

Asylum as a Fundamental Human Right: Examining the Legal Ideal, Status, Challenges and Promises

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Kariuki Muigua*

Abstract

This paper critically examines asylum as a fundamental human right. The paper observes that the right to asylum is a core human right that protects individuals from persecution, conflicts, wars, violence, or serious harm by allowing them to cross an international border and seek protection in another state. The paper discusses the legal ideal behind the right to asylum. It also explores the current status and progress made towards protecting the right to asylum. Despite its international recognition, the paper notes that protecting the right to asylum remains a challenge all over the world. It discusses some of the key obstacles hindering the protection of asylum as a fundamental human right. In light of current challenges, the paper suggests how the right to asylum can be attained globally.

1.0 Introduction

Human rights are fundamental entitlements that belong to every person by virtue of being human¹. Human rights are entitlements and freedoms we have simply because we exist as human beings and are not granted by any state². The United Nations notes that human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status³. Human rights belong to every person in the world, from birth until death⁴.

Human rights can be classified into several categories. For instance, *civil and political rights* protect individuals' freedoms from infringement by governments, social organizations, and private individuals⁵. These rights include the right to life, freedom of speech, freedom of association, freedom of religion, and the right to a fair trial⁶. *Economic, social and cultural rights* are a category of human rights that ensure individuals have access to basic economic and social goods, services,

* PhD in Law (Nrb), SC, FCI Arb (Chartered Arbitrator), OGW, LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. in Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; ESG Consultant; Advocate of the High Court of Kenya; Professor of Environmental Law and Conflict Management at the University of Nairobi, Faculty of Law; Member of the Permanent Court of Arbitration (PCA) [October, 2026].

¹ Human Rights., Available at <https://www.britannica.com/topic/human-rights> (Accessed on 21/10/2026)

² Office of the United Nations High Commissioner for Human Rights., 'What are Human Rights?' Available at <https://www.ohchr.org/en/what-are-human-rights> (Accessed on 21/10/2026)

³ United Nations., 'Human Rights' Available at <https://www.un.org/en/global-issues/human-rights> (Accessed on 21/10/2026)

⁴ Human Rights., Available at <https://www.diplomacy.edu/topics/human-rights/> (Accessed on 21/10/2026)

⁵ Ibid

⁶ Ibid

and opportunities⁷. These rights include the right to education, the right to work, the right to health, right to water and sanitation, and the right to an adequate standard of living⁸. Human rights also include *collective/group rights* which are rights held by a group rather than by its members individually⁹. These rights include the right to self-determination held by indigenous peoples¹⁰.

Protection of human rights is a prerequisite for Sustainable Development. The *2030 Agenda for Sustainable Development*¹¹ envisages a world of *universal respect for human rights and human dignity*, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity¹². The Agenda is anchored in key global human rights instruments including the *Universal Declaration of Human Rights (UDHR)*¹³, the *International Covenant on Civil and Political Rights (ICCPR)*¹⁴, and *International Covenant on Economic, Social and Cultural Rights (ICESCR)*¹⁵.

However, protecting human rights remains a challenge all over the world with factors such as discrimination, marginalisation, inequalities within and among nations, wars and conflicts, racism, sexism and intolerance undermining the attainment of human rights¹⁶. Consequently, it is imperative to strengthen universal respect for and protection of human rights towards Sustainable Development.

This paper critically examines asylum as a fundamental human right. The paper observes that the right to asylum is a core human right that protects individuals from persecution, conflicts, wars, violence, or serious harm by allowing them to cross an international border and seek protection in another state. The paper discusses the legal ideal behind the right to asylum. It also

⁷ Ibid

⁸ Ibid

⁹ Group Rights., Available at <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e805?prd=MPIL> (Accessed on 21/10/2026)

¹⁰ Ibid

¹¹ United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 21/10/2026)

¹² Ibid

¹³ United Nations General Assembly. *The Universal Declaration of Human Rights (UDHR)*. New York: United Nations General Assembly, 1948

¹⁴ United Nations General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966

¹⁵ United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966

¹⁶ United Nations Population Fund., 'Advancing Equity and Social Justice for People of African Descent' Available at <https://www.unfpa.org/advancing-equity-and-social-justice-people-african-descent> (Accessed on 21/10/2026)

explores the current status and progress made towards protecting the right to asylum. Despite its international recognition, the paper notes that protecting the right to asylum remains a challenge all over the world. It discusses some of the key obstacles hindering the protection of asylum as a fundamental human right. In light of current challenges, the paper suggests how the right to asylum can be attained globally.

2.0 The Right to Asylum: Legal Ideal, Status and Challenges

The right to asylum is a fundamental human right that allows individuals to flee their home country and seek protection in another country due to fear of persecution, conflict or violence¹⁷. It has been observed that seeking asylum is a human right and every person in the world has the right to apply for asylum if they are fleeing conflict, violence or persecution¹⁸. The right to asylum only applies to people who cross a border between countries and are not fleeing within a country¹⁹. Further, it has been observed that the right to asylum applies to persons who are seeking protection as refugees but they are yet to be granted refugee status²⁰.

