

# Role of the United Nations High Commissioner for Refugees in Refugee Protection: A Critical Review of the Changing Mandate and Challenges to its Functions

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**Abstract:** The UNHCR was initially mandated to protect and resettle refugees that had accumulated in Europe following the aftermath of the first and second world wars. It was formed in 1951 by the Refugee Convention. Since its inception, it has succeeded in resettling majority of the refugees that were displaced in Europe, and the convention was later revised in 1967 to remove the geographical restraints that restricted it to Europe alone. Over the years, its mandate has grown to take care of refugees all over the world, significantly during the decolonization of Africa, and in some cases to take care of internally displaced persons. With the rising influx of refugees into Europe in recent years, human rights abuses have been leveled at refugees, this article seeks to understand the role of the UNHCR in the protection of refugees and the challenges the organization is facing. In addition, recommendations to deal with these challenges will be given.

**Keywords:** United Nations High Commission for Refugees, Refugees, Protection, Displacement, Shelter, Asylum.

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## 1. INTRODUCTION

In recent years, the world has been plagued by large scale conflict in but not limited to Africa, the Middle East and Asia. There have been civil wars, political upheaval, religious tension and emergence of terrorist groups that have caused levels of displacement unseen since the UNHCR was formed after World War 2. The UNHCR is the world's leading organization charged with protecting refugees and other forcibly displaced people and with helping to resolve the problem of statelessness and asylum seeking. The large scale and complexity of situations of forced displacement, lack of lasting solutions and the rapidly changing global environment in which displacement is occurring gives rise to unprecedented demands for the UNHCR to which it must adapt to and respond.

The United Nations High Commissioner for Refugees (UNHCR) was established in 1950 and its mandate is rooted in the 1951 Convention relating to the Status of Refugees and the 1967 protocol. The United Nations High Commissioner for Refugees (UNHCR) was tasked with a core mandate to protect "refugees". This is a legal term referring to displaced people meeting certain criteria. But in today's complex world there are other similarly uprooted groups or people on the move, known variously as asylum-seekers, internally displaced persons (IDPs), stateless persons or migrants. Persons of Concern to UNHCR, are those whose protection and assistance needs are of interest to UNHCR. They include refugees, asylum-seekers, stateless people, some internally displaced people and returnees. These two legal instruments are seen to not adequately address the complexity and magnitude of current refugee situation throughout the globe. Challenges to international refugee protection are a persistent feature and refugee movement is not decreasing by any amount and thus refugee protection is in a state of perpetual crisis (Kelley & Durieux, n.d.).

In order to understand the concerns and mandate of the UNHCR, we first have to understand the complexity of definitions used for the different groups of people. Refugees are persons - sometimes entire villages and towns - fleeing armed

conflict, religious or other persecution, often at the hands of their own governments. They cross borders in search of safety and become internationally recognized with access to official assistance from states, UNHCR and other organizations. An asylum-seeker is someone who says he or she is a refugee, but whose claim has not yet been definitively assessed. Internally displaced people are often wrongly identified by the press or general public as refugees, however, as the name suggests, IDPs are people who have not crossed an international border but remain within their own countries though they may have fled for similar reasons such as war or persecution, sometimes perpetrated by their own governments, they legally remain under the protection of that same government, and retain all their rights to protection under human rights and international humanitarian law. Victims of natural disasters also frequently become IDPs (UNHCR, 2014).

A stateless person is an individual who is not considered as a national by any state under the operation of its law, including a person whose nationality is not established. Returnees are individuals who were outside his/ her country of origin, and who remain so for a limited period (usually two years), then return to their country of origin. The term also applies to internally displaced people who return to their previous place of residence. Migrants, particularly economic migrants, choose to move not because of a direct threat of persecution or death but mainly to improve their lives by finding work, or in some cases for education, family reunion or other reasons (UNHCR, 2014).

