

## HUMAN RIGHTS AND DIGNITY OF REFUGEES: RISKS AND CHALLENGES WORLDWIDE\*

**“To deny people their human rights is to challenge their very humanity.”**

**Nelson Mandela**

The term "refugee," like the people it describes, can cover a lot of ground. Politicians, aid workers, academics, and the press often approach the word from different angles, and with varying ideas of the rights, roles, and responsibilities the term implies. Such divergent views fuel the global debate about how best to manage and protect refugees, who by some counts number over 13 million.

The complexity of the problem, as well as the many and vocal interest groups concerned, makes it difficult to sort out global refugee issues without answering two main questions. First, who qualifies as a refugee? Second, what are the most pressing issues facing them and the many institutions with which they interact? The most accurate answers can be had by zeroing in on the legal definition of "refugee," then backing away for a broader look at those whom the definition encompasses, and the issues connected to their situation.

### **Who Is a Refugee?**

Understanding the problems confronting refugees and those striving to protect them depends on grasping precise legal definitions. These definitions determine who qualifies for the protections, both legal and physical, that national and international bodies have developed to deal with people pushed across borders by conflict and persecution. They also play a critical role in efforts to collect and interpret refugee statistics.

The core definition of a "refugee" is contained in the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees, which define a refugee as an individual who: "owing to a 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 unwilling to avail himself of the protection of that country."

Recognizing that this definition of so-called "statutory refugees" did not cover situations of mass flight from war, regional bodies such as the Organization for African Unity developed agreements like the OAU Convention of 1969. These expanded the definition of refugees to include not only individuals subject to persecution, but also every person who in the words of

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the OAU Convention "owing to external aggression, occupation, foreign domination, or events seriously disturbing the public order...is compelled to leave...to seek refuge in another place outside his country of origin or nationality." The Cartagena Declaration, adopted in 1984 by a group of Latin American states, added massive human rights violations to this list. Though it is not a treaty, the declaration carries considerable moral force in the region and beyond.

On this basis, people who move as a group across international boundaries to escape war or civil conflict are also generally recognized as refugees on a group or prima facie basis in Africa and Latin America, and frequently in Asia and the Middle East as well. Poorer countries in these regions use the broader definition of refugees in part because they lack the administrative capacity to determine whether or not each individual meets the criteria for refugee status. Those in mass flight in industrial regions, however, are not automatically recognized as refugees, and instead may be subject to "individual status determination" using the narrower statutory (Convention) definition of a refugee.

The concept of refugees as people fleeing persecution is central to efforts to aid and protect them. However, debates exist about what constitutes "persecution." Some parties ask whether the persecution must be state-sponsored and focused on individuals, or whether widespread social practices and attitudes also qualify as grounds for persecution. Further arguments surround what constitutes a human rights abuse and what is a "cultural practice."

Such questions arise particularly in gender-related cases; for example, women subjected to female genital cutting, women under the Taliban regime whose education was blocked, or gays and lesbians from countries where their sexual orientation is prohibited by law and subject to severe punishment. Gender-based factors have, on a case-by-case basis, been recognized as grounds for granting asylum and refugee status to individuals, but there remains no international consensus or standard for doing so.

### **International Concerns**

Given the dimensions of the problem described above, it is no surprise that national governments and global bodies are engaged in an ongoing discussion of international policy issues having to do with refugees and related populations. These discussions include:

**Legal protections:** Arguably, the principal and most enduring international policy issue is protection, a matter of concern for refugees, asylum seekers, and IDPs alike. The "responsibility to protect" is grounded in the principle that sovereign states have the primary obligation to protect their citizens against harm, but when states are unable or unwilling to do so, that responsibility falls to the international community. Legally, the responsibility to protect is upheld by obligations inherent in the concept of sovereignty, by the UN Security Council's responsibility for maintenance of international peace and security under Article 24 of the UN Charter, and by legal obligations embodied in specific declarations, covenants, treaties, international humanitarian law, and national law. Protection is also the core mandate of UNHCR and the fundamental principle by which other policy issues and options are guided. It has also been reaffirmed by the findings of the United Nation's Commission on Sovereignty and Intervention.

