



Protecting the unprotected: Human rights of refugee and migrant person

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Abstract

The critical need to address the human rights violations these vulnerable people faced has been highlighted by the global refugee and migration crisis. International legal frameworks notwithstanding, marginalization, exploitation, and discrimination against refugees and migrants persist. The difficulties that refugees and migrants have in obtaining human rights—such as those related to work, healthcare, education, and asylum are critically examined in this article. It also looks at how governments, non-governmental organizations, and civil society may work together to guarantee that these rights are upheld. This paper identifies the shortcomings in the current protection systems and makes the case for a more inclusive and comprehensive strategy to preserve the human rights of migrants and refugees through a thorough review of case studies and empirical research. In the end, it makes the case for a paradigm change in how we approach refugee and migrant protection that prioritizes dignity, equality and justice.

Keywords: Refugee, migrants, human rights, asylum, discrimination, immigrants, international law, UNHCR, IOM, equality fundamental rights.

Introduction

Many people all around the globe make one of the most difficult decisions of their lives to leave their homes in pursuit for life of dignity.

Most humans have had the experience of leaving their hometown or where they are born and brought up. Perhaps they'll just go as far as the next city. However, other individuals are forced to leave their nation totally, sometimes forever.

Since the end of World War II, up to 50 million refugees have been relocated or repatriated, but roughly an equal number of individuals have struggled to reclaim their basic human rights. The UN High Commissioner for Refugees (UNHCR) is now aiding more than 22 million individuals around the world. Refugees are created as a result of mass human rights violations, civil wars, internal unrest, communal violence, forced displacement, and natural calamities. While national governments are responsible for the protection of their citizens' basic human rights, "refugees" find themselves without such protection. As a result, international protection and assistance are required for these individuals more than for people living in their home countries.

Refugees are victims of human rights breaches by definition. According to Article 1(a) (2) of the 1951 United Nations Convention Relating to the Status of Refugees (hereinafter referred to as the Refugee Convention), "any persons 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, are outside the country of his nationality and are unable or unwilling to avail himself of the aforementioned Professor James Hathaway defined persecution as "the sustained or systematic violation of essential human rights demonstrative of a lack of governmental protection," despite the fact that the term is not defined in the Refugee Convention.

Who are exactly a refugee, an asylum seeker, an immigrant and a migrant?

Refugee: A refugee is defined as someone who, in accordance with UNHCR 1951 convention¹, is either not a national and, as a result of such events, is outside the country of his former habitual residence and is unable or unwilling to return there due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, or who is not a national and is unwilling to return due to such fear. Someone who has been compelled to flee violence, persecution, or war and is seeking safety is referred to as a refugee.

Refugees are defined and protected by international law. Seeking sanctuary is also not a crime. Not all people who apply for asylum will ultimately be recognized as refugees, even if all asylum seekers are refugees at initially. Temporary settlements known as refugee camps are created to offer refugees immediate protection and aid. Most migrants have little possessions when they are forced to leave their homeland. Because they lack access to food, clean water, clothing, and basic hygiene supplies, refugee children and their families are more likely to suffer from illness, maltreatment, and other problems. There are camps for refugees everywhere in the world. These are a few of the biggest in the globe.

Asylum seeker

An asylum seeker is someone who claims to be a refugee but whose claim has not yet assessed. This individual would have sought refuge on the grounds that returning to his or her home country would expose him or her to persecution on the basis of race, religion, nationality, or political opinions.

As long as an application for asylum is pending, the person is considered an asylum seeker. So, while not every asylum seeker is recognized as a refugee, every refugee begins as an asylum seeker.

An asylum seeker is a person who is outside their country of origin and has applied to another country for legal recognition as a refugee under the guidelines of the UNHCR. The right to seek asylum is enshrined in international law and with improvements in access to information, there has been a global spread of knowledge about human rights. On the other hand, the increase in the numbers of asylum seekers has been the cause of much political dissent and media discussion in receiving countries. Asylum seekers are widely perceived as having the ability to misuse the refugee protection system since their claims of persecution may not be true. As a result, many potential host countries' interpretation and enforcement of refugee protection legislation has become increasingly harsh and restricted.

Immigrant

Immigrants leave their native nation freely and lawfully to enter another country using visas. They ask for permission to come and remain in the nation permanently, allowing them to work freely in their new country. The term "immigrant" is not widely used in all nations, although it is regularly heard in the United States. It refers to all those who live in a nation in which they were not born. They might have any cause for wishing to relocate to a different nation. They may be relocating for financial reasons, schooling, or to be reunited with relatives.

