

# Who is Who?

A quick reference guide on  
Migrants and Refugees



**REGIONAL SUPPORT OFFICE**  
THE BALI PROCESS

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### Who is a Migrant?

Generally, the term ‘migrants’ refers to people who are residing outside of their country of origin/citizenship or former habitual residence and lack a citizenship attachment to the host country.<sup>i</sup>

Under international human rights law, all human beings, including migrants, are entitled to fundamental rights and freedoms without distinctions of any kind and status and anywhere.<sup>ii</sup> However, under national laws, distinctions are sometimes made between the rights of citizens and those of migrants following administrative procedures in the interests of national security, public safety, order, health, or morals or the fundamental rights and freedoms of others.<sup>iii</sup>

For example, international law recognizes that everyone has the right to leave any county, including their own and the right to return to their country, and non-discriminatory ground for migrants for entry to a country based on race, sex, religion, or health status (E.g., HIV status, Covid-19 status, etc.).<sup>iv</sup> In practice, migrants are subject to laws and administrative procedures of the host county for (lawful/legal) entry, such as the requirement of a visa, valid passport or certificate of identity, certificate of vaccination, fitness for a travel certificate, and refugee status determination procedure under international legal obligations. Therefore, in accordance with the laws and regulations subject to international obligations, states may make distinctions between migrants and citizens.<sup>v</sup>

### Who is an Irregular Migrant?

Migrants who enter or stay in a country in ways that do not adhere to national laws and administrative procedures and international legal obligations are considered migrants in an irregular situation, or irregular or undocumented migrants.<sup>vi</sup>

Irregular migrants may include a range of individuals, such as trafficked migrants, smuggled migrants, failed asylum seekers, migrants violating the rules of temporary stay of non-nationals, over-stayers, migrants working illegally without work permits, migrants entering the country illegally.<sup>vii</sup>

“Illegal migrant” is a legally incorrect term. Being undocumented does not constitute a crime in most countries. As it is not an offense against persons, property, or national security, it belongs to the realm of administrative law. However, even in countries where violations of immigration law are considered criminal offenses, committing a criminal offense does not make you an ‘illegal’ person. Therefore, calling migrants ‘illegal’ denies their innate dignity and human rights and it is a harmful term.<sup>viii</sup>

## Who is an Asylum Seeker?

Asylum seekers are people seeking international protection. In countries with individualized procedures, asylum seekers are people whose refugee claims have been submitted to a country's government or the United Nations High Commissioner for Refugees (UNHCR) but are pending a result.<sup>ix</sup> Not every asylum seeker will ultimately be recognized as a refugee.<sup>x</sup>

## Who is a Refugee?

Refugees are people who have crossed an international border and are outside of their own country or habitual residence; have a well-founded fear of being persecuted because of their race, religion, nationality, membership of a particular social group or political opinion; and are unable or unwilling to avail themselves of the protection of that country, or to return there, for fear of persecution.<sup>xi</sup> However, people who have not crossed an international border but have been forced or obliged to flee or leave their homes or habitual residence as a result of armed conflicts, generalized violence, violations of human rights or natural or man-made disasters are internally displaced persons (IDPs).<sup>xii</sup>

Refugees require specific legal protection without exception, such as protection from being returned or '*refouled*' to their country of origin or former habitual resident or any other place that may place their lives and freedom in danger due to their race, religion, nationality, membership of a particular social group or political opinion.<sup>xiii</sup> According to the *1951 Convention Relating to Status of Refugee (the 1951 Convention)*, refugees are "people who are unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion."<sup>xiv</sup>

Though every country has the power to decide criteria for entry and expulsion of non-nationals (including those in irregular status),<sup>xv</sup> the expulsion of non-nationals is limited by *the principle of non-refoulement* guaranteed by international human rights law, international refugee law, international humanitarian law, and international customary law to protect refugees and migrants.<sup>xvi</sup> As such, *the principle of non-refoulement* is binding on all States, including those who are not party to *the 1951 Convention and/or its 1967 Protocol*.<sup>xvii</sup>

## What are the distinctions between Migrants and Refugees, and why is it important to understand them?

It is important to understand the distinctions between migrants and refugees due to differences in legal protection and operational response requirements to manage people's movements.<sup>xviii</sup>