The issues raised by the responsibility to protect are numerous. At what point does the international community determine that a given state has failed to exercise its obligation to protect, and that international intervention is warranted? What threshold in terms of loss of life, ethnic cleansing, or others harm demanding protection must be reached before international military intervention is justified? These have been dilemmas in cases where military

intervention ultimately did occur (with varying degrees of success), as in northern Iraq in the Gulf War of 1991-1992, Somalia in 1992-1993, Bosnia in 1995, or Kosovo in 1999, and where it did not, as in Rwanda in 1994.

**Providing humanitarian aid:** For humanitarian assistance agencies, a dilemma that has become particularly salient in recent years is how best to provide protection and assistance under conditions of conflict. The challenge arises especially when humanitarian assistance is diverted to fuel conflict, when UNHCR and NGO staff are themselves targeted by warring parties, or both.

Under such circumstances, international agencies face tough decisions: Do they call for international military involvement to provide security for protection and assistance operations, and thereby risk violating the principles of neutrality and impartiality under which they seek to function? What if the only way to protect people is to move them away from areas of conflict? Are agencies then complicit in "ethnic cleansing"? Humanitarian agencies struggled with these issues in Bosnia. When do international agencies choose to pull out of a conflict situation (as some did from Liberia), and how do they balance their responsibilities to protect and assist refugees and displaced populations against concerns that their presence may prolong a conflict, let alone jeopardize the safety of their own staff?

**Handling combatants:** Another debate on the world stage is the proper response by aid agencies when the populations they seek to protect in refugee camps include combatants or war criminals. People in refugee camps or self-settled refugee communities are often thought of as being exclusively vulnerable civilians and, under various international legal instruments, those who engage in armed activities are not to be accorded refugee status. However, in some cases camps do contain armed combatants (so-called "refugee warriors") who may seek to continue fighting opposition forces in their home or host countries (as in the case of Rwandans in the Democratic Republic of the Congo) or who are encouraged by other states to be reservoirs of conflict (as in the case of Afghan mujahedeen in Pakistan, who were armed by Pakistan, Saudi Arabia, China, and the U.S. to fight the Soviet occupation of Afghanistan).

**Mass flight:** Another international policy issue becomes especially prominent when developed countries are faced with prospects of mass exodus from conflicts in nearby countries. Most Western countries do not subscribe to the expanded "refugee" definition of the OAU Convention or Cartagena Declaration, and are reluctant to recognize as refugees those in mass flight from generalized conflict. However, humanitarian considerations, along with factors such as domestic political pressures to respond, a sense of shared responsibility for the conflicts in question, the desire for orderly population movements, or the reluctance of neighboring countries to receive mass influxes, can lead to the establishment of one of several forms of temporary protection schemes.

These can include the granting of "temporary protected status" in host countries (also known in Europe as "B-status"), or provisions for "extended leave to remain." Under such arrangements, temporary residence permits are issued to those in flight, without the accordance of full Convention standards or refugee status. Bosnians and Kosovo's in Western Europe and Salvadorans in the U.S. are among those who have received some form of temporary protected status.

A number of international policy issues surround temporary protection: First, in the view of some observers, the use of temporary protection has been adopted by some states as a way to avoid granting more permanent asylum and refugee status. Second, the decision to grant such status is on a situation-by-situation basis and may be accompanied by extended and heated

negotiations over "burden sharing" that is, the equitable distribution of those in flight among prospective host countries. Burden sharing has been a special concern of Germany, which had 320,000 to 350,000 (or approximately half) of the Bosnians who sought protection in Western Europe during the 1992-1996 war.