Migrant

Migrants are persons who leave their homeland freely in pursuit of work or other opportunities in another nation or another region within the same country. By far the most migrant population of any country on the planet is in the United States. This figure is four times that of Saudi Arabia and Germany, both of which have large immigrant populations.

So to sum up, Migrants can be people simply moving from one region to another within their country or people crossing international borders whereas an immigrant is always crossing an international border and looking for permanent residency in another country.

Why do people leave their homeland?

People move for a variety of reasons. These reasons can be economic, social, political, religious, environmental and many more. These reasons are further explained below:

Economic migration

It is defined as relocating to obtain job or to pursue a certain professional path.

Social Migration: Moving somewhere for a better quality of life or to be closer to family or friends is referred to as social migration.

Political migration

It is defined fleeing from political oppression or conflict.

Environmental migration

Natural calamities such as floods, drought, famine, volcanic eruptions, etc. includes environmental reasons of migration.

Religious Migration: Moving to seek shelter from persecution on basis of faith is called Religious Migration.

War Migration: One of the major reason is war situation due to which people leave their homeland.

If we go back far enough in history, we can see how conflict has destroyed countries and people's lives, as well as their homes and homelands, forcing them to migrate and abandon their territories in quest of better livelihoods and a better existence.

Following the war, a county perished, as did human life. Apart from other causes and factors, this is one of the key reasons why individuals leave their hometowns.

International convention on the protection of the rights of all migrant workers and members of their families

Part 1: Scope and definitions

Article 1

1. Except as otherwise provided herein, the present Convention applies to all migrant workers and their families, regardless of sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.
2. The present Convention applies to migrant workers and their families throughout their entire migration process, which includes preparation for migration, departure, transit, and the entire period of stay and remunerated activity in the State of employment, as well as return to the State of origin or habitual residence.

Article 4

The term "members of the family" refers to people who are married to migrant workers or have a relationship with them that produces effects equivalent to marriage under applicable law, as well as their dependent children and other dependent persons who are recognised as members of the family by applicable legislation or bilateral or multilateral agreements between the States concerned.

Article 5

For the purposes of this Convention, migrant workers and their families are defined as:

- a. Are regarded documented or in a regular situation if they are entitled to enter, stay, and work in the State of employment under the law of that State and international agreements to which that State is a party; If they do not meet the standards set forth in subparagraph
- b. of this article, they are regarded undocumented or in an irregular situation.

Part 2: Non-discrimination with respect to rights article 7

States Parties agree to respect and protect the rights of all migrant workers and their families within their territory or under their jurisdiction, in accordance with international human rights instruments, without regard to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, or economic position.

Part 3: Human rights of all migrant workers and members of their families

Article 8

1. Migrant workers and their families have the right to leave any country, including their own country. This right is unaffected by any restrictions unless they are

imposed by legislation, are required to safeguard national security, public order (*ordre public*), public health or morals, or other people's rights and freedoms, and are compatible with the other rights recognised in this section of the C families' convention.

2. Migrant workers and their family members have the right to enter and reside in their home country at any time.

Article 9

Migrant workers' and their families' right to life shall be respected by law.

Article 10

No migrant worker or family member shall be tortured or subjected to cruel, inhuman, or degrading treatment or punishment.

Universal Declaration of Human Rights (UDHR)

Two years after the Universal Declaration of Human Rights (UDHR) was passed by the UN General Assembly, the United Nations High Commissioner for Refugees (UNHCR) was founded. Before it was shut down, the organization was meant to provide three years of assistance to the millions of Europeans who had lost their homes or emigrated during World War II.

After decades of existence, the UN Refugee Agency continues to serve the world's displaced population, which now numbers over 68 million. Of these, 40 million are internally displaced, and 25 million are refugees—people who have crossed an international border in order to escape conflict or persecution. The remainder are asylum seekers, who may or may not ultimately be found to be refugees.

"May not be invoked in the case of prosecution genuinely arising from non-political crimes or acts contrary to the purposes and principles of the United Nations," reads article 14(2) of the Universal Declaration of Human Rights, which guarantees the right to seek and enjoy asylum as guaranteed by article 14(1). The "exclusion" clause in Article 14(2) of the Universal Declaration states that some individuals who are escaping persecution may not be granted international protection as refugees because of their involvement in certain serious crimes. The notion that these individuals are undeserving of international protection and assistance as refugees emerged during World War II and was incorporated into the concept of "refugee" from the outset of the international convention on refugees.

