

# UNHCR Resources for U.S. Asylum Advocates: International Law, UNHCR Guidance, and Their Strategic Use in Representation and Litigation



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# UNHCR's Mandate

- Provide international protection & assistance to refugees
- Seek permanent, durable solutions for refugees
- Prevent and reduce statelessness and protect the rights of stateless people



# International Refugee Law Instruments

- 1951 Convention on the Status of Refugees
- 1967 Protocol Relating to the Status of the Refugees
  - U.S. acceded to the 1967 Protocol in 1968 and implemented its obligations via the Refugee Act of 1980

# Foundational Principles

- Non-refoulement
- Right to seek and enjoy asylum
- Non-discrimination
- Non-penalization

# UNHCR Multi-Country Office Washington

- U.S. Protection and Solutions Unit
  - Ensure access to territory
  - Advance fair and efficient asylum procedures
  - Align interpretation of the refugee definition with international law
  - Consider detention only as a measure of last resort
  - Prevent and reduce statelessness

# Relevant Law & Guidance

- 1951 Convention & 1967 Protocol
- Conclusions on International Protection (“ExCom Conclusions”)
- Handbook on Procedures & Criteria for Determining Refugee Status
- Guidelines on International Protection
- Country guidance, e.g., Eligibility Guidelines

# UNHCR's Updated Webpages

[Home](#) > [About Us](#) >

## Asylum Resources

Resources for asylum seekers and attorneys representing them in the United States

[Country Information and Guidance](#) [Central American and Mexican Claims](#) [Children's Claims](#) [Detention](#)  
[LGBTIQ+ Claims](#) [Statelessness](#) [Women's Claims](#)

UNHCR's U.S. Protection and Solutions Unit offers resources to assist asylum seekers and attorneys represent them in the United States. These materials provide an overview of international refugee law, address how it ap U.S. asylum adjudication and include guidance to support claims by individuals seeking protection in the U.S. 1 cover six core topics: children's asylum claims, gender-based asylum claims, Central American and Mexican as claims, detention issues and statelessness. Most thematic pages include a cover note explaining how to use international law and UNHCR publications to leverage an asylum claim, with links to key resources.

### International Law and UNHCR Guidance in U.S. Asylum Adjudication

The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugee the key international instruments governing the protection of refugees. The United States is a party to the 1967 Protocol and therefore bound to comply with its provisions, and it has incorporated the substantive provisions the Protocol into domestic law through the 1980 Refugee Act. Accordingly, the Refugee Act should be interpre implemented in a manner consistent with the United States' international law obligations.



#### Country Information and Guidance

UNHCR guidance addressing eligibility for international protection, reasonableness and feasibility of return, and other issues.



#### Children's Claims

UNHCR's views on the specific protection needs of children in asylum procedures.



#### Women's Claims

UNHCR's views on the special protection needs of women and girls in asylum procedures.



#### Claims from Central America

UNHCR's views on asylum claims from individuals fleeing violence by organized criminal groups in Central America and Mexico.



#### LGBTIQ+ Claims

UNHCR's views on asylum claims based on sexual orientation and gender identity.