Migrants	Refugees
People who are outside of their country of origin for work, education, family reunion, or other reasons such as natural disasters, famine, or extreme poverty. <sup>xix</sup>	People who are outside their country of origin due to feared persecution, conflict, violence, or other circumstances. <sup>xx</sup>
People who move for complex reasons. <sup>xxi</sup>	People who move for compelling reasons of threats to lives and freedom. <sup>xxii</sup>
People who may be subject to return to the country of origin through appropriate measures under national laws or who may choose to return to the country of origin without fear of direct threat to their lives and freedom. <sup>xxiii</sup>	People who enjoy the right to protection from return to any place if their lives and freedom are in danger or who are unable or unwilling to return to the country of origin or former habitual residence due to direct threat to their lives and freedom. <sup>xxiv</sup>
People who might seek protection and assistance in other countries owing to conditions in their country of origin and vulnerability. <sup>xxv</sup>	People who seek international protection in other countries because their country of origin is unable or unwilling to protect them. <sup>xxvi</sup>

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## ENDNOTE

- <sup>i</sup> OHCHR, Differentiation between migrants and refugees, Available at <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/MigrantsAndRefugees.pdf> ; IOM-UN Migration Agency, Glossary on Migration ( 2019), Alien, P.8
- <sup>ii</sup> Universal Declaration on Human Rights (UDHR), Article 1; International Covenant on Civil and Political Rights (entered into force on 23 March 1976), vol. 999, UNTS, p.171, Art 2(1); OHCHR, CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986, Para 1 and 2
- <sup>iii</sup> International Covenant on Civil and Political Rights (entered into force on 23 March 1976), vol. 999, UNTS, p.171, Arts 13 and 25; International Covenant on Economic, Social and Cultural Rights(entered into force on 3 January 1976), vol. 993, p. 3, Art 2(3); Declaration on the Human Rights of Individuals who are not nationals of the country in which they live, UNGA 40/144, 13 December 1985, Article 5(2), Article 7, Available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/HumanRightsOfIndividuals.aspx>
- <sup>iv</sup> OHCHR, CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986, Para 5; Migration, Human Rights and Governance, 1.1. State Sovereignty and International Migration, HR/PUB/13/3(UN), P.38, Available at [https://www.ohchr.org/documents/publications/migrationhr\\_and\\_governance\\_hr\\_pub\\_15\\_3\\_en.pdf](https://www.ohchr.org/documents/publications/migrationhr_and_governance_hr_pub_15_3_en.pdf)
- <sup>v</sup> International Covenant on Civil and Political Rights (entered into force on 23 March 1976), vol. 999, UNTS, p.171, Arts 13 and 25; International Covenant on Economic, Social and Cultural Rights (entered into force on 3 January 1976)), vol. 993, p. 3, Art 2(3); OHCHR, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25). 12/07/96. CCPR/C/21/Rev.1/Add.7, General Comment No. 25. (General Comments), Para 5-9
- <sup>vi</sup> International Organization for Migration, Glossary on Migration, border management, 2019, P. 20; Ibid, migrants in an irregular situation, P. 133; Ibid., irregular migration, p. 116; Ibid., jus cogens, p. 119; OHCHR, Differentiation between migrants and refugees, Available at: <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/MigrantsAndRefugees.pdf>
- <sup>vii</sup> The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Organized Crime, Curriculum on Standardized Induction Training for Frontline Border Officials, Irregular Migration, Module 6, P.30
- <sup>viii</sup> Platform for International Cooperation on Undocumented Migrants (PICUM), Why not illegal?, Available at [https://www.unhcr.org/cy/wp-content/uploads/sites/41/2018/09/TerminologyLeaflet\\_EN\\_PICUM.pdf](https://www.unhcr.org/cy/wp-content/uploads/sites/41/2018/09/TerminologyLeaflet_EN_PICUM.pdf);
- <sup>ix</sup> IOM-UN Migration Agency, Glossary on Migration (2019), asylum seeker, p.14
- <sup>x</sup> Ibid.
- <sup>xi</sup> The UN Refugee Agency (UNHCR), The 1951 Convention relating to the Status of Refugees and its 1967 Protocol, September 2011, P.3, Available at <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>
- <sup>xii</sup> E/CN.4/1998/53/Add.2, Para. 2, P. 5, Available at <https://undocs.org/E/CN.4/1998/53/Add.2>