Like its predecessors in a General Assembly resolution and the 1946 Constitution of the International Refugee Organization, as well as later provisions in the 1951 Convention relating to the Status of Refugees and the 1950 Statute of the Office of the United Nations High Commissioner for Refugees, Article 14(2) of the Universal Declaration expresses the concern that those responsible for acts that are more broadly considered to be acts of contempt for human rights, such as war crimes, crimes against humanity, and crimes against peace, will be held accountable.

Who are internally displaced persons

"Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence,

violations of human rights, or natural or human-made disasters, and who have not crossed an internationally recognized border" are classified as internally displaced persons (also known as "IDPs") under the Guiding Principles on Internal Displacement.

The idea has gained momentum and is currently applied broadly worldwide. There are two key components in identifying whether someone is an IDP. The forceful or otherwise involuntary character of mobility, i.e., migration brought on by acts of violence, armed conflict, natural disasters, and the like; and the fact that such movement takes place inside national borders. Its broad comprehension is the second requirement. It is satisfied, for instance, if displaced people have to pass through a neighboring state's territory to reach a safe area within their own nation; if they leave their home country first and are unable to return; or if they leave their home country first and return (either voluntarily or involuntarily).

Reasons for internal displacement

Internal displacement occurs in a variety of situations, with multiple and sometimes overlapping sources. Armed conflict, generalised violence, human rights violations, and "natural and man-made calamities," either abrupt or slow-onset, are among the causes of internal displacement listed in the Guiding Principles. Large-scale infrastructure or urban regeneration projects, for example, might result in large-scale displacement and human rights violations.

Internal displacement is, without a doubt, a more significant issue today than it has ever been. Due to communal violence or ethnic tensions, governance crises such as poor security, development-induced causes such as planned resettlement programmes and relocation, and natural disaster-related causes such as drought and famine, the number of people or groups forced to flee their homes and habitual residences in large numbers has increased more recently than ever before. The third key driver of forced internal migration and or displacement was identified as weak governance, sometimes known as bad governance (such as poor security and human rights violations) issues associated to development projects. Other factors that have resulted in forced displacement of people in the country include planned resettlement programmes and relocations owing to development projects by the government and regional authorities. Despite its positive progress in ensuring the country's people's food security, the new resettlement programme developed as part of the Food Security Program has exacerbated the country's forced internal migration.

Difference between an internally displaced person and a refugee?

According to the 1951 Convention on the Status of Refugees, a "refugee" is a person 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it." Subsequent international instruments (such as the Cartagena Declaration on Refugees and the Convention Governing the Specific Aspects of Refugee Problems in Africa) have

expanded this definition for some states to persons fleeing the general effects of armed conflict and/or natural disaster. A crucial requirement to be considered a "refugee" is crossing an international border. Persons forcibly displaced from their homes who cannot or choose not to cross a border, therefore, are not considered refugees, even if they share many of the same circumstances and challenges as those who do. Unlike refugees, these internally displaced persons do not have a special status in international law with rights specific to their situation. The term "internally displaced person" is merely descriptive.

History of guiding principles on internal displacement

The need for international norms to safeguard internally displaced persons became obvious in the 1990s, when the number of individuals displaced within their own nations due to armed conflict, ethnic unrest, and human rights violations skyrocketed. In 1982, the initial worldwide IDP estimate included only 1.2 million persons in 11 countries. By 1995, there were an estimated 20 to 25 million internally displaced persons (IDPs) in over 40 countries, about double the number of refugees.

The 30 Guiding Principles are organised around displacement periods.

Protection against displacement (principles 5–9), protection during displacement (principles 10–23), the framework for humanitarian aid (principles 24–27), and protection during return, local integration in displaced areas, and resettlement in another part of the country are all addressed (principles 28 to 30).

The principles guide all relevant actors, including the UN Special Rapporteur in carrying out his or her mandate; states when confronted with the phenomenon of internal displacement; all other authorities (including de facto authorities), groups, and individuals in their interactions with IDPs; and intergovernmental and non-governmental organisations.

IDPs must not be discriminated against simply because of their displacement, or because of their ethnicity, sex, language, religion, social origin, or other similar considerations, according to the principles.

The principles reaffirm the right to not be displaced arbitrarily and ban displacement based on ethnic, religious, or racial considerations. In this sense, they fill in some key gaps in IDP protection by expressly expressing what international law simply implies.

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The principles emphasise that it is the fundamental obligation of national authorities to guarantee that IDPs' basic rights to food, water, shelter, dignity, and safety are met, as well as to facilitate their access to all other rights. When they don't have the resources to help themselves, they should accept help from the world community.