#### Statelessness

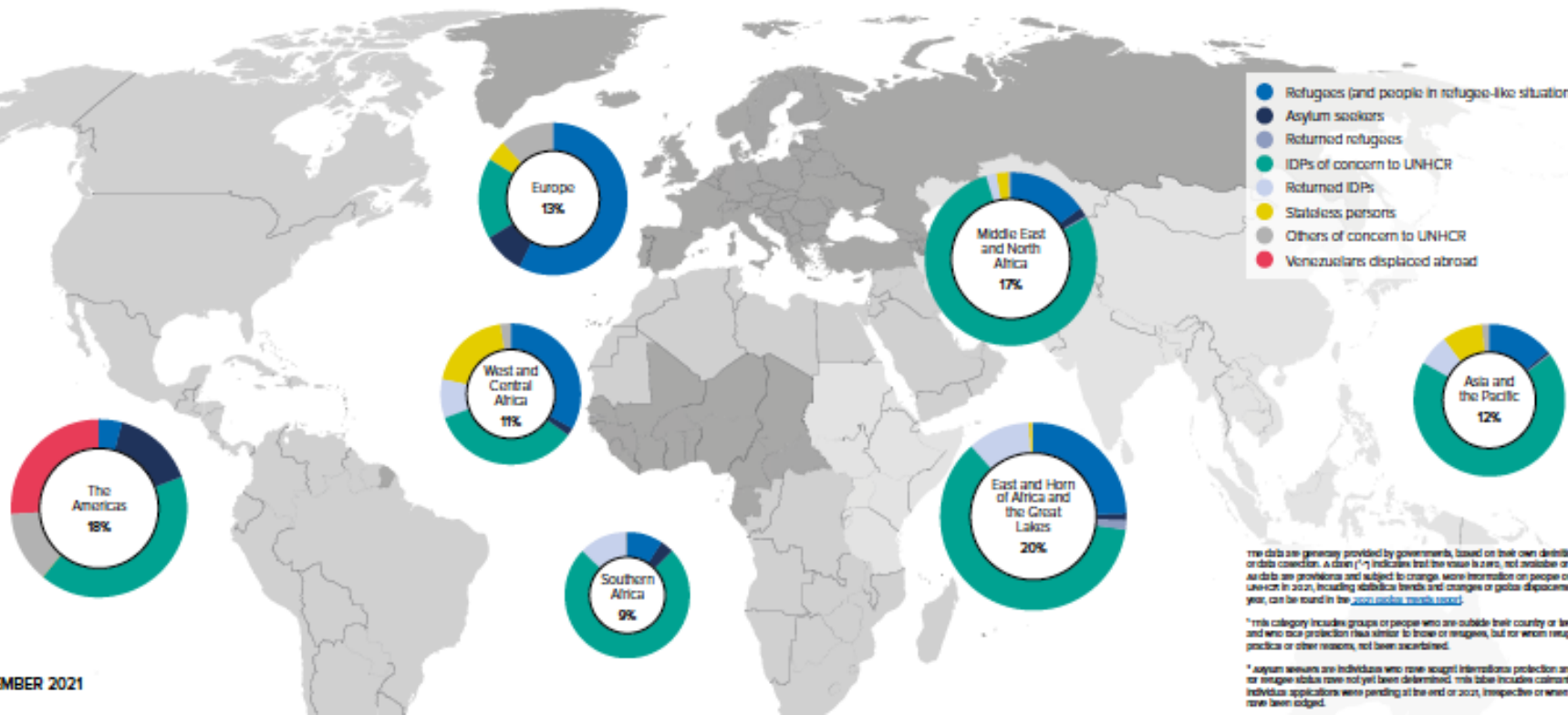
Information on what it means to be stateless, the specific protection needs of stateless individuals, and UNHCR guidance and resources.



#### Detention

UNHCR's position against the detention of asylum seekers, international law relevant to immigration detention, and tools to advocate for release.

# POPULATIONS OF CONCERN TO UNHCR



END DECEMBER 2021

- Refugees (and people in refugee-like situations)
- Asylum seekers
- Returned refugees
- IDPs of concern to UNHCR
- Returned IDPs
- Stateless persons
- Others of concern to UNHCR
- Venezuelans displaced abroad

The data are generally provided by governments, based on their own definitions and methods of data collection. A dash (-) indicates that the issue is zero, not available or not applicable. All data are provisional and subject to change, where information on people of concern to UNHCR in 2021, including statistical trends and changes or policy displacement during the year, can be found in the [2021 Global Trends Report](#).

\*This category includes groups or people who are outside their country or territory of origin and who have protection needs similar to those of refugees, but for whom refugee status has, for practical or other reasons, not been ascertained.

\*Asylum seekers are individuals who have sought international protection and whose claims for refugee status have not yet been determined. This label includes countries whose individual applications were pending at the end of 2021, irrespective of when their claims may have been lodged.

Source: UNHCR Global Report 2021



# UNHCR Country Information & Guidance

## Eligibility Guidelines & International Protection Considerations

- Offer **guidance on the eligibility for international protection** of specific at-risk groups or profiles.

## Positions on Returns

- Contain country-specific policy guidance regarding the **reasonableness and feasibility of return** based on country conditions.

## Guidance Notes

- Contain country-specific policy guidance on **issues other than eligibility or return**.