## 2. THE MANDATE OF THE UNHCR

UNHCR's mandate is the legal basis for UNHCR's activities and the rationale for its existence. Simply put, it informs what UNHCR is supposed to do and for whom. The primary source of UNHCR's mandate is the Statute adopted by the General Assembly (GA) of the United Nations in 1950 (Resolution 428 (V) of 14 December). Paragraph 1 of the Statute states that "The ... High Commissioner ..., acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees (...)"The Statute further develops to include stateless persons (clarified by the General Assembly in 1974 and confirmed in 1976), asylum-seekers (clarified by the General Assembly in 1981), and returnees (recognized by the General Assembly in 1985). UNHCR does not have a general or exclusive mandate for internally displaced people. The General Assembly authorized UNHCR's involvement in specific operations since 1972 (for example in Sudan, Angola, Colombia, and Bosnia and Herzegovina) ("UNHCR Emergency Handbook", 2018).

The High Commissioner has a mandate with respect to refugees globally, wherever they are located. The refugee mandate applies in both emergency and non-emergency asylum-seeker and refugee situations, as well as in situations of emergency and non-emergency mixed movements involving asylum-seekers and refugees. UNHCR's mandate is its entirely non-political (that is, impartial), humanitarian and social character (paragraph 2 of the Statute). UNHCR's core mandate is to ensure the international protection of uprooted people worldwide. Protection has many variances and includes but not limited to ensuring that asylum seekers are granted asylum, their rights protected and resettling of displaced persons.

### *Shelter:*

As part of their mandate in the protection of refugees, the UNHCR provides shelter for displaced individuals that have fled their country due to conditions that make it dangerous. This function is often offered during dire humanitarian crises and emergencies where lives are at stake and the difference between living and dying is the UNHCR providing adequate basic and essential living conditions such as tents, plastic sheeting and food (UNHCR website). Most refugees lack the resources or funds to fend for themselves especially immediately after fleeing, and the UNHCR anticipates this with emergency plans and tools to alleviate their suffering, even temporarily ([www.unhcr.org/shelter](http://www.unhcr.org/shelter)).

The most common way that the UNHCR uses to provide shelter for refugees is through established refugee camps all over the world. These camps are often established in peaceful and stable states close to countries that are unstable or war-torn to allow easy access to the refugees when they cross their borders. Some of the most prominent refugee camps currently include Dadaab Refugee Camp in Kenya near the Somalia border, the Darfur Refugee Camp in Chad near Sudan, the Kakuma Refugee Camp in Kenya that hosts refugees from south Sudan, Philippines Refugee camp for refugees fleeing wars in Indochina, Niatak camp in Iran for afghan refugees and the Shimelba camp in Ethiopia (Verdirame, 1999).

The UNHCR has created partnerships with other organizations such as the Red Cross and humanitarian agencies to provide food, water, beddings and other supplies for the refugees to survive while they settle down. In addition to this, the

host states provide military support for security to protect the refugee camps from threats levelled against them by insurgents. Physical medical care and mental care in form of therapy is also provided in the camps to treat physical wounds and also help the refugees cope with trauma experienced during war. In large camps, there are schools and training centres to provide education and technical skills to help the refugees learn to earn a living if and when they resettle (Barber, 1997) (UNHCR 2006).

Every refugee and person of concern has a right to access a shelter in an emergency where they will also be able to access emergency supplies of food, water, and places to rest. For the UNHCR, in case displacement is protracted, more stable solutions that are not tents and temporary placements need to be considered. However, most camps that start out temporarily often end up becoming permanent residence for refugees; for instance the Dadaab camp in Kenya has been present since 1992 and is still active to date owing to the ongoing conflict in Somalia. There are also unofficial refugee camps in various countries that experience large influxes of refugees; volunteers and various non-governmental organizations provide services to refugees but are not under the purview of the UNHCR (Anika & Stijn, 2017).

### ***Protection:***

Refugee protection is the act of granting asylum to refugees. The notion of ‘protection’ has been defined by the Inter-Agency Standing Committee (IASC) as a function that encompasses all activities aimed at obtaining full respect for the rights of the individual, in accordance with the letter and the spirit of relevant bodies of law, including human rights, humanitarian and refugee law, and without discrimination of any kind (Refugees, 2018).

In protecting refugees, UNHCR does its duties at international level and field level. In international level, UNHCR promotes international refugee agreements and monitors government compliance with international refugees law which has been seen by UNHCR staff promoting the laws among all people involved in refugee protection. At field level, UNHCR staff work to protect refugees through a wide variety of activities like responding to emergencies, relocating refugee camps away from border areas to improve safety, ensuring that refugee women have a say in food distribution and social services, re-uniting separated families, providing information to refugees on conditions in their home country so that they can make informed decision about return, documenting a refugees need for resettlement to a second country of asylum, visiting detention centres and giving advice to governments on drafting refugee laws, policies and practices ("The role of UNHCR in refugee protection project - PDF Free Download", 2018).

