

# Refugee definition

01 March 2019

## Key points

- The primary and universal definition of a refugee is contained in the 1951 Refugee Convention. Extended definitions are contained in regional instruments in Africa and Latin America. Clarify which refugee definition applies in your host country taking into account national and international law.
- The refugee definitions are declaratory, i.e. people are to be regarded as refugees until it is determined otherwise, and apply in all situations including emergencies.
- Ensure that refugee protection is afforded to all refugees and asylum-seekers, i.e. those who have been determined as refugees and those who await determination of their refugee status.

## 1. Overview

The refugee definition answers the question "who is a refugee" and is the basis for determining refugee status. The definition applies to individuals as well as groups of persons.

Being a refugee entitles the person to a number of (refugee) rights, including the right not to be sent back to the country of origin (principle of **non-refoulement**). See also the [entry on Access to territory and non-refoulement](#).

The refugee definition is declaratory, i.e. a person is a refugee as soon as s/he fulfils the criteria contained in the definition. This would necessarily occur prior to a formal determination of her/his refugee status. Until such determination is made it must be assumed that those who have crossed an international border to escape a risk of serious harm in their country of origin are refugees and should be treated as such.

## 2. Relevance for emergency operations

The refugee definition applies both in emergency and non-emergency situations and can under no circumstances be changed, restricted or suspended.

Emergency situations, however, typically do not allow for time and resource intensive individual status determination. Group determination on the basis of a **prima facie** recognition of refugee status may be more suitable in emergency situations. See also the entry on [Refugee status determination](#) ([Refugee status determination \(internal\)](#)) - accessible to UNHCR staff only).

When refugee status is not immediately determined, either on an individual or group basis, it is important to recall the declaratory character of the refugee definition and to operate on the assumption that all those fleeing a situation of serious harm in their country of origin are refugees, even if this is not always formally stated.

As such, they all enjoy protection from [refoulement](#) as well as protection derived from human rights law and - if applicable - international humanitarian law.

### 3. Main guidance

The 1951 Convention Relating to the Status of Refugees provides the universal definition of a refugee. This definition is extended by criteria contained in regional instruments and in national law, as applicable. Where UNHCR conducts RSD under its mandate, the authority to do so derives from its mandate under UNHCR's [1950 Statute](#). However, UNHCR applies the eligibility criteria as set out in the 1951 Convention, which constitutes the later, more specific and authoritative expression of the refugee definition, supplemented by definitions in regional instruments (see below).

#### The 1951 Convention and its 1967 Protocol

The primary and **universal** definition of a refugee that applies to States is contained in Article 1(A)(2) of the 1951 Convention, as amended by its 1967 Protocol, defining a refugee as someone who:

**"owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.**

**In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national."**

The inclusion criteria in Article 1A is complemented by clauses contained in Articles 1D to 1F of

the 1951 Convention. Together, they form the refugee definition in the 1951 Convention, but consideration of these aspects of the definition will generally not be a priority in emergency situations. For completeness they are listed below:

- Article 1 D on its face excludes those presently receiving protection or assistance from another organ of the United Nations (essentially Palestinian refugees), but also explicitly includes these same people when that assistance or protection has ceased.
- Article 1 E excludes those presently enjoying rights normally accorded to nationals in a country where they have taken residence.
- Article 1 F excludes persons who would otherwise qualify for refugee status on account of having committed, or participated in the commission of, certain serious crimes or heinous acts. See also the entry on [Exclusion clauses \(article 1F\)](#).

Finally, Article 1 C describes the circumstances in which a refugee ceases to be a refugee. Cessation considerations are normally not relevant to emergency situations. However, in the event that an emergency causes refugees to return to their country of origin prematurely, they will remain of concern to UNHCR and will retain their status as refugees. Any return undertaken where there is effectively no other alternative, or where the alternative offers no more protection than does the country of origin, cannot be considered voluntary repatriation and does not change or cease the refugee character of the individuals concerned.

The above-mentioned core definition in Article 1 of the 1951 Convention is supplemented by regional instruments in Africa and Latin America.

In **Africa**, Article I (2) of the 1969 OAU Convention governing specific aspects of refugee problems in Africa, a binding legal instrument open to all Member States of the African Union, extends the refugee definition to:

**"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."**

In **Latin America**, Conclusion III of the 1984 Cartagena Declaration, a non-binding instrument that nonetheless is incorporated in the domestic legal framework of many countries in Central and South America, extends the refugee definition to:

**"persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."**

## **UNHCR's mandate**

Based on UNHCR's Statute and successive UN General Assembly and ECOSOC resolutions UNHCR's competence to provide international protection to refugees encompasses individuals

who meet the criteria for refugee status contained in Article 1 of the 1951 Convention and its 1967 Protocol and is extended to individuals who are outside their country of origin and who are unable or unwilling to return there owing to serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order. See also the Entry on [UNHCR's mandate for refugees, stateless persons and IDPs](#).

## **National law**

In any operational context, the national legal framework is also important because it is usually the primary source of law for national authorities and as such generally serves as their first point of reference. The definitions contained in international and regional instruments will generally have been incorporated into the national legal frameworks of the States parties to them. It is therefore critical to be aware of and understand the refugee definition provided under the relevant national legal framework.

## **Annexes**

[Convention and Protocol relating to the Status of Refugees, 1951](#)

[OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept 1969](#)

[Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Nov 1984](#)

## **4. Links**

[Handbook on Procedures and Criteria for Determining Refugee Status under the 19...](#)

## **5. Main contacts**

UNHCR Dep. Representative (Protection), UNHCR Asst. Rep. (Protection), and/or Snr Protection Officer in the country

The UNHCR Regional Asst./Dep Rep (Protection) and/or Snr. Regional Protection Officer at the regional office (if applicable)

The Snr. Regional Legal Advisor in the respective UNHCR regional bureau, covering the respective country region, who in turn will liaise as required with the parent unit at UNHCR DIP.