# Country Information and Guidance

## *UNHCR Eligibility Guidelines & International Protection Considerations*

- Afghanistan (2018)
- Colombia (2015)
- Czech Roma (1999)
- El Salvador (2016)
- Eritrea (2011)
- Guatemala (2018)
- Honduras (2016)
- Iraq (2019)
- Kosovo (2009)
- Nigeria (2016)
- Pakistan: Members of Religious Minorities (2017)
- Slovak Roma (1998)
- Somalia (2010)
- Somalia: City of Galkacyo (2010)
- Southern & Central Somalia (2014)
- Sri Lanka (2012)
- Syria (2021)
- Ukraine (2015)
- Venezuela (2018)

## *UNHCR Positions on Return*

- Afghanistan (2021)
- Burkina Faso (2021)
- Democratic Republic of the Congo (2019)
- Ethiopia (2022)
- Gaza (2022)
- Libya (2018) and Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea (2020)
- Mali (2022)
- South Sudan (2021)
- Ukraine (2022)
- Yemen (2021)

## *UNHCR Guidance Notes*

- Afghan Claims (2022)
- Gang-Based Claims (2010)
- Nicaraguan Claims (2018)
- Venezuelan Claims (2019)

# Example: El Salvador Eligibility Guidelines

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1. Persons perceived by a gang as contravening its rules or resisting its authority	29
2. Persons in professions or positions susceptible to extortion, including those involved in informal and formal commerce as business owners, their employees and workers, or as street vendors; public transport workers; taxi and mototaxi (tuk-tuk) drivers; public sector employees; children and adults who receive remittances from abroad; and certain returnees from abroad	30
3. 'Informants', witnesses and victims of crimes committed by gangs and other organized criminal groups, or by members of the security forces	32
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## II. Overview of the Situation in El Salvador

### A. Background

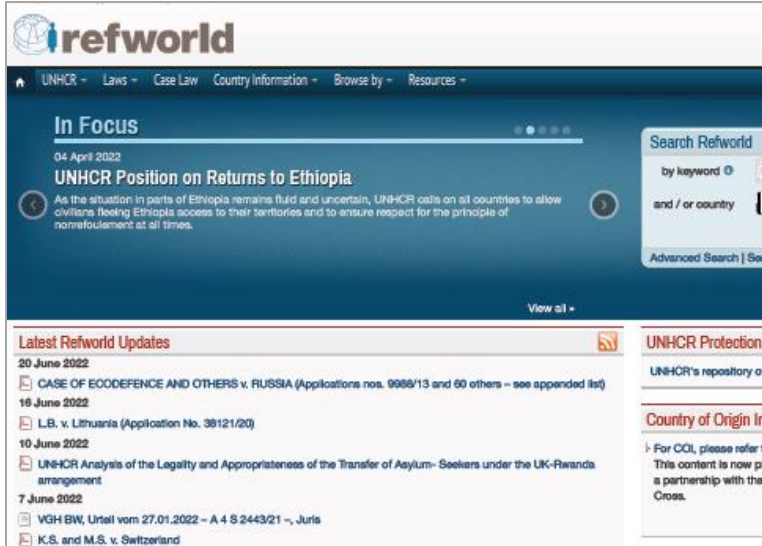
The increasing exodus of Salvadorians in search of international protection is rooted in the human rights, social, political and economic impact of the increasing reach, power and violence of organized criminal groups in El Salvador. The extent of the violence is reflected in the fact that the small and densely-populated country of El Salvador presently has the highest rate of homicides of any country in the world.<sup>1</sup> This surge of violence is driven by the activities of powerful rival and conflictive street gangs that operate across El Salvador and also by the severe response of the State security forces. At the same time, the influence of other organized crime groups, as well as widespread domestic and societal abuse of women and children, also fuels the flight of Salvadorians seeking international protection.

#### 10. Teachers and educators working in public schools and educational institutions

Due to the youthful membership of the gangs in El Salvador, gangs reportedly often seek to exert influence in and on public schools and educational institutions in the zones where they operate. Gang members may also be present as students in these schools and educational institutions. Teachers and other educators working in parts of the country where gangs are present reportedly often find themselves subject to extortion demands.<sup>324</sup> Moreover, those teachers and educators who represent an alternative source of authority or resist or oppose the gangs and their recruitment of local youth have reportedly been threatened and killed by the gangs.<sup>325</sup>

Depending on the particular circumstances of the case, UNHCR considers that teachers and educators working in public schools and educational institutions may be in need of international refugee protection on the basis of their (imputed) political opinion, or on the basis of other Convention grounds.<sup>326</sup>

# UNHCR Database: Refworld



The screenshot shows the Refworld homepage with a dark blue header. The main content area features an 'In Focus' section with a headline 'UNHCR Position on Returns to Ethiopia' dated 04 April 2022. Below this is a 'Latest Refworld Updates' section listing several legal cases with their dates and brief descriptions. A search bar is visible on the right side of the page.

**refworld**

UNHCR - Laws - Case Law - Country Information - Browse by - Resources -

### In Focus

04 April 2022

#### UNHCR Position on Returns to Ethiopia

As the situation in parts of Ethiopia remains fluid and uncertain, UNHCR calls on all countries to allow civilians fleeing Ethiopia access to their territories and to ensure respect for the principle of non-refoulement at all times.