The UNHCR is highly involved in conflict-torn countries, providing assistance and protection, to the extent possible, to internally displaced persons (IDPs) and to other displaced persons. Generally, the UNHCR's involvement with the internally displaced has often been in the context of the voluntary repatriation of refugees, where return movements and rehabilitation programs have included both returning refugees and displaced persons in circumstances where it was neither reasonable nor feasible to treat the two differently (Refugees, 2018).

After the late 1980s, however, the UNHCR has taken on different responsibilities. It has become more active in countries of refugee origin by granting humanitarian aid, monitoring human rights violations and trying to prevent the flow of refugees. Today, the UNHCR's role has been expanded so that it covers both the victims of war and gross human rights violations, as well as people who have not crossed an international border. In this regard, one scholar has noted that the “UNHCR's role has changed so much that it now officially provides assistance even to those who are not displaced.” UNHCR also helps “potential source governments” in their stabilization process ("Annual-report-chapter-2c;hr," n.d.).

As of 2015, the UNHCR has been heavily criticized by civil society and humanitarian organizations for not being able to protect refugees migrating from war-torn Syria to Europe. UNHCR has been criticized for not doing enough to push European states and criticizing them for not doing enough to help deal with the ongoing refugee crisis. In March 2016, UNHCR distanced itself from the EU-Turkish plan, stating that it undermined the tenants of international refugee protection (Sandvik, 2016).

### ***Health:***

Addressing concerns about health in the context of violent conflict and the consequent forced displacement of populations raises operational and ethical issues for the UNHCR. UNHCR strives to ensure that all refugees have access to quality health care. This can include HIV prevention, protection and treatment, reproductive health services, food security and nutrition, and water, sanitation and hygiene services. In addition the UN Refugee Agency offers paediatric healthcare, preventative care, maternal and obstetric services and mental health and counselling resources. Field staff work to stop the

spread of disease in refugee communities by providing displaced people with vaccinations, bed nets and hygiene and sanitation kits. As of September 2017 timely interventions and regular monitoring allowed UNHCR and partners to provide lifesaving assistance to approximately 7.3 million people in camps and other displacement settings (Refugees, 2018).

The health of those forced to flee is a major priority for UNHCR. The 1951 Refugee Convention states that refugees should enjoy access to health services equivalent to that of the host population, while everyone has the right under international law to the highest standards of physical and mental health. Health and nutrition programmes are delivered with an emphasis on primary health care and support for secondary hospital care. Their healthcare interventions are based on needs, risks and vulnerabilities, which are determined by a health and nutrition partner and/or UNHCR staff (Refugees, 2018).

Among forcibly displaced populations in developing countries, the top five killers of children under the age of five are malaria, malnutrition, measles, diarrhoea and respiratory tract infections. UNHCR's priorities and those of their partners at the start of an emergency are measles immunization, nutritional support, control of communicable diseases and epidemics, implementation of the reproduction health measures and public health surveillance. As the situation stabilizes, these services are enlarged. In more developed and urban settings, public health priorities among adults shift toward cardiovascular and chronic diseases and cancers (Refugees, 2018).

Most refugees are remarkably resilient and are able to move on despite their distressing experiences. UNHCR provides counselling and other psychosocial support to the very small number of people forced to flee who need such help. Their response is critical when social structures and essential services have broken down (Refugees, 2018).

UNHCR uses an online platform called Twine to manage and analyse public health data collected in refugee operations. Data is collected using a number of different tools, which cover a range of sectors and operational settings. UNHCR and partners select the most appropriate combination of tools in Twine to design, monitor and evaluate their public health programmes (Refugees, 2018).

The aim is to improve the health status of people of concern through evidence-based policy formulation, improved management of health programmes and, ultimately, direct actions that improve refugee health (Refugees, 2018).

