have passed through other countries on the way. This principle is not found in the Refugee Convention and there is no such requirement under

international law. It also undermines global cooperation as States should instead find solutions to share responsibility.

Additionally, externalization is when countries shift the responsibility for asylum seekers to other countries, sometimes sending asylum seekers to another country to be processed. These countries may not have everything asylum seekers need and this may also lead to asylum seekers being trapped and isolated in a country they don't want to be in.

Responses and Solutions

UNHCR, THE UN REFUGEE AGENCY

- **UNHCR encourages States to join the 1951 Refugee Convention** and/or 1967 Protocol
Accessing the Convention means States agree to uphold the right to asylum.
- **UNHCR manages its own reception centers** to support governments that do not have the capacity to absorb asylum claims in their countries. UNHCR also provides guidance to States to build or improve their own asylum systems.
- **UNHCR denounces practices** that go against international law.
- **UNHCR helps organize evacuation flights** for vulnerable asylum seekers. This can include asylum seekers that were arbitrarily detained or were smuggled.
- **UNHCR provides life-saving information** to refugees and asylum seekers, to redirect them to safe places and prevent trafficking.

GOVERNMENTS

- **Governments can sign the 1951 Refugee Convention.** Even if they have not signed it, they must respect international law and they need to uphold the right to asylum. They must not conduct pushbacks and keep their borders open to those fleeing danger.
- **Governments can improve their national asylum systems** to make them more fair and efficient, allowing them to respond quickly and predictably to refugee influxes.
- **Governments can ensure asylum seekers are hosted in good conditions.**
 - › They must not put asylum seekers in jail and must close down detention-like facilities.
 - › They can create emergency shelters at border points to ensure asylum seekers have a safe place to stay temporarily before being redirected to the right services.
 - › Governments can also create reception centers and programs that support asylum seekers in their countries while they wait for their claim to be adjudicated.

HOST COMMUNITY AND NGOS

- Many legal nonprofits provide free or **low-cost legal services** to asylum seekers. For example, [RAICES](#) is a nonprofit located in Texas, USA, along the Mexican border, that helps asylum seekers with affordable legal advice, represents those who are detained, and guides them if they go to court.

- International human rights watchdogs, like Amnesty and Human Rights Watch, also play a role in **denouncing situations** where asylum seekers' rights are being violated.
- Charities like Sea Watch or SOS Méditerranée conduct **rescue at sea operations** in the Mediterranean to help people in distress, and disembark them to places of safety where their claims can be considered.

Questions to Guide Debates

- How to ensure States' respect their obligation to uphold the right to seek asylum?
- How to prevent pushbacks and discrimination at borders?
- How to protect asylum seekers from being smuggled and trafficked?
- How to end the detention of asylum seekers?
- How can countries better share the responsibility of welcoming asylum seekers?
- How to reduce wait times for asylum claims?
- How can host communities better assist asylum seekers?
- How do we ensure that asylum seekers have the legal support that they need?
- How do we ensure that families are not separated when crossing international borders?

Useful Resources

- [Universal Declaration of Human Rights](#)
- [1951 Refugee Convention and 1967 Protocol](#)
- [OHCHR: The Right to Asylum](#)
- [UNHCR: Refugees and Asylum-Seekers, Data](#)
- [International Justice Research Center: Asylum and the Rights of Refugees](#)
- [UNHCR: A Guide to International Refugee Protection and Building State Asylum Systems](#)
- [Rescue at sea: A guide to principles and practice as applied to migrants and refugees](#)

Contact Us

If you have any questions about this background guide, please visit our [webpage](#) or contact lindner@unhcr.org.