Search Refworld

by keyword

and / or country

Advanced Search | See

View all +

#### Latest Refworld Updates

20 June 2022

CASE OF ECODEFENCE AND OTHERS v. RUSSIA (Applications nos. 9088/13 and 60 others – see appended list)

16 June 2022

L.B. v. Lithuania (Application No. 38121/20)

10 June 2022

UNHCR Analysis of the Legality and Appropriateness of the Transfer of Asylum- Seekers under the UK-Rwanda arrangement

7 June 2022

VGH BW, Urteil vom 27.01.2022 – A 4 S 2443/21 –, Juris

K.S. and M.S. v. Switzerland

#### UNHCR Protection

UNHCR's repository of

#### Country of Origin In

For COI, please refer to  
This content is now part of a partnership with the Cross.



The screenshot shows the 'Gender Equality and Women' page on Refworld. It features a header with the Refworld logo and navigation links. Below the header is a search bar and a main image showing a group of women sitting on the ground in a rural setting. The page includes a paragraph of text explaining the content, a section for 'Legal Documents Related to Gender Equality and Women' with a list of resolutions, and a 'Country and Region Specific Situations' section with a list of reports.

**refworld**

Home » Gender Equality and Women

## Gender Equality and Women



Search Refworld

by keyword

Enter a word or phrase

and / or country

All countries

Clear

Advanced Search | Search Tips

### Country and Region Specific Situations

- Initial Assessment Report: Pro Risks for Women and Girls in European Refugee and Migration Greece and the former Yugoslav Republic of Macedonia, 20 January 2010
- UNHCR's Contribution to the International Commission's Consultation on Genital Mutilation in the EU, 14

Refworld documents related to gender equality and women, including legal, policy and background information. This "Special Feature" on gender equality and women is regularly maintained and contains legal, policy and operational material.

### Legal Documents Related to Gender Equality and Women

- Resolution 1960 (2010) [on women and peace and security], Adopted by the Security Council at its 6453rd meeting, 16 December 2010
- Resolution 1888 (2009) [on acts of sexual violence against civilians in armed conflicts], Adopted by the Security Council at its 6195th meeting, 30 September 2009

# UNHCR Asylum\* Resources

Central  
American and  
Mexican Claims

Children's  
Claims

LGBTIQ+  
Claims

Women's Claims

Detention

Statelessness

Home > About Us > Asylum Resources >

## Children's Claims

UNHCR has long recognized the specific protection needs of children in asylum procedures. Children might have independent claims to refugee status separate from those of their parents or other family members, in part due to the possibility that they may experience certain child-specific forms of persecution that could give rise to a distinct claim for protection. In addition, children have inherent vulnerabilities that mandate additional safeguards as they move through the asylum process.

UNHCR offers the following summary of its position on these topics as relevant to pursuing asylum in the United States:

- [UNHCR's Views on Child Asylum Claims: Using International Law to Support Claims of Children Seeking Protection in the United States \(2022\)](#)

### Key UNHCR Resources

For a discussion of substantive and procedural considerations relevant to child-specific asylum claims, including in the U.S. context, see:

- [Guidelines on International Protection, Child Asylum Claims under Articles 1\(A\)2 and 1\(F\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees \(2009\)](#)
- [UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child \(2021\)](#)
- [Amicus Brief, \*Marroquin-Perez v. Barr\* \(2020\)](#)
- [Amicus Brief, \*Grace v. Barr\* \(2019\)](#)
- [Amicus Brief, \*Matter of O.L.B.D.\* \(2019\)](#)
- [Amicus Brief, \*Mojillo-Romero v. Holder\* \(2010\)](#)
- [UNHCR Recommendations to Support the Work of the Interagency Task Force on the Reunification of Families \(2022\)](#)

For a discussion of the reasons why children who flee Central America and Mexico may need international protection, see:

- [Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection \(2014\)](#)
- [Uprooted \(\*Arrancados de Raíz\*\) \(2014\)](#)
- [Guidance Note on Refugee Claims Relating to Victims of Organized Gangs \(2010\)](#)

### Additional Materials

- [Refworld: Children](#)
- [Webinar by UNHCR, KIND, & The Young Center: Representing Children from Central America: Leveraging International Law to Strengthen Gang Based Asylum Claims \(2017\) \(recording and slides\)](#)

# Cover Notes Expressing UNHCR's Views

Relevance of Int'l Law in the U.S.