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#### **Advocacy:**

A vital part of UNHCR's work is advocacy. An advocacy campaign is a set of actions targeted to create support for a policy or proposal. It is the act of giving support to a policy and persuading those with power to act in support of the policy at local, national and international levels. Advocacy at UNHCR helps to transform policies and services that affect displaced and stateless people on a national, regional and global level. In both countries of asylum and countries of origin, the UNHCR works within national political, economic and social structures to bring policies, practices and laws into compliance with international standards ([www.unhcr.org/advocacy](http://www.unhcr.org/advocacy)).

In times of forced displacement, the UNHCR uses advocacy to influence governments, non-governmental partners and the public at large to adopt practices that ensure the protection of those in need. Advocacy designed to change systems is distinct from advocacy on behalf of an individual victim of violence in the courts or within the community. Systems advocacy means efforts to change policy and practice at the local, national or international level; to change the situation for groups of individuals who share similar problems. While systems advocacy works to improve the system to the benefit of individuals, it is a long-term approach to problem solving requiring sustained effort. Individual advocacy focuses on changing the situation for an individual and protecting their rights ("What is Advocacy and Why is It Important?" 2018).

Governments normally guarantee the basic human rights and physical security of citizens. But when civilians become refugees this safety net disappears. UNHCR's main role in pursuing international protection is to ensure that states are aware of, and act on, their obligations to protect refugees and persons seeking asylum. Countries may not forcibly return

(refoulement) refugees to a territory where they face danger or discriminate between groups of refugees. They should ensure that refugees benefit from economic and social rights, at least to the same degree as other foreign residents of the country of asylum. For humanitarian reasons, states should allow a spouse or dependent children to join persons to whom temporary refuge or asylum has been granted. Finally, states have an obligation to cooperate with UNHCR (Refugees, 2018).

Governments establish status determination procedures to decide a person's legal standing and rights in accordance to their own legal systems. UNHCR may offer advice as part of its mandate to promote refugee law, protect refugees and supervise the implementation of the 1951 Refugee Convention. The agency advocates that governments adopt a rapid, flexible and liberal process, recognizing how difficult it often is to document persecution (Refugees, 2018).

### 3. CHALLENGES FACING UNHCRS MANDATE

Almost two thirds of the world's population that has been forced to move by violence, conflict and general infringement on human rights still remain within the borders of their own countries and are still directly exposed to gross violation of International law and have limited access to protection and support. Patterns of displacement are also changing in a rapidly urbanizing world. The number of displaced people and refugees in urban centres is growing even though a large number is still confined within to the camps (Refugees, 2018).

Some countries have taken measures to restrict access to their territories, reduce the level of rights they provide to refugees, deny them asylum and even prevent them from reaching safety. They have gone as far as setting up barriers to entry, including but not limited to transferring asylum seekers to other countries that do not have the capacity to provide protection. Some have introduced quotas to the number of applicants admitted to asylum procedures. They've also set up unwarranted detention centres for asylum seekers. This has been the case in the European migrant crisis with countries barricading their borders to restrict inflow of refugees and asylum seekers. These restrictions are a driving factor in the emerging trends of smuggling and other exploitative network which pose a challenge to the protection of refugees. One of the most crucial principles laid down in the 1951 Convention is that refugees should not be expelled or returned "...to the frontiers of territories where [their] life or freedom would be threatened..." (Art. 33). A shift in strategic interests, a radical change in the ethnic background of asylum seekers and a rise in clandestine means of arrival has been seen to cause these strict rules being adopted by some countries (Kelley, N., & Durieux, J.).

Serious concerns about security have also accompanied many refugee flows. Most countries cite national security as a reason to lock out refugees from entering their countries, while others threaten to close down existing camps and shelters that provide refuge for these people. With the rise of incidences of terrorism and growing so called Islamic groups, many countries have used this as an excuse to deny asylum to asylum seekers and close their borders to refugees. This is highly influenced by the media who do not practice impartiality and drive the narrative that people from certain ethnic and religious backgrounds, mainly the from the Middle east and Muslims, are more likely to be terrorists which creates a fear of and discrimination against them (Kelley, N., & Durieux, J.).

Translating international legal instruments and guidance into national practice expresses many implementation challenges. Many countries have not been able to establish effective systems for identification, referral, care managements, standards, protocols and procedures for cases of children in mixed migration flows. Systematic capacity building and coordination are important in order to improve the ability of national and local officials to respond to large migration flows involving children (Kelley, N., & Durieux, J.).

