

Protection of Human Rights and Refugees' Law through International Human Rights Law and Sharia

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Abstract

This paper clarifies how human rights and refugee rights are protected by international human rights legislation. It explains the background of human rights principles and refugee legislation. Human rights breaches continue to be a threat to refugees' safe return, having historically played a significant factor in their departure. The essay demonstrates how human rights and refugee law are both protected by international human rights law. Publications on human rights and refugee law as well as relevant resources can be located on numerous academic websites using the secondary data collecting method. Between 2019 and 2024, PubMed, Google Scholar, and Science Direct have been used to conduct literature searches. Selected secondary data make clear that refugee protection must drastically change to focus more on problem-solving. The study's findings clarify that, in contrast to international human law, which is only relevant in times of armed conflict, human rights law is always applicable, regardless of whether there is a state of peace or war. Based on the findings of this study, it is concluded that a human-rights-based interpretation of refugee law implies that it is time to make a concerted effort to balance receiving states' legitimate interests with the ongoing need of refugees to be guaranteed access to safety and a dignified existence.

Keywords: Human rights, Refugees' law, International human rights law

Introduction

This study aims to clarify the ways in which "international human rights (IHR)" legislation protects the rights of refugees as well as human rights. Human rights are those to which each and every person is naturally entitled. Among the plethora of human rights, some are considered to be especially important.¹ Human rights are inalienable and complementary strengthening; as such, they should all be accorded equal weight and treatment, even though certain international agreements permit the suspension of these rights when a country's citizens are in danger². Rights abuses have historically played a major role in the expulsion of refugees and continue to pose an issue to their peaceful return; however, it is important to keep in mind that these values are also relevant to other migration-related issues. Because of this, while making judgements about security or different issues, it is essential that you have an in-depth awareness of "human rights laws".

Research Problem

It does not address the history of principles related to human rights or refugee law, despite the fact that it is important to acknowledge the solid historical roots of these legal frameworks. Human rights abuses have historically been a significant factor in the expulsion of refugees and continue to be a threat to their safe return; nevertheless, it is crucial to remember that these principles also apply to other concerns associated to migration. It outlined the fundamental duties and rights of refugees as well

¹Bauböck, Rainer. "Refugee protection and burden-sharing in the European Union." *JCMS: Journal of Common Market Studies* 56, no. 1 (2018): 141-156.

²Chodorowska, Anna and Anna Trylińska. "The Concept of the Principle of Non-Refoulement in Refugee Law." *Dyskurs Prawniczy i Administracyjny* 2 (2021): 7-23.

as the treatment to which their asylum-seeking nation is entitled. Not every issue pertaining to the safety of refugees is covered under international refugee law³. “International humanitarian law, human rights law, and refugee law,” however, offer a complete framework for protecting UNHCR's priority individuals, including internally displaced people. However, certain of its provisions have gained recognition over time as generally enforced conventional international legislation. Many of its elements have been incorporated into legally enforceable regulations, statutes, and global and "national human rights treaties (Fitzpatrick 2021)." IHR is a useful supplement to international protection, particularly in regards to displaced people's rights. These documents set forth precise guidelines for treating men, women, girls, and boys. The UNHCR bases many of its protection principles on the norms set forth by international human rights law. These instructions offer helpful guidance on how to use human rights norms to the advantage of UNHCR-affected individuals⁴.

Aims and Objectives

- To investigate how “international human rights law” protects human rights.

- To examine how “international human rights law” protects refugee law.

³ Dziurda, Marcin, Agnieszka Golab, and Tadeusz Zembrzuski. "European Convention for the Protection of Human Rights and Fundamental Freedoms: Impact on Polish Law Development." *Access to Just. E. Eur.* (2021): 23.

⁴ Goodwin-Gill, Guy S. "The politics of refugee protection." In *International Refugee Law*, pp. 145-160. Routledge (2017).

1 Literature Review

According to Atapattu's (2020) research, the "New York Declaration for Refugees and Migrants" listed a number of different causes for migration, including natural disasters, terrorism, armed conflict, hunger, poverty, persecution, and abuses of human rights. It took more than 20 years for climate negotiators to incorporate displacement in climate documents, even though it was acknowledged in the very first IPCC report in 1990 that human migration may have the biggest single impact of climate change. The difficulties faced by small island states and the relationship between displacement, war, and climate change are highlighted in this article's discussion of complexities, scale, and migration scenarios. It looks at the legal structure that international law provides for political refugees and the legal loophole that currently exists for refugees from climate change. In their paper, they argue that current human rights legislation only provides a limited amount of protection, and that the worldwide community must act rapidly to establish a legal framework that would protect the rights of persons who have been affected by changes in the climate. This is particularly true for people who live in tiny island republics that are "disappearing," as they will have to relocate. The author makes the case that large emitters have a legal obligation to assist those displaced by climate change, particularly the citizens of small island states⁵.

