

# THE LEGAL LIMITS OF REFUGEE FREEDOM AT THE INTERNATIONAL LEVEL: BALANCING RIGHTS AND DUTIES

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Submission date: 15 July 2025,

Publication date: 08 September 2025

**Abstract** - In recent years, the world has witnessed a refugee phenomenon unprecedented in history. The number of refugees has reached record levels, estimated by the United Nations High Commissioner for Refugees at approximately 65 million, including 10 million stateless people. The Middle East and North Africa region leads the way, followed by Africa, Asia, Latin America, and Europe. As of mid-March 2016, the UNHCR had registered 2.1 million Syrian refugees in Egypt, Iraq, Jordan, and Lebanon, while the Turkish government had registered 1.9 million. The UNHCR registered more than 28,000 refugees in North Africa, and nearly 900,000 Syrian asylum applications were filed in Europe between 2011 and 2015.

Consequently, refugees enjoy a range of rights, including as human beings, as citizens of the country of asylum, and as refugees. They also have duties to respect, in accordance with the 1951 Geneva Convention relating to refugees.

**Keywords:** Refugee; Country of Asylum; Non-Refoulement; Duties of Refugees; Rights of Refugees.

## INTRODUCTION

The world has acknowledged refugee issues since ancient times. Throughout human history people have turned to foreign nations for safety when their home countries fail to offer needed protection because of prevailing difficulties. The world has developed more interest in refugee issues because various parts of the globe have experienced rising numbers of displaced peoples due to ongoing instability. International norms protecting human rights together with specific legal frameworks for refugee protection now receive more rigorous enforcement because of recent developments. Host countries have a duty to uphold specific rights that apply to refugees who reside within their borders. Refugees must fulfill certain duties which they need to follow.

This raises the following question:

**What are the rights and obligations of refugees under the 1951 Geneva Convention Relating to the Status of Refugees?**

To answer this question, the discussion will be divided into two main sections: the rights of refugees (Section One) and their obligations (Section Two).

### 1. Rights of Refugees

Refugees are entitled to various rights, including those granted to them as human beings (Subsection One) and those specific to their status as refugees (Subsection Two).

#### 1.1 Rights of Refugees as Human Beings

Within the host country, refugees hold rights in three distinct capacities: as ordinary foreigners (First Branch), as extraordinary foreigners (Second Branch), and as citizens (Third Branch).

##### 1.1.1 Rights of Refugees as Ordinary Foreigners

The host nation grants refugees equivalent legal protections that foreign residents receive in the country. The 1951 Geneva Convention Relating to the Status of Refugees establishes several rights for refugees which include the following provisions:

- The host nation must allow refugees to possess movable and immovable property together with all related property rights including selling and leasing under Article 13 of the 1951 Geneva Convention Relating to the Status of Refugees.

– Under the same conditions as other foreign residents the host state must allow refugees to create associations and trade unions and non-political non-profit organizations. The 1951 Geneva Convention Relating to the Status of Refugees establishes this right in Article 15.

– All people possess the right to obtain proper work which allows them to earn enough money to maintain an adequate lifestyle for their family and themselves. Refugees have the right to work for wages that enable them to sustain themselves and their families without relying on host society assistance according to Article 17 of the 1951 Geneva Convention. Under Article 18 of the same Convention refugees may participate in agricultural or industrial activities and Article 19 allows them to work in professions that match their qualifications (Khodrawi, 2018, p. 132).

– The 1951 Geneva Convention in Article 26 establishes that refugees possess the ability to relocate throughout the host state territory. The state implements its regulations through which both foreign nationals and citizens must follow rules concerning restricted access to specific areas for military and security purposes (Meknassi, 2015, p. 39).