There is no worldwide universal treaty that applies exclusively to IDPs, unlike in the case of refugees. The Guiding Principles presented to the UN Commission on Human Rights in 1998 by M. Francis Deng, the UN Secretary General's Representative on Internal Displacement, were thus a watershed moment in the process of building a legal rules for the protection of IDPs.

Introduction to human mobility in the Covid-19 pandemic

Many countries have taken harsh and unusual actions against migrants, refugees, and other displaced people in response to the COVID-19 outbreak. Border closures, quarantines, expulsions, and lockdowns of migrant worker groups and refugee camps have all been used. Migrants, refugees, and other displaced people have also been left out of state-run programs aimed at ensuring the health and economic well-being of individuals living within their boundaries. Actions taken to contain and prevent the spread of the virus, as well as to mitigate the pandemic's huge effects, must adhere to recognized international human rights rules. These standards, which include non-discrimination, rights to health and information, due process, and non-return to grave danger, apply to all people, regardless of immigration status.

The following concepts are drawn from international treaties and instruments, customary international law, UN treaty bodies' rulings, and widely accepted international norms. They are also influenced by regional human rights agencies' judgements and regional inter-state agreements. The principles are intended to enlighten and guide government action, aid international organisations, and serve as a foundation for lobbying and education.

The current predicament necessitates swift and decisive action. However, tumultuous times do not justify arguments that rights can be waived or ignored because they are inconvenient to the fight against the virus. International human rights organisations perform their most vital work in such times, reminding us of the core principles of the humanity we are fighting to protect.

Human rights in the Covid-19 pandemic

1. Labour rights of workers

During the COVID-19 pandemic, migrants, who make up a substantial component of the "essential" workforce in several states, will continue to work. They are subject to the same standards as nationals when it comes to workplace safety, minimum wages, hazard pay, overtime, and collective bargaining. To preserve the health of all workers, states must offer proper protective equipment, as well as soap, water, and sanitary facilities to migrant, refugee, and other displaced workers. They may not be forced to labour in dangerous environments or be housed in overcrowded situations.

2. Marginalized Groups

COVID-19 is more dangerous to older persons (defined by the United Nations as people over 60) and has a greater death rate. Limited access to health and hygiene supplies, as well as a reduced ability to socially separate or self-isolate, will pose special health hazards to older migrants, refugees, and other displaced persons living in camps, collective shelters, and settlements. To realise their right to health, governments must ensure that everyone, regardless of legal status, has access to health care as well as the shelter, water, and sanitation facilities they require to be healthy. Detained older migrants, particularly those with chronic health concerns, pose unique dangers, and their extended imprisonment would be excessive. Children account for over 31 million of the world's forcibly displaced people, and they confront unique obstacles in the current epidemic,

including access to testing and treatment, adequate water, sanitation, shelter, and education. Border closures, increased immigration enforcement, containment measures such as quarantine, and the loss of caregivers exacerbate these issues for children who are unaccompanied or separated.

3. Gender considerations

Women, girls, and persons who identify as gender nonconforming face unique challenges and hazards as a result of the COVID-19 pandemic, including the worsening of existing inequities. These gender-specific dangers affect migrants, refugees, and other displaced people, particularly those living in camps, collective shelters, or settlements and who face hurdles to critical commodities and services. Increased caregiving duties, such as caring for sick children or relatives, might limit women's and girls' access to information, services, education, and livelihood opportunities. Indoor confinement raises the risk of intimate partner violence and limits survivors of gender-based violence's access to life-saving treatment and assistance. Women, girls, and gender nonconforming persons must have access to sexual and reproductive health information, goods, and services in response to COVID-19, including safe abortion treatment

4. Protection of privacy

Collection and management of personal data, including that of migrants, refugees, and other displaced persons, is required to successfully prevent and control infection and provide therapeutic care. Without a person's express and voluntary consent, neither names, other identifying information, nor personal medical information shall be publicly disseminated in the pursuit of public health goals. For the purposes of contact tracing, disclosing a person's identity and health status without their agreement should be a last resort, used only after all reasonable efforts to gain consent have been exhausted. Tracking the mobility of COVID-19-infected people should only be done in specific conditions, such as when the information isn't available directly from the person and it'll be used to track down contacts.

5. Right to information

Access to scientifically sound health-related information is a critical component of the right to health, and States have a responsibility to offer accurate and trustworthy information to migrants, refugees, and other displaced persons. The nature and severity of the health danger, risk mitigation measures, health-care access, and current response efforts should all be included in this material (including restrictions on movement and other rights). Information must be provided in a language that migrants, refugees, and other displaced people can comprehend. Affected persons should be supplied with information that allows them to actively engage in the shaping of response activities in order to develop the trust necessary to prevent the spread of the virus, provide health care for those who need it, and best deploy resources.