According to research by Nola (2022), "Syria has been experiencing a humanitarian crisis" since 2011 as a result of the conflict

⁵ Atapattu, Sumudu. "Climate change and displacement: protecting 'climate refugees' within a framework of justice and human rights." *Journal of Human Rights and the Environment* 11, no. 1 (2020): 86-113

between the people and Bashar al-Assad's administration. Many were forced to escape to neighboring nations in search of safety and assistance as a result. Using the method of descriptive research and secondary data, their study sought to determine whether refugees fleeing the Syrian crisis were legally protected from the war from an IHR standpoint. The findings of their investigation show that crimes against humanity were committed in Syria during Bashar Al Assad's rule, which made the people of Syria fearful for their safety. Refugees are Syrian citizens who go to other nearby nations in search of safety. In order to address the refugee issue, nations and international organizations must also contribute. This is because the issue affects not just the country of origin of the refugees but also all facets of global society ⁶.

According to Supriyadi (2022), refugees leave behind their families, houses, belongings, and lives when they flee their native nation or place of residence. Since the refugees are being forced to flee their country, their own country is unable to provide them with protection. As such, the international community bears the responsibility of providing them with safety and aid. Refugees frequently endure cruel treatment in host nations, including rape, abuse, discrimination, and forced return, all of which violate their human rights. Both internationally and regionally, there have been human rights regulations pertaining to refugee issues; two examples of these are the "Convention related to Status of Refugee 1951 and The Protocol related to the Status of Refugee 1967." The right to justice and inclusivity; the capacity to submit an application for asylum; the ability to

⁶ Nola, Selvia. "Legal Protection of Refugees from the Syrian Conflict in the View of International Human Rights." *Research Gate* (2022).

Protection of Human Rights and Refugees' Law

an adequate and secure environment; and the right to go back home are the minimum five basic freedoms that relate to refugees.⁷

In addition to providing knowledge of the foundational ideas of “international human rights law” and its applicability in protection decisions, the RAO DIRECTORATE - OFFICER TRAINING, (2019) study also imparts a basic comprehension of “humanitarian law and the sources of international law.” We are not required to be conversant with every worldwide rights article or idea that can come up in the course of protection adjudications. Human may take into account any international legal instrument that can assist in determining eligibility for the requested benefit while deciding a protection case⁸.

2 Methodology

The article illustrates how IHR law protects both “refugee law and human rights.” Human rights and refugee law publications and related resources can be found on Science Direct, Google Scholar, and other academic websites. This study used a secondary technique of data gathering to understand "human rights and refugee legislation" within the structure of "international human rights law." A number of relevant papers were selected as secondary data for this study. The entire report outlines

⁷Supriyadi, Slamet. "International Refugees in the Protection of Human Rights: A Discourse of International Humanitarian Law and Human Rights Law." *International Law Discourse in Southeast Asia* 1, no. 1 (2022): 43-64. <https://doi.org/10.15294/ildisea.v1i1.56872>

⁸Raio Directorate – Officer Training. *Refugee, Asylum, And International Operations Directorate (Raio) Raio Directorate -Officer Training Raio Combined Training Program International Human Rights Law Training Module.* (2019). https://www.uscis.gov/sites/default/files/document/foia/International_Human_Rights_Law_RAIO_Lesson_Plan.pdf

current issues with the law pertaining to refugees and human rights. This extensive compilation of top academic research looks at the advantages and disadvantages of international refugee legislation over the course of its almost 100-year history⁹.

Science Direct has documents and other resources related to the subject of applying data protection rules in the framework of international agreements. For the purpose of conducting literature searches, PubMed, Google Scholar, and Science Direct are used between 2019 and 2024.

There was a wealth of information relevant to the topic under investigation on every website that was used to gather data for this study. Each of these online resources was therefore chosen with the intention of gathering data for this inquiry. Selected secondary data clarify the necessity for refugee protection to shift significantly towards problem-solving. The significance of finding "solutions" to refugeehood is discussed in passing. In the common sense, this refers to putting an end to the violence or other violations of human rights that led to the flight of refugees, allowing them to return home safely. Little has been done to retool the mechanisms of refugee protection itself to support this solution-oriented approach, despite the fact that states and the UN are becoming more aware of the need to intervene against the phenomena that drive refugees from their homes.