While many countries have established special procedures for the protection and assistance of children in mixed migration flows, children might not have access to these services if they are not able to prove that they are under the age of 18. Therefore, issues around documentation and age assessment are important for children in mixed migration flows. The tendency for national migration policies to criminalize irregular migration may expose children in mixed migration flows to greater protection risks. Although the legal actions against trafficking in the international child protection framework are improving, government policies often focus on the criminalization and prosecution of traffickers and not on the protection of trafficking victims. Smuggled or trafficked children may be given false information or instructed to claim that they are without identification documents. Children may fear reprisals if they report their situation. Thus, the reported number of trafficked children may not accurately reflect the real numbers (UNHCR, 2016).

Refugees are an international responsibility, and all countries need to share this equitably. First and foremost, support for developing and middle-income countries hosting the largest populations of refugees is both critical and long overdue. At the same time industrialized countries need to both live up to their obligations to the comparatively smaller numbers of refugees arriving at their borders and give refugees more opportunities for resettlement or admission so that they are not compelled to resort to smugglers or traffickers to find a solution. Each country has a role to play in assuming this responsibility. We need more global responsibility sharing at this time of soaring levels of displacement and human suffering not less (Refugees, 2018).

According to UNHCR reports, a large number of refugees in the world do not reside in refugee camps, but are spread out in the host countries among the native population. Most of these people are undocumented and live in private housing without work, and are often perceived as security threats by local governments and residents (UNHCR Global Trends).

Most refugee camps sprung into existence as a response to an immediate humanitarian crisis at the time, but have grown to become permanent residences for some refugees. The presence of facilities such as clinics and hospitals, schools and training centres as well as opportunities for economic income give most refugee shelters a permanent feel that encourages the refugees to stay there. Since repatriation and resettlement are both done on a voluntary basis, the camps become almost impossible to get rid of, and this has raised a lot of problems especially for host countries (UNHCR, 2014).

A distinct lack of support for developing countries by the UNHCR has created some deficiencies in its operations towards providing shelter to refugees. African governments have pointed out that while countries within the African continent host two-thirds of the world's refugee camps, UNHCR care and maintenance programmes are inadequately funded and thus unable to meet minimum standards, let alone provide refugees with means of self-reliance. It is argued that this situation is compounded by geopolitical considerations that desire to curb an outpouring of refugees into Europe. Developing countries further ask the question why their borders should remain open to refugees while the developed countries choose to close theirs. The capacity of developing countries to reintegrate refugees is minimal as they are faced by their own enormous problems such as underdevelopment, poor infrastructure, poor health facilities and massive unemployment rates (Kelley, N., & Durieux, J.).

Another challenge cited is the state of limbo many refugees currently exist under. Many of the refugees have not been granted asylum in the countries they currently reside in and return home is not guaranteed to be safe. In cases where repatriation exercise are underway, the UNHCR faces great challenges with the refugees seen to be returning to extraordinarily difficult circumstances. There is little infrastructure for the provision of basic services health, education and water delivery. This was the case seen in Angola when close to 3 million refugees and IDPs returned to their places of origin where there was lack of basic services, destroyed roads and bridges and even the presence of landmines and unexploded ordnances that make resuming farming difficult and putting the lives of returnees at risk (Kelley, N., & Durieux, J.).

#### 4. CONCLUSION

The current challenges facing the UNHCR are likely to continue as instability, conflict and large scale displacement continues since underlying causes of conflict are not being addressed. Meanwhile, in established economies, the negative impact of globalization and economic uncertainty in these countries is likely to continue to fan a nationalistic reflex other political concerns which in turn influence migration and asylum policies.

Increased sensitization and recognition of how refugees and displaced people can contribute to host communities and the positive benefits of their entry into the local labour force can go a long way in facilitating their acceptance into their host communities. The UNHCR should look at engaging international financial institutions to develop new instruments and opportunities for engaging host countries in displacement situations. This will assist in alleviating the financial strain of taking in refugees by host communities.

This is not to say there have been no positive developments in dealing with refugees, people in search of protection and asylum have continued to be admitted into safety. The involvement of other non-governmental and private actors to support refugees has been strengthened by the emerging trend of volunteerism and current engagement by civil societies in refugee issues which has led to a decrease of the burden of refugee protection which had previously solely lied on UNHCR.

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