6. Right to health

In international law, the right to health is widely recognised. When a lack of access to existing health care services that are reasonably available exposes an individual or community to a danger that could result in death, states have

an obligation to provide access to those services. Food, water, sanitation, safe shelter, and education are all regarded as essential components of achieving the right to health. These responsibilities, which are particularly important in the current COVID-19 pandemic, are owed to all people, including migrants, refugees, and other displaced people, as well as stateless people, whose lack of functional nationality should not prevent them from exercising their right to health.

7. Equal treatment and non-discrimination

COVID-19's danger recognises no bounds, including those of location, class, race, age, gender, sexual orientation, status, or circumstance. This entails ensuring that everyone who are or may be at risk have access to medical aid, testing, and health care, as well as access to State initiatives designed to alleviate the pandemic's economic challenges. In addition to increasing the risk of COVID-19 spreading further, failing to address the health needs of migrants, refugees, and other displaced persons on the basis of their origin or status would be discriminatory because it would be unreasonable, disproportionate, pursue no legitimate goal, and endanger the entire community's well-being.

Conclusion

While refugees have previously been subjected to human rights breaches, the current international situation is further victimising them as they seek safety.

Such infractions, however, do not halt migration. They merely make things more difficult and dangerous. They put refugees' lives at peril and put the right to travel in jeopardy. We must confront these difficulties. Refugees are a problem that affects the modern globe and its nation states, not just in 2015 or 2017. Refugees are a human rights and protection issue, as well as a defining issue of the twentieth century thus far. When refugees are on the move, once they reach secure territory, and even after they have found shelter, they are subjected to violations. Consider refugee camps, where access to economic and social rights, as well as long-term solutions, is limited. Furthermore, the number of resettlement places is dwindling, as is funding, which was never enough to meet the needs of refugees even at its peak. Refugees are people who are fleeing persecution because of their religion, nationality, race, political beliefs, or membership in a social group. They are also fleeing egregious and widespread violations of human rights in other regions of the world, such as Latin America. On average, a person is a refugee for 20 years. While refugees are already in the country,

According to the research, the decision violates Articles 14 and 21 of the Indian Constitution, as well as the State's responsibility to respect customary international law under Article 51 of the Indian Constitution, because it discriminates against the same class of people, namely "refugees," as different refugees from different countries, ethnicities, and religious backgrounds are treated differently, with some receiving protection and others not.

The right to a dignified and private life is protected by Article 21 of India's Constitution. The right not to be subjected to refoulement, which is enshrined in Article 33 of the 1951 Convention, is the most fundamental right for refugees. However, the 1951 Convention is not the sole international convention that protects people from being deported. When refugees are in a country that is embroiled

in an armed conflict, IHL protects them as well. In addition to the broad protection provided by IHL to civilians, refugees are given additional protection under the Fourth Geneva Convention and Additional Protocol I.

The majority of people living in informal settlements rely on casual jobs and are unable to work from home. People sell fruit and snacks on the streets, clean vehicle windows, or work as day labourers on construction sites, living paycheck to paycheck with no savings or assets to protect them from losing their jobs.

Meanwhile, refugees escaping persecution may have lost their legal documents or had their citizenship stripped away, making healthcare services more difficult to get.

COVID-19 has already infiltrated several of these high-risk environments. Physical separation and frequent handwashing, as recommended by the World Health Organization, will not suffice. We could see disastrous consequences in refugee camps and slums around the world. Traumatic events, social exclusion, marginalisation, and stigma can erode public trust in the government, law enforcement, and civil authority. People living in informal settlements may have already been compelled to leave, while refugees may be afraid of losing their legal status or having to return to the country from which they fled. We must ensure that migrants and refugees are not forgotten as governments deal with the impacts of the pandemic. A human rights and dignity-based strategy should be used to protect and safeguard vulnerable people in the future. Immediate international measures in accordance with the Global Compact for Migration and the Global Compact for Refugees protection policy can save lives, improve health, and provide dignity to all. Every human being has the right to a dignified and secure life devoid of disease, displacement, family disintegration, and the prospect of death. The right to safe food, drinking water, appropriate sanitation, suitable housing, and healthy working conditions; the right to disease prevention, treatment, and control; and the right to available, accessible, and acceptable public healthcare services are examples of these human rights

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