### 1.1.2 Rights of the Refugee as a Non-Ordinary Foreigner

Refugees possess a specific set of rights as non-ordinary foreigners, including the following:

– The requirement of reciprocal treatment does not apply to refugees: The norm of reciprocal treatment functions as a key element in international relations between states and it usually determines how states treat foreign nationals based on the rights they provide to their foreign residents. International law provides refugees with an exemption from the requirement of reciprocity once they have lived in their host country for three years because they are vulnerable people who seek protection from persecution and injustice in their home countries. The exemption appears in Article 7 of the 1951 Geneva Convention (Meknassi, 2015, p. 35).

– The 1951 Geneva Convention guarantees refugees lawfully present in a host state the right to receive travel documents for foreign travel unless public order or security reasons specifically restrict such travel. According to Article 27 of the 1951 Geneva Convention Relating to the Status of Refugees the host state must provide personal identification cards to all refugees who lack valid travel documents while present on its territory (Al-Aafer & Assoul, 2016, p. 34).

– The host country cannot apply special measures or procedures against refugees based on their nationality according to Article 8 of the 1951 Geneva Convention.

– The 1951 Geneva Convention under Article 31 provides contracting states with the authority to avoid criminalizing refugees for illegal entry into their territory when the refugees came directly from a place where their life or freedom faced danger and they reported to authorities immediately with legitimate reasons for their unauthorized entry (Meknassi, 2015, p. 36).

### 1.1.3 Rights of the Refugee as a Resident in the Host State

Refugees enjoy a range of rights as residents within the host state, including, but not limited to, the following:

– Right to Practice Religious Rituals: Refugees possess the freedom to perform their religious rites without restrictions. Refugees possess the right to hold their beliefs freely as well as the freedom to modify their religion and share it with others while being able to provide religious education to their offspring. According to the 1951 Refugee Convention Article 4 the Contracting States must provide refugees treatment which matches the national treatment regarding religious freedom and education for children. The international community unanimously supports protecting refugees' religious practices because state persecution frequently begins with restrictions on religious group membership or requiring worship to occur in secret. Such practices constitute clear violations of the right to religious freedom while providing valid reasons for refugee protection (Boukherchoufa, 2017, pp. 54-55).

### 1.1.4 Rights of the Refugee as a Citizen

Refugees possess a range of rights by virtue of their status as citizens, which can be summarized as follows:



– Right to Practice Religious Rituals: Refugees possess the freedom to perform their religious rites without restrictions. Refugees possess the right to hold their beliefs freely as well as the freedom to modify their religion and share it with others while being able to provide religious education to their offspring. According to the 1951 Refugee Convention Article 4 the Contracting States must provide refugees treatment which matches the national treatment regarding religious freedom and education for children. The international community unanimously supports protecting refugees' religious practices because state persecution frequently begins with restrictions on religious group membership or requiring worship to occur in secret. Such practices constitute clear violations of the right to religious freedom while providing valid reasons for refugee protection ([Boukherchoufa, 2017, p. 132](#)).

– Refugees enjoy the right to move freely within their host country under Article 26 of the 1951 Refugee Convention. Refugees in host countries must follow national regulations which control access to particular areas based on military or security reasons that apply equally to both foreigners and nationals ([Meknassi, 2015, p. 35](#)).

– Refugees receive educational rights through Article 22 of the 1951 Refugee Convention which requires states to grant refugees identical educational opportunities that national citizens possess. Education stands as an essential public right which applies to every individual including refugees.

– The World Health Organization defines primary healthcare as the delivery of essential health services to every person within a country at a level which people and their families and communities find acceptable. Full participation from the community remains mandatory for healthcare provision which must stay affordable for the local population. Refugees who claim asylum in host countries need to receive basic healthcare services because their journey exposed them to severe conditions including malnutrition and extreme exhaustion alongside psychological effects such as fear and insecurity. Comprehensive medical care is required to address these conditions ([Kessraoui, 2018, pp. 109-110](#)).

## 1.2 Rights of the Refugee by Virtue of Their Status

As refugees, individuals enjoy specific rights, notably the principle of non-refoulement (First Branch) and limitations on the state's authority regarding the expulsion of refugees (Second Branch).