**Non-refoulement:** In order for states to be willing to grant temporary protection, there needs to be some reasonable expectation that temporary protection is indeed temporary. But debate is underway about when, and under what conditions, it is acceptable and morally principled for host states to return those to whom they have granted temporary protection. In the case of Bosnians in Germany, for example, the original deal struck with UNHCR stipulated that, in exchange for being granted temporary protection in Germany, Bosnians would be returned "in dignity and safety."

However, then the questions arise: What constitutes "in dignity and safety"? What circumstances have to exist in the country or origin? Can people be returned to any safe place, or must they be able to return to the homes or at least the communities in which they lived prior to flight? Is the decision to return the sole prerogative of the host state? Or is the individual's voluntary willingness to return the deciding factor? Under German law, people who remain in the country for five years are eligible for permanent residence, so Germany has exerted great pressure on Bosnians to return "voluntarily;" about 225,000 have done so and another 7,000 have been resettled in third countries. But Germany has also forcibly repatriated over 8,000 Bosnians, thereby bringing upon itself protests and condemnation by UNHCR and other refugee advocacy groups.

These protests are rooted in the principle of "non-refoulement," which is spelled out in the 1951 Refugee Convention, which states that "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Sometimes "refoulement" becomes an international policy issue when host governments want to close camps on their territories and return refugees to countries the host governments deem safe Vietnamese in Hong Kong and Rwandans in Tanzania are among the refugee populations to have faced this situation. In other cases, a de facto host country may refuse to recognize those fleeing to its territory as refugees. This is China's current stance viz á viz North Koreans, who China argues are economic migrants. The round-up and forcible return of North Koreans is characterized by refugee advocates as a violation of the principle of non-refoulement.<sup>1</sup>

### ***Ten Largest Refugee Camps***

The fighting in Syria has forced more than 2 million people out of the country and into refugee camps. Review the list of the 10 most populous U.N. refugee settlements in the world. (Numbers based on the latest data available from UNHCR as of Sept. 2, 2013)

#### **1.Dadaab,Kenya**

A complex of five camps hosts 402,361 people, mostly from neighboring Somalia.

#### **2.DolloAdo,Ethiopia**

A complex of five camps hosts 198,462 people, mostly Somalis fleeing drought and famine in their home country. These people slept in the open there in 2011.

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<sup>1</sup> <http://www.migrationpolicy.org/article/refugees-risks-and-challenges-worldwide>

### **3.Kakuma, Ken**

A total 124,814 Somali and Sudanese refugees live in Kenya's Kakuma refugee camp. Here, men competed at a makeshift stadium at the camp in 2004.

### **4.AlZaatri,Jordan**

Hosts about 122,723 Syrian refugees. Almost 5,000 citizens a day on average are flowing out of Syria, U.N. High Commissioner for Refugees António Guterres said Tuesday.

### **5.Jabalia,GazaStrip**

Nearly 110,000 Palestinians live in the Gaza Strip refugee camp. Here, boys played soccer at the camp in 2003.

### **6.Mbera,Mauritania**

A total 75,261 refugees, mostly fleeing the conflict in northern Mali, occupy the refugee camp in Mbera. Here, the camp in 2012.

### **7.Yida, South Sudan**

A total 70,095 people mostly from Sudan live in the Yida camp, in the newly independent South Sudan. Girl refugees lined up at the camp in 2012.

### **8.Nakivale,Uganda**

A total 68,996 refugees live in the Nakivale settlement. Here, a Rwandan refugee cleaned beans at the camp in 2009.

### **9.Nyarugusu,Tanzania**

A total 68,197 people, mostly Burundians and Congolese, reside at the camp in Kasulu, northwest Tanzania. Here, children walked out of their classroom at the camp in 2010.

### **10.Tamil Nadu state,India**

Some 66,700 Sri Lankan refugees live in more than a hundred camps on the southern Indian state of Tamil Nadu. About 34,000 more live outside the camps. Here, a girl at a camp outside Chennai, India.<sup>2</sup>

## **Refugee Figures**

UNHCR was set up in 1951 to help the estimated 1 million people still uprooted after World War II to return home. Since then, we have helped find durable solutions for tens of millions of refugees and they remain our core constituency.