Forms of Persecution and Common Risk Profiles

Asylum Claims Based on Membership in a PSG

Asylum Claims Based on Other Convention Grounds

Agents of Persecution and a State's Ability and Willingness to Protect

Other Considerations

Overview of UNHCR Resources



## UNHCR's Views on Asylum Claims based on Sexual Orientation and Gender Identity

*Using international law to support claims from LGBTIQ+ individuals seeking protection in the U.S.*

September 2022

The United Nations High Commissioner for Refugees (UNHCR) has long recognized the specific protection needs of lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ+) individuals and those who are perceived as holding such identities.<sup>1</sup> This note articulates UNHCR's views on LGBTIQ+ asylum claims, highlights particular issues which may arise under such claims, and provides guidance on how to use UNHCR's views in assisting asylum seekers in the United States. It is generally applicable to claims with a sexual orientation or gender identity component from all over the world.



## UNHCR's Views on the Detention of Asylum Seekers

*Using international law to advocate against detention of individuals seeking protection in the U.S.*

September 2022

The United Nations High Commissioner for Refugees (UNHCR) has had a longstanding interest in the situation of detained asylum seekers and the legality of detention of this population under international law. UNHCR takes the position that, consistent with international refugee and human rights law and standards, detention of asylum seekers generally should be avoided and considered only as a measure of last resort. Because seeking asylum is not a crime, an individual's status as an asylum seeker is not in and of itself a valid basis for detention. Instead, detention is an exceptional measure that can be justified only by a legitimate purpose and when its necessity, reasonableness, and proportionality are based on an individualized assessment for each person.

# Using Int'l Law and UNHCR Materials in Direct Representation

# Using Int'l Law and UNHCR Materials in Impact Litigation



## Justice Stephen Breyer, “The Supreme Court and the New International Law,” ASIL, April 4, 2003

“The lawyers must do the basic work, finding, analyzing, and referring us to, that [comparative law] material. I know there is a chicken and egg problem. The lawyers will do so only if they believe the courts are receptive. By now, however, it should be clear that the chicken has broken out of the egg. The demand is there. To supply that demand, the law professors, who teach the law students, who will become the lawyers, who will brief the courts, must themselves help to break down barriers - barriers that exist between disciplines, so that the criminal law professor as well as the international law professor understands the international dimension of the subject ....”

# Access CGRS Technical Assistance

CGRS provides free expert consultation to attorneys and organizations representing asylum seekers, including legal technical assistance, strategy development, sample briefs, unpublished decisions, country conditions evidence, and expert witness affidavits.

**Access assistance in your case:** <http://cgrs.uchastings.edu/assistance>.

**Email:** [CGRS-TA@uchastings.edu](mailto:CGRS-TA@uchastings.edu) with your CGRS Case Number if you have follow-up questions.

**Reach out to CGRS:** [cgrs-ABtracking@uchastings.edu](mailto:cgrs-ABtracking@uchastings.edu) to request CGRS's amicus support in a case involving *Matter of A-B-* before the BIA or courts of appeals.

# CGRS Technical Assistance Resources

## Practice Advisories

- Domestic violence
- Children's asylum
- Fear-of-gang claims
- Gender-based claims
- CAT protection claims
- EAD Rule

## Country Conditions Reports

- Specific topics in individual countries (e.g., children, indigenous, LGBTQI+, gang)

## Unpublished Case Law

- IJ and BIA decisions

## Expert Declarations

- Country-specific (e.g., violence against women, children, LGBTQ)
- Topic-specific (e.g., domestic violence, incest, trauma and memory)

## Sample Pleadings

- Case documents: declarations, indices, expert affidavits
- Legal briefs

# Contact CGRS for Amicus Support in the Courts of Appeals

- Gender-based, gang-related, and family-based PSG claims
- Thorny nexus issues
- Social group cognizability findings turning on the “circularity principle”
- Issues surrounding state protection (asylum/withholding) or a state’s acquiescence to torture
- Bars to asylum
- The rights of children or pro se respondents
- Individuals affected by climate displacement
- Failure to admit or credit expert evidence, including universal or global declarations

EMAIL: [cgrs-ta@uchastings.edu](mailto:cgrs-ta@uchastings.edu) with your request and CGRS case number

# Questions?

A photograph showing the silhouettes of a group of refugees walking across a field at sunset. They are carrying various items, including bags and bundles, on their heads and backs. The scene is reflected in a pool of water in the foreground. The sky is filled with large, dark clouds, and the sun is low on the horizon, creating a warm, golden glow. The overall mood is one of resilience and hope.

**Thank You!**

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