### 1.2.1 The Principle of Non-Refoulement

The non-refoulement principle serves as the essential basis for asylum law while establishing itself as the primary defense mechanism for protecting refugees. Refugees receive protection from forced return because this principle prevents them from being sent to countries where they face persecution or credible threats of it. This fundamental protection does not compromise the authority of states to control their territory nor their independence to make decisions about granting or refusing asylum. The obligation to avoid sending someone back to persecution exists as a restriction on state discretion when asylum is refused even though states maintain full control over their territory ([Kassi, 2014, pp. 88-89](#)).

The principle of non-refoulement protects both recognized refugees and any individuals who seek asylum because they might qualify as refugees. The right to protection against refoulement exists with certain limitations that need to be specified. The principle does not apply to refugees who create a danger to the security or public order of the host nation. Host country authorities can deport refugees during exceptional circumstances but they must allow the individual enough time to obtain asylum protection from a different country that does not present a risk of persecution ([Meknassi, 2015, p. 39](#)).

Refugees possess non-refoulement rights as a fundamental core of refugee law. The 1967 United Nations Declaration on Territorial Asylum in Article 3 paragraph 1 establishes that all people have the right to seek asylum without being denied entry or forced to return to their country of persecution. The principle exists within the 1951 Refugee Convention and its 1967 Protocol. Article 32 of the Convention establishes three particular guarantees:

- Refugees may not be expelled from the territory except for reasons related to national security or public order.
- Expulsion must be carried out in accordance with the law, allowing the refugee the opportunity to present evidence in their defense.

– The state must provide the refugee with a period during which they can seek legal admission to another country (Kessraoui, 2018, p. 08).

### 1.2.2 Limitations on the State's Authority to Expel Refugees

The principle functions as a specific application of the general rule which prohibits sending refugees back to their persecutory nations. The state implements expulsion through legal procedures against foreign nationals who reside legally in its territory to end or restrict their stay before requiring them to depart.

Each state maintains a fundamental right to decide how it will remove foreigners from its territory unless treaty agreements establish different provisions. The host state maintains the power to remove refugees at any moment it chooses to withdraw the protection it initially granted. The international community has developed specific rules which limit state power to expel refugees because expulsion threatens these individuals who face persecution from their home country. These restrictions mainly establish valid grounds for expulsion along with procedures for handling expulsion orders and their enforcement and appeals (Meknassi, 2015, pp. 39-40).

Article 32 of the 1951 Convention relating to the Status of Refugees includes the most important restrictions that apply to expulsion:

– The prohibition of expulsion as a general rule, with allowance for expulsion only as an exception to preserve public order.

– The requirement that any expulsion decision be made in accordance with procedures prescribed by law, and that the state must grant the refugee sufficient time to seek admission in another country willing to offer asylum.

Referring to Article 32 of the 1951 Convention, which provides protection to refugees against expulsion and *refoulement*, it is clear from the safeguards it outlines that these protections apply exclusively to refugees who are lawfully present within the territory of the host state (Al-Aafer & Assoul, 2016, p. 28).

## 2. Duties of the Refugee

The refugee has various duties, including the obligation to maintain public order and national security (Section One), and the duty to uphold amicable relations between states (Section Two).

### 2.1 The Refugee's Duty to Maintain Public Order and National Security

According to Article 2 of the 1951 Convention relating to the Status of Refugees every refugee must fulfill their duties toward their host country especially by following its laws along with its actions to sustain public order.

The host state demands that refugees follow its laws and measures because these requirements protect its sovereignty alongside national security and public order. All foreigners who reside within the same territory as refugees must fulfill this obligation in equal measure (Khodrawi, 2018, p. 145).

The relationship between national security concerns and refugee duties to the host state requires two basic conditions about maintaining refugee status: the prohibitive condition (first subsection) and the terminative condition (second subsection).