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- <sup>xiii</sup> 1951 Convention Relating to Status of Refugee ( entered into force on 22 April 1954) [vol. 189](#), UNTS, p. 137., Art 33(1); The UN Refugee Agency (UNHCR), Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol\*, Available at <https://www.unhcr.org/4d9486929.pdf>
- <sup>xiv</sup> The UN Refugee Agency (UNHCR), What is a refugee, Available at <https://www.unhcr.org/what-is-a-refugee.html>
- <sup>xv</sup> Migration, Human Rights and Governance, 1.1. State Sovereignty and International Migration, HR/PUB/13/3(UN), P.19, Available at [https://www.ohchr.org/documents/publications/migrationhr\\_and\\_governance\\_hr\\_pub\\_15\\_3\\_en.pdf](https://www.ohchr.org/documents/publications/migrationhr_and_governance_hr_pub_15_3_en.pdf)
- <sup>xvi</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ( entered into force 26 June 1987) [vol. 1465](#), UNTS, p. 85.,Art. 3(1); “ Article 3 (1) of the Convention provides that no State party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.”, CAT, General comment No.4(2017) on the implementation of article 3 of the Convention in the context of article 22\*, CAT/C/GC/4, 4 September 2018, Para.5; The UN Refugee Agency (UNHCR), Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol\*, Para 14-16, See also supra footnote 41, Available at available at: <https://www.refworld.org/docid/45f17a1a4.html> ; UN High Commissioner for Refugees (UNHCR), 'Refugees' and 'Migrants' - Frequently Asked Questions (FAQs), 31 August 2018, P. 2, Para.3, available at: <https://www.refworld.org/docid/56e81c0d4.html> [accessed 24 May 2021]; “The principle of non-refoulement (or) any forms of removal or return of a person, regardless of their status, to where that the returnee would be at risk of irreparable harm upon return on account of torture, ill-treatment, or other serious breaches of human rights obligations, is applied to refugees and migrants at all times, irrespective of migration status.”, OHCHR, The principle of *non-refoulement* under international human rights law, Available at: <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.docx> ; Hicks, H., OHCHR, Informal Summary of Expert Meeting on Protecting the human rights of migrants in the context of return, Lawfulness of Return, Discussion, 16 April 2018, Available at: <https://www.ohchr.org/Documents/Issues/Migration/Return/InformalSummary.pdf>
- <sup>xvii</sup> The UN Refugee Agency (UNHCR), Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol\*, Para 15, See also supra footnote 31.
- <sup>xviii</sup> UN High Commissioner for Refugees (UNHCR), 'Refugees' and 'Migrants' - Frequently Asked Questions (FAQs), 31 August 2018, available at: <https://www.refworld.org/docid/56e81c0d4.html> [accessed 25 May 2021]
- <sup>xix</sup> Ibid., Para. 6; So, at UNHCR [...] we say ‘migrants’ when we mean people moving for reasons not included in the legal definition of a refugee.”, The UN Refugee Agency (UNHCR), UNHCR viewpoint: ‘Refugee’ or ‘migrant’ – Which is right?, 11 July 2016
- <sup>xx</sup> Ibid, 2. What is unique about refugees?, P. 1
- <sup>xxi</sup> Ibid, 5. Can 'migrant' be used as a generic term to also cover refugees?, P. 2

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- <sup>xxii</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Advisory Opinion on the Interpretation of the Refugee Definition*, 23 December 2004, available at: <https://www.refworld.org/docid/4551c0374.html> [accessed 24 May 2021]; UN High Commissioner for Refugees (UNHCR), *'Refugees' and 'Migrants' - Frequently Asked Questions (FAQs)*, 3. How are refugees protected under international law? , 31 August 2018, available at: <https://www.refworld.org/docid/56e81c0d4.html> [accessed 28 May 2021]
- <sup>xxiii</sup> Migration, Human Rights and Governance, 1.1. State Sovereignty and International Migration, HR/PUB/13/3(UN), P.19, 20
- <sup>xxiv</sup> The UN Refugee Agency (UNHCR), *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol\**
- <sup>xxv</sup> UNGA, *New York Declaration for Refugees and Migrants, A/71/L.1\**, 13 September 2016, Para. 20, 50, 51 and 52; The UN Refugee Agency (UNHCR), *UNHCR viewpoint: 'Refugee' or 'migrant' – Which is right?*, 11 July 2016, Available at <https://www.unhcr.org/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-migrant-right.html>; “For example, unaccompanied or separated migrant children, or migrants who become victims of trafficking or are otherwise in a situation of vulnerability, may have specific needs for assistance, and have the right to have those needs met.”, UN High Commissioner for Refugees (UNHCR), *'Refugees' and 'Migrants' - Frequently Asked Questions (FAQs)*, 7. Don't migrants also deserve protection? , P.3, 31 August 2018, available at: <https://www.refworld.org/docid/56e81c0d4.html> [accessed 14 June 2021]
- <sup>xxvi</sup> The UN Refugee Agency (UNHCR), *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol\**, 3. How are refugees protected under international law?, P. 1; IOM-UN Migration Agency, *Glossary on Migration (2019)*, International Protection, P. 114