The latest figures available show that the number of refugees of concern to UNHCR in mid-2014 stood at 13 million refugees, up from a year earlier.

A further 5.1 million registered refugees are looked after in some 60 camps in the Middle East by United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), which was set up in 1949 to care for displaced Palestinians.

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<sup>2</sup> <http://www.wsj.com/articles/SB10001424127887323932604579052742703621858>

The refugees of concern to UNHCR are spread around the world, with half in Asia and some 28 per cent in Africa. They live in widely varying conditions, from well-established camps and collective centers to makeshift shelters or living in the open.

More than half of all refugees of concern to UNHCR live in urban areas. They all face three possible solutions: repatriation; local integration or resettlement.

### **REFUGEE PROTECTION:**

A Guide to International Refugee Law“Everyone has the right to seek and to enjoy in other countries asylum from Persecution.”

Universal Declaration of Human Rights, Article 14(1)

### **The Legal Framework of the International Refugee Protection System**

It is the responsibility of States to protect their citizens. When governments are unwilling or unable to protect their citizens, individuals may suffer such serious violations of their rights that they are forced to leave their homes, and often even their families, to seek safety in another country. Since, by definition, the governments of their home countries no longer protect the basic rights of refugees, the international community then steps in to ensure that those basic rights are respected.

In the aftermath of World War II, the United Nations General Assembly created the Office of the United Nations High Commissioner for Refugees (UNHCR). UNHCR is mandated to protected find durable solutions for refugees. Its activities are based on a framework of international law and standards that includes the 1948 Universal Declaration of Human Rights and the four Geneva Conventions(1949) on international humanitarian law, as well as an array of international and regional treaties and declarations, both binding and nonbinding, that specifically address the needs of refugees.

### **1951 Convention relating to the Status of Refugees**

The Convention Relating to the Status of Refugees is the foundation of international refugee law. The Refugee Convention defines the term “refugee” and sets minimum standards for the treatment of persons who are found to qualify for refugee status.

Because the Convention was drafted in the wake of World War II, its definition of a refugee focuses on persons who are outside their country of origin and are refugees as a result of events occurring in Europe or elsewhere before 1 January 1951. As new refugee crises emerged during the late 1950s and early 1960s, it became necessary to widen both the temporal and geographical scope of the Refugee Convention Thus, a Protocol to the Convention was drafted and adopted.

### **1967 Protocol relating to the Status of Refugees**

The 1967 Refugee Protocol is independent of, though integrally related to, the 1951 Convention. The Protocol lifts the time and geographic limits found in the Convention’s refugee definition.

Together, the Refugee Convention and Protocol cover three main subjects:

- The basic refugee definition, along with terms for cessation of, and exclusion from, refugee status.

- The legal status of refugees in their country of asylum, their rights and obligations, including the right to be protected against forcible return, or refoulement, to a territory where their lives or freedom would be threatened.
- States' obligations, including cooperating with UNHCR in the exercise of its functions and facilitating its duty of supervising the application of the Convention.

By acceding to the Protocol, States agree to apply most of the articles of the Refugee Convention (Articles 2 through 34) to all persons covered by the Protocol's refugee definition. Yet the vast majority of States have preferred to accede to both the Convention and the Protocol. In doing so, States reaffirm that both treaties are central to the international refugee protection system.

“The Conference calls on all Parliaments and Governments to be conscious of their responsibility to protect refugees and to receive victims of political persecution as defined in the 1951 Convention Relating to the Status of Refugees.” 78<sup>th</sup> Conference of the Inter-Parliamentary Union, October 1987

“The Executive Committee reaffirms that the 1951 Convention relating to the Status of Refugees and the 1967 Protocol remain the foundation of the international refugee regime.” UNHCR Executive Committee Conclusion N° 87(f), 1999

### **The responsibilities of States parties to the Refugee Convention**

As a general principle of international law, every treaty in force is binding upon the parties to it and must be performed in good faith. Countries that have ratified the Refugee Convention are obliged to protect refugees on their territory according to its terms.