3 Results and Discussion

This chapter is divided into two sections, each of which explains a distinct challenge related to the legislation pertaining to refugees and

⁹Galani, Sofia. "Assessing maritime security and human rights: The role of the EU and its member states in the protection of human rights in the maritime domain." *The International Journal of Marine and Coastal Law* 35, no. 2 (2020): 325-347

human rights. "International human rights law" is used in the first section to describe human rights, and it is used in the second portion to explain refugee law.

3.1 Protection of Human rights through international human rights law and Islamic sharia

Global agreements on human rights have become increasingly specialized and narrowly targeted in terms of the subject they address as well as the social groups they identify as needing protection. Human rights law applies everywhere, unlike international humanitarian law (IHL), which is only relevant during times of conflict¹⁰. The "International Court of Justice, the UN Human Rights Committee, the European Court of Human Rights, the Inter-American Commission on Human Rights, and, of course, numerous national courts" are just a few of the tribunals worldwide that have expressly acknowledged the simultaneous effect of these two bodies of law. In a situation of emergency, states may deviate from some rights according to HR agreements. The prohibition against murder and cruel treatment, as well as the right to life, are two essential rights that cannot be postponed.¹¹

It is essential to take refugee protection into account within the broader context of defending human rights. Just because two different organizations were founded by States to deal with human rights and refugees, accordingly, in the years following World War II does not mean

¹⁰Harisman, Harisman. "Protection of Human Rights in the Amendment of the 1945 Constitution of The Republic of Indonesia." In *1st International Conference on Law and Human Rights 2020 (ICLHR 2020)*, pp. 384-389. Atlantis Press (2021).

¹¹Ishak, Nurfaika, Romalina Ranaivo, and Mikea Manitra. "Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia." *Journal of Human Rights, Culture and Legal System* 2, no. 1 (2022): 31-44

that these issues are unrelated. The common objective of the "United Nations' and the High Commissioner for Refugees" efforts in the field of human rights is the preservation of human dignity. The rights of individuals within State borders are covered by the UN's human rights program. The refugee organization was founded with the goal of restoring people's basic rights when they depart from their home nations.¹²

The two sets of laws have slightly varied areas of application. States, organized armed groups, and individuals are all subject to international humanitarian law when engaging in armed conflicts. On the other side, human rights law establishes guidelines that govern how nations interact with individuals. Although there is a growing body of thought that organized armed groups should protect human rights as well, especially if they perform functions similar to those of the government, this is still an unresolved problem. "Human rights law and international human law" share many of the same fundamental principles. For instance, the goal of both legal systems is to safeguard human life, restrict discrimination, forbid torture and inhumane treatment, and outline fundamental rights for anyone facing legal action. It is imperative to use caution in order to accurately articulate the interplay between the two sets of regulations¹³.

There might be some situations where IHR establishes a "self-contained" set of guidelines. Human rights are excluded in certain situations when the norms of "international humanitarian law" are applicable. This implies, for instance, that prisoners of war may have their

¹²Henrard, Kristin. *Devising an adequate system of minority protection: individual human rights, minority rights and the right to self-determination*. Vol. 62. Brill (2021).

¹³Kronick, Rachel, G. Eric Jarvis, and Laurence J. Kirmayer. "Refugee mental health and human rights: A challenge for global mental health." *Transcultural Psychiatry* 58, no. 2 (2021): 147-156.

Protection of Human Rights and Refugees' Law

freedom revoked until hostilities terminate and that human rights law does not imply the existence of a right to contest such a deprivation. When international human law is ambiguous or silent on a specific issue, one should refer to human rights law for help on how to interpret the relevant regulations.

This is particularly noteworthy with regard to the articles pertaining to fair trials, as international humanitarian law consists solely of generic principles, such as a mention of the right to "judicial guarantees recognized as indispensable by civilized peoples." Human rights law is an essential source of guidance and protection in circumstances other than worldwide conflict between nations when there are few "international humanitarian law" convention rules. Every protection strategy described how a nation may effectively guarantee the protection of refugees' rights by enforcing its human rights and refugee-related laws. Human rights and international protection concepts, such as the freedom from torture, the right to life and liberty, and the prohibition against arbitrary detention, are incorporated into national legislation in many nations.¹⁴

Islam also gives stress to give and ensure the basic rights to the people on priority basis. Human rights have been protected in Islam by applying the penalties on the culprits. The Quran says

مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا
فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا¹⁵

¹⁴ Kahl, Verena. "A human right to climate protection—Necessary protection or human rights proliferation?." *Netherlands Quarterly of Human Rights* 40, no. 2 (2022): 158-179

¹⁵ Al-Quran, 5 : 32

whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely.

