

# REFUGEE AND MINORITY RIGHTS LAW

## FRAMEWORKS

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### PRESENTATION

While refugee status determination is a very individualised and judicialized process in the global north, for the vast majority (86%) of persons seeking international protection who are outside that region, protection is very group-focused. And the grounds for persecution, race, religion, nationality, membership of a particular social group, and political opinion, mirror the recognised criteria for minority groups in international law. Of course, RSD recognises a far wider range of minorities than those listed in Article 27 International Covenant on Civil and Political Rights and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. However, given the intersectionality of discrimination, where women, members of the LGBTI community, and persons with disability face even broader persecutory treatment as persons belonging to national or ethnic, religious and linguistic minorities, the need for a comprehensive approach to minority protection in international law in times of displacement arising from humanitarian crises cannot be gainsaid. Furthermore, there are other overlaps between the two frameworks for international protection surrounding 'nationality' – refugees must be outside their country of nationality or, if stateless, an unfortunately common experience for persons belonging to minority groups, their country of habitual residence, while the traditional understanding of minorities in international law would have them be nationals of the state. On that understanding, refugees would not, unless they moved to a state where they added to the members of a pre-existing minority group fall within Article 27 or the 1992 Declaration. The Human Rights Committee, though, in its General Comment 23(50) stated that nationality was not a requirement that minorities had to accept – on that understanding, a refugee community could equally be a minority.

In terms of non-discrimination, too, Article 3 of the 1951 Convention relating to the Status of Refugees and Paragraph 2 of the Statute of UNHCR both include it as fundamental to international protection. Moreover, it is an essential aspect of providing humanitarian protection for displaced persons under Article 70/ Article 18 Additional Protocol 1/ 2 (respectively) to the Geneva Conventions of 1977 that the provision of assistance is impartial in character.

Finally, given the protracted nature of many situations of displacement, access to education is a right for refugees, especially if they are to be in a position to obtain durable solutions – and providing schools close to where the displaced community has located itself will improve their protection since the children will be off the streets and at less risk. Of course, many refugees find themselves to be linguistic minorities in the country of refuge. In that regard, the OSCE's Hague Guidelines can provide a framework to facilitate protection. In a research consultancy carried out for UNHCR in 2014-15 with Anna Magdalena Rüsç, where Anglophone teenagers fleeing Boko Haram in Nigeria came to Niger, UNHCR facilitated distance learning programmes so they could finish their education where transfer to a francophone system would have been all but impossible.

The causes of persecution and the consequences of flight mesh with the protection of minorities in international law. Upholding minority rights will reduce those needing to flee and better guarantee their protection where flight was the only real option.

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