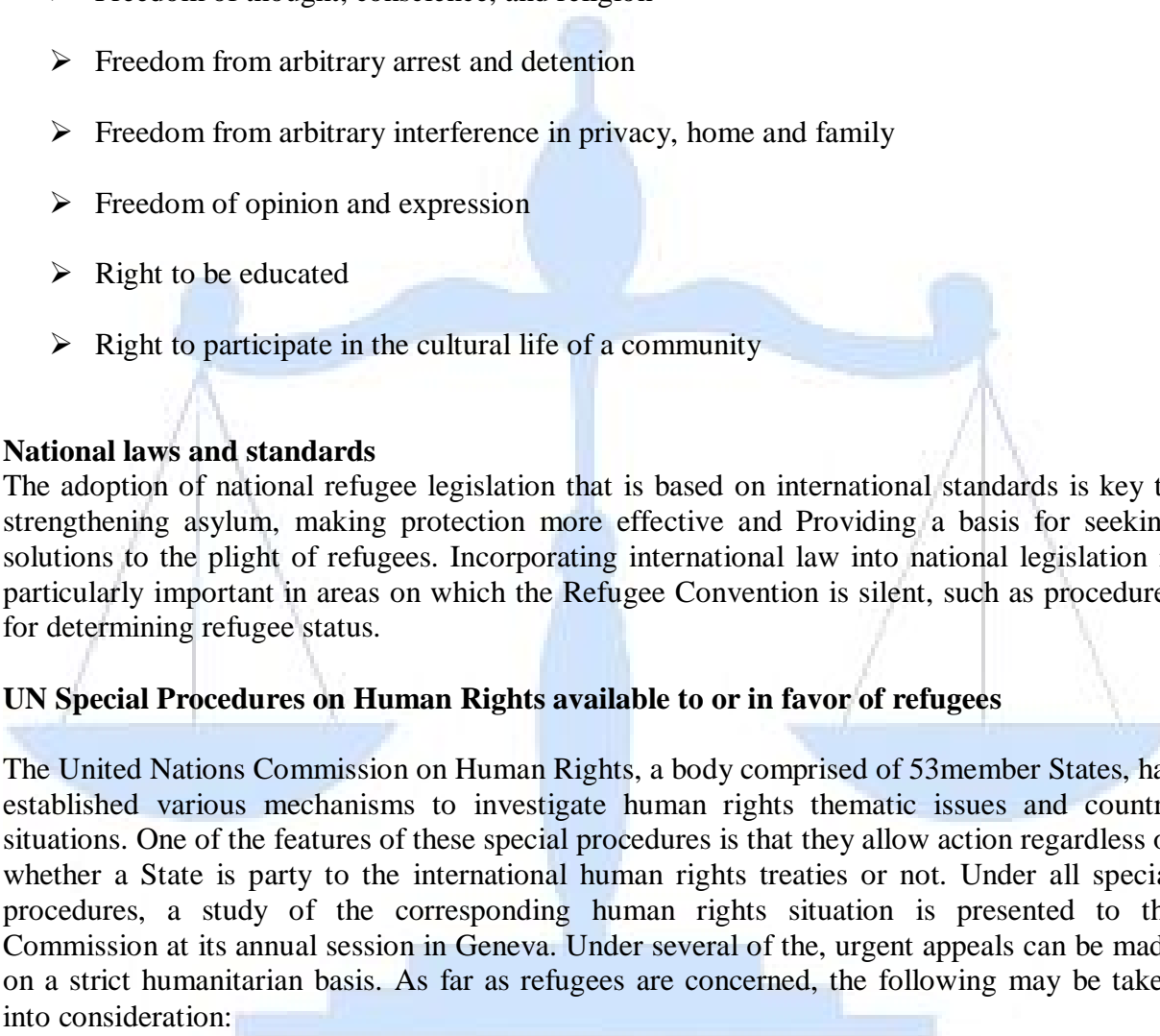
Among the provisions that States Parties to the Refugee Convention and Protocol must apply are:

- Cooperation with UNHCR-Article 35 of the Refugee Convention and Article II of the 1967 Protocol contain an agreement for States Parties to cooperate with UNHCR in the exercise of its functions and, in particular, to help UNHCR supervise the implementation of the provisions found in those treaties.
- Information on National Legislation-The States Parties to the Refugee Convention agree to inform the UN Secretary-General about the laws and regulations they may adopt to ensure the application of the Convention.
- Exemption from Reciprocity-Where, according to a country's law, the granting of a right to an alien is subject to the granting of similar treatment by the alien's country of nationality (reciprocity), this will not apply to refugees. The notion of reciprocity does not apply to refugees since they do not enjoy the protection of their home country.

### **Rights crucial to refugee protection**

Most of the rights crucial to refugee protection are also the fundamental right stated in the 1948 Universal Declaration of Human Rights:

- Right to life, liberty and security of person
- Right to seek and enjoy asylum

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- Freedom from torture, or cruel, inhuman or degrading treatment or punishment
  - Freedom from slavery or servitude
  - Recognition as a person before the law
  - Freedom of thought, conscience, and religion
  - Freedom from arbitrary arrest and detention
  - Freedom from arbitrary interference in privacy, home and family
  - Freedom of opinion and expression
  - Right to be educated
  - Right to participate in the cultural life of a community

### **National laws and standards**

The adoption of national refugee legislation that is based on international standards is key to strengthening asylum, making protection more effective and Providing a basis for seeking solutions to the plight of refugees. Incorporating international law into national legislation is particularly important in areas on which the Refugee Convention is silent, such as procedures for determining refugee status.

### **UN Special Procedures on Human Rights available to or in favor of refugees**

The United Nations Commission on Human Rights, a body comprised of 53 member States, has established various mechanisms to investigate human rights thematic issues and country situations. One of the features of these special procedures is that they allow action regardless of whether a State is party to the international human rights treaties or not. Under all special procedures, a study of the corresponding human rights situation is presented to the Commission at its annual session in Geneva. Under several of the, urgent appeals can be made on a strict humanitarian basis. As far as refugees are concerned, the following may be taken into consideration:

The Special Reporters or special bodies of the UN Commission can intervene with the Government concerned to prevent refugees, asylum-seekers or internally displaced persons from being subjected to imminent human rights abuses or in response to allegations of the existence of such abuses.

Parliamentarians may make use of and contribute to the above special procedures by:

- Providing information under the relevant procedures on the situation of refugees, internally displaced persons and asylum-seekers
- Requesting the relevant thematic procedure(s) to intervene when an individual or group is about to be sent back to a country in violation of the principle of non refoulement or is arbitrarily detained. It should be borne in mind that such a situation can only be addressed by a country or thematic mechanism whose mandate covers the imminent abuse
- Urging their own governments to follow-up on requests for information or urgent appeals issued under the special procedures.



## Human rights law and refugee law: How they are related

International refugee law is part of a larger mosaic of international human rights law and international humanitarian law. Human rights law constitutes the broad framework within which refugee law provisions should be seen. The International Covenant on Civil and Political Rights has been interpreted to prohibit return to torture. In addition, nearly all of its provisions apply to non-citizens.

Refugees are entitled to two partially overlapping sets of rights: those rights accorded to them as individuals and guaranteed under international human rights standards and national law, and specific rights related to their status as refugees.