3.2 Protection of refugees' law through international human rights law

There are several ways in which refugee law and refugee protection are related to armed conflict and "international human law." First, to ascertain the identity of a refugee People escaping armed war and frequently transgressions of international humanitarian law make up a large number of asylum seekers. Are they now considered refugees as a result? Not all individuals escaping armed conflict are immediately covered by the 1951 Refugee Convention, which establishes a restricted set of reasons for being persecuted. It's not always the case that people are fleeing because they fear persecution due of their "race, religion, nationality, or membership of a particular social group." This is especially true in circumstances when there is an ethnic component to disputes.¹⁶

The following ways that international human rights law protected refugee law:

- It is clearly forbidden for parties involved in a conflict to force civilians to relocate. This is an example of the idea that the effects of wars should be minimized for the civilian population.
- Even in non-international armed conflicts, it is forbidden to relocate civilians for conflict-related reasons unless doing so would jeopardize their safety or serve vital military objectives.

¹⁶ Leckie, Scott, ed. *Returning home: Housing and property restitution rights for refugees and displaced persons*. BRILL. (2021).

- Apart from these explicit proscriptions, the regulations of “international humanitarian law,” which protect civilians from the consequences of warfare, also hold significant importance in averting displacement; in fact, it is frequently the breach of these regulations that leads to displacement during armed conflicts.
- The right to leave the area they are in, barring circumstances where doing so would jeopardize the state of asylum's national interests.
- The ongoing entitlement to fundamental rights and safeguards that foreign nationals enjoyed before hostilities broke out.
- Assurances for the aliens' means of subsistence in the event that the parties to the conflict's control measures render them incapable of supporting themselves.
- In addition to the guidelines previously indicated for the benefit of all foreign nationals on a party's territory. According to government regulations, refugees cannot be classified as hostile aliens based just on their nationality and be subject to control measures. This acknowledges that refugees are not inherently a threat to their host state because they have severed their ties of allegiance to that state¹⁷.

4 Conclusion

This paper clarifies how human rights and refugee rights are protected by international human rights legislation. It makes clear that although acknowledging the strong historical foundations of "refugee and

¹⁷ Riley, Andrew, Yasmin Akther, Mohammed Noor, Rahmat Ali, and Courtney Welton-Mitchell. "Systematic human rights violations, traumatic events, daily stressors and mental health of Rohingya refugees in Bangladesh." *Conflict and health* 14 (2020): 1-14

human rights" legislation is crucial, this session does not delve into their respective histories. Human rights violations have always played a big role in the flight of refugees and still pose a danger to their safe exchange.¹⁸ The study makes clear that "human rights law" is always necessary, whatever the situation whether there is a state of peace or war, in contrast to "international human law," which is only important during situations of conflict between countries. Every protection strategy described how a nation may effectively guarantee the protection of refugees' rights by enforcing its human rights and refugee-related laws.

Human rights and international protection concepts, such as the freedom from torture, the right to life and liberty, and the prohibition against arbitrary detention, are incorporated into national legislation in many nations. These are upheld by means of court interventions at the national level. This situation raises serious human rights concerns because it will not always be possible to tell the difference between an economic migrant and a refugee. One could argue that if the focus is on threats to life and freedom, it will be difficult to tell the difference between someone who is starving to death and someone who is being threatened with arbitrary execution due to their political beliefs. Nevertheless, the fact remains that everyone is entitled to the minimum standards of treatment and human rights, regardless of whether they are citizens or non-citizens, and regardless of whether they are fleeing persecution, armed conflict, threats to their lives, or extreme poverty.

¹⁸Supriadi, Slamet. "International Refugees Protection in the Context of Human Rights." *Law Research Review Quarterly* 7, no. 4 (2021): 417-432.

Protection of Human Rights and Refugees' Law

Understanding refugee law from a human-rights perspective implies that it is necessary to make a concerted effort to balance receiving nations' legitimate interests with refugees' ongoing need for access to safety and a decent existence. The moral duty is to demonstrate that this objective may be met without compromising the international inclusivity and accountability that result from handling refugee cases within the bounds of international law. What's needed is for current requirements to be implemented with creativity and flexibility. Accepting this challenge will help us get past the platitudes about our commitment to human rights and develop a workable system that will provide protection on a consistent and broad basis.



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