#### 2.1.1 Condition Precluding the Enjoyment of Refugee Status

The situation which stops refugees from receiving protection as refugees depends on how national security concerns of the host country prevent initial refugee status recognition for asylum seekers. The denial of refugee recognition occurs because of past offenses which pose inherent dangers to the state's public order according to the standard political versus non-political crime differentiation (Meknassi, 2015, p. 46).

#### 2.1.2 Condition Terminating the Enjoyment of Refugee Status

National security stands as a fundamental priority for host nations when managing refugee situations because of modern developments which include rising refugee populations throughout the African

continent. The impact of refugee movements on national security of host states depends on the number of refugees and the ethnic or ideological motivations that drive asylum seekers especially across African nations facing these situations.

The host state can deport and expel refugees who break their obligations according to Article 38 of the 1951 Refugee Convention ([Meknassi, 2015, p. 47](#)). The procedural systems that determine expulsion and deportation decisions are shaped by two essential provisions which focus on this concern.

The refugee loses their right to defend themselves through evidence presentation and appealing the expulsion decision when national security threats exist according to Article 32 paragraph 2 of the 1951 Refugee Convention.

The host state maintains full authority to execute any domestic measures it chooses during the timeframe provided for refugees to obtain lawful entry into another country according to Article 32 paragraph 3 of the 1951 Refugee Convention ([Al-Aafer & Assoul, 2016, p. 37](#)).

The host state's national security protection framework derives from Article 32 paragraphs 1 and 2 which permit security exceptions to non-refoulement principles based on critical national security concerns ([Khodrawi, 2018, p. 146](#)).

## **2.2 Duties of the Refugee to Maintain Friendly Relations Between States and Other Obligations**

Refugees bear additional responsibilities, including the duty to preserve friendly relations between states (First Branch), as well as other obligations (Second Branch).

### **2.2.1 Duties of the Refugee in Preserving Friendly Relations Between States**

A sovereign nation holds the autonomous power to provide asylum protection to all people who fulfill refugee status requirements. The power to grant asylum within a state's territory does not create international liability nor does it negate the host state's obligation to protect individuals from their persecutors.

When refugees take actions against their persecutors or create threats to national security the host state may become responsible for these activities if they engage in cross-border actions through refugee-led organizations.

The majority of international asylum agreements and declarations place requirements on host states to implement controls over refugee political actions which may endanger foreign governing systems ([Al-Aafer & Assoul, 2016, p. 38](#)).

### **2.2.2 Other Duties of the Refugee**

The refugee is also bound by several additional duties, which include but are not limited to:

- Compliance with the domestic laws and regulations of the host state.
- Contributing to the development of the host country.
- Adherence to public order and prevailing social morals.
- Commitment to enforcing and respecting the law.
- Solidarity in sharing the general burdens of society.
- Cooperation with the state in matters of security and social welfare.
- Preservation of the natural environment.
- Protection of cultural heritage, including safeguarding historical monuments and sites.
- Exercising their rights with good faith and responsibility.
- Abstaining from interference in the political affairs of the host country.
- Payment of taxes and fiscal obligations equivalent to those imposed on other foreigners.

– Respect for the religious beliefs and practices that underpin the host society (Cherafet & Cherfa, 2015, pp. 48-49).

### CONCLUSION

The human rights of refugees exist because of their basic human dignity and their special status as refugees. Refugees must fulfill multiple duties which include protecting national security together with public order inside their host country and keeping positive relations between different states. The international community has devoted substantial attention to asylum and refugee matters through international conventions and state rights recognition yet numerous host nations do not honor these agreements. Many host nations practice forced repatriation of refugees who stay within their borders without proper legal justification.

### ACKNOWLEDGEMENT

I would like to express my gratitude to my colleagues and mentors for their constructive feedback and support in the preparation of this article. My sincere thanks also go to my family for their encouragement throughout this work.

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