Two international human rights treaties have a particularly significant role in international refugee law:

- **The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** provides for protection from refoulement, or forced return, to situations where there is a substantial risk of torture. The non-refoulement provision of the Convention against Torture is absolute, unlike the non-refoulement provision of the Refugee Convention, which requires that protection be linked to a fear of persecution because of a person's race, religion, nationality, membership of a particular social group, or political opinion. In addition, no exceptions may be made to the Convention against Torture's non-refoulement obligation. Unlike the Refugee Convention, the Convention against Torture does not have any provision excluding perpetrators of particularly serious crimes or other undeserving persons from its protection.
- **The Convention on the Rights of the Child**, to which nearly every State in the world is a party, applies to all children without discrimination, including child refugees and asylum-seekers. The Convention specifically stipulates that every child seeking refugee status has a right to protection and humanitarian assistance in the enjoyment of the rights set forth in that Convention and in others to which the State is a party.

### What parliaments and their members can do:

Parliaments and their members have a crucial role to play in ensuring protection to refugees both in law and in practice. Key to that effect are the following steps:

- **Incorporate the principle of non-refoulement** The principle of non-refoulement should be incorporated into national legislation. To do so, laws concerning the entry of foreigners and border-control requirements must reflect the difference between those seeking asylum and others who may want to enter a country for other reasons. Review of national legislation on immigration may be necessary. Asylum-seekers should be offered a fair and efficient procedure in which to present their claims for asylum.
- **Broaden the refugee definition** Parliaments and their members may wish to consider incorporating an expanded refugee definition, such as that found in the OAU Convention and the Cartagena Declaration, in national legislation. Parliamentarians may also wish to review the situation of internally displaced persons in their country, if any, to facilitate their protection and to bring their plight to the attention of the international community.
- **Accede to international treaties** The government should be encouraged to take steps with a view to accession to the Refugee Convention and Protocol, if it has not already done so. Accession to international human rights treaties relevant to refugee protection,

particularly the Convention against Torture and the Convention on the Rights of the Child, and to international humanitarian law treaties should also be considered. On the regional level, parliaments in African countries that have not acceded to the OAU Convention should consider accession. Regional human rights treaties in Africa, Europe and the Americas also provide standards relevant to refugee protection. Countries in those regions should consider acceding to them.

- **Review reservations and restrictive interpretations** The validity of reservations and restrictive interpretations ought to be reviewed periodically. In the absence of any steps to that effect by the Executive, Members of Parliament may put questions to the Government or even present a private Member bill.
- **Implement international standards** In addition to the treaties mentioned above, inspiration can be drawn from a significant body of international standards -including the Conclusions adopted by UNHCR's Executive Committee and guidelines, produced by UNHCR, on a range of refugee-related issues -in devising national systems of refugee protection. UNHCR offices can assist parliamentarians by providing information on these standards and commenting on proposed legislation.
- **Encourage cooperation with UNHCR** Parliamentarians can ensure that their government provides UNHCR with information on the number and condition of refugees on the national territory, the implementation of the Refugee Convention, and the laws, regulations and decrees in force related to refugees. Parliamentarians can also seek UNHCR's views on matters related to refugee protection, including proposed or pending legislation, court cases and policy decisions. Since UNHCR has offices in nearly 120 countries parliamentarians in most countries will find a UNHCR office in their capital city.<sup>3</sup>

**Conclusion:** Understanding efforts to protect refugees around the world depends on grasping many issues, from the meaning of "protection," to the complexities of aid distribution. This understanding requires thinking through the actions (and motivations) of governments, aid workers, academics, and the media. Complicated as they are, attempts to shed light on all of these topics are vital to the hands-on work ahead, to achieving public understanding of these problems, and to formulating better policies.<sup>4</sup>

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<sup>3</sup> [http://www.ipu.org/pdf/publications/refugee\\_en.pdf](http://www.ipu.org/pdf/publications/refugee_en.pdf)

<sup>4</sup> <http://www.migrationpolicy.org/article/refugees-risks-and-challenges-worldwide>