It has been observed that from a legal perspective, a refugee is distinguished from an asylum seeker. The right to asylum implies that a person is attempting to submit a formal request for refugee status in a foreign country or awaiting the result from the examination of his/her file by the competent national authorities²¹. A refugee on the other hand is a person who has obtained an official refugee status from competent national authorities and therefore must be granted

¹⁷ Weis. P., 'The Right of Asylum: In the Context of the Protection of Human Rights in Regional and Municipal Law' Available at [¹⁸ United Nations High Commissioner for Refugees., 'Asylum-Seekers' Available at <https://www.unhcr.org/about-unhcr/who-we-protect/asylum-seekers> \(Accessed on 22/10/2026\)](https://international-review.icrc.org/sites/default/files/S0020860400011463a.pdf?afd_azwaf_tok=eyJraWQOiOiRTI2QzM5NkVBRTdENEZGZnAyRkFFN0M0MTBCQjBBNDRDRjg3NjgzMzM2NjEwNDk0MURFNUVBODFFODU5RjU3IiwiaWVxnljoiUIMyNTYifQ.eyJhdWQiOiJpbmRlcm5hdGlvbmFsLXJldmlldy5pY3JjLm9yZyIsImV4cCI6MTc5MjY1MTk0MiwiawWF0IjoxNzkyNjUxOTMyLCJpc3MiOiJ0aWVyMS01ODc5ZmQ0N2RjLXhsOWRyIiwic3ViIjoiMTA1LjE2My4xNTguNTIiLCJkYXRhIjpw7InR5cGUiOiJpc3N1ZWQILCJyZWYiOiIyMDI2MTAyMlQwNjUyMTJlTE1ODc5ZmQ0N2RjeGw5ZHJoQzFKTKI3dDE0MDAwMDAwMDI1MDAwMDAwMDAwNXZ5dSIsImIiOiJlVWRKWlpSeVFLaHBTcXpETFU4M2JiOVNQSGRHVUxIV1JzbUZSWkVrRmZJliwiaCI6Inp3b0MycV9mLVdQRXVpR2pBbBUekc5cEtVdE5DSHBiOGFlaHA1NDZOUiEifX0.gFWoZEVUDPKVTRjepOgIV6nGJQs- n73mLYiRQAGv6UonNba_m2E3YyS8k7DHXwsnEHFKDTHwG6N4t3K-7dtE1YsArpNaNCInI_YEP9PduL4IH3XSnEcEtWbkufVyOTTkMOLSRp_ZzqmltyGD3wKWv9IM66DcJN2RNCr7dtSI4IR-7ZrSBWG2lzVpkuG3BilzvRsShXD4zLXI1DSH2leb5r45SwNz2HIC-GyrT20cmwTCHkvsMwrDeOTuIbNMTtNZJkDwdGjSyWvtxjU6P_W15jIo0BOJg0tdGl_zLoy8BdySyk8E3-D1Kti7GtaCkphMac-pPsF8oEFzznVJoXDQ.WF3obl2IDtqgvMFRqVdYkD5s (Accessed on 22/10/2026)</p></div><div data-bbox=)

¹⁹ Article 14- Asylum., Available at <https://www.uu.nl/en/education/universal-declaration-of-human-rights-75-years/udhr-in-words-and-images/udhr-articles-1-30/article-14-asylum> (Accessed on 22/10/2027)

²⁰ Amnesty International., 'Refugees, People Seeking Asylum, and Migrants' Available at <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/> (Accessed on 22/10/2026)

²¹ The Right to Seek and Enjoy Asylum., Available at <https://guide-humanitarian-law.org/asylum> (Accessed on 22/10/2026)

certain rights as envisaged under the *Convention Relating to the Status of Refugees*²². Persons seeking asylum are initially referred to as asylum seekers until their claims are validated²³. Upon approval, they are granted the status of refugees where upon they receive fundamental protections, including non-refoulement rights, which prevent their return to a country where they may face danger²⁴.

Asylum is therefore a fundamental human right in international law. This right is stipulated under the *Universal Declaration of Human Rights* which provides that everyone has the right to seek and to enjoy in other countries asylum from persecution²⁵. The Universal Declaration of Human Rights therefore envisages the right of every person to seek and enjoy asylum in another country in order to protect themselves from persecution, violence, conflict and other acts that can violate their fundamental rights and freedoms. The *Convention Relating to the Status of Refugees* also envisions the legal protection of asylum seekers. For instance, under the principle of *non-refoulement*, states are prohibited from returning refugees and asylum seekers to a country where they face serious threats to their life or freedom²⁶. It has been observed that under this principle, asylum seekers have the right not to be removed, in any manner whatsoever, by their host country to their country of origin, or any other country, where they are at risk of being seriously harmed²⁷. The principle of *non-refoulement* therefore plays a key role in ensuring the legal protection of the right to asylum by prohibiting asylum seekers from being returned to countries when they face danger and human rights abuses.

Seeking asylum is therefore a fundamental human right for persons fleeing persecution, conflict, violence and human rights abuses. However, several challenges undermine the attainment of this right. For example, it has been observed that the right to seek and enjoy asylum is subject to national discretion, and while many countries recognise this right, some do not recognize an individual right to asylum²⁸. Consequently, it has been observed that the right to asylum is limited since there is no reciprocal and automatic obligation for states to grant asylum²⁹.

Failure to embrace a universal approach on the right to asylum can subject individuals to grave human rights abuses. It has been correctly observed that the need to protect the human rights of asylum seekers is particularly acute due to persecution, conflict and violence in their home countries yet their protection depends on the goodwill of states which may or may not accept any

²² United Nations General Assembly, 1951 *Convention Relating to the Status of Refugees*, United Nations, Treaty Series, vol. 189, p. 137, 28 July 1951

²³ Asylum (International Law)., Available at <https://www.ebsco.com/research-starters/social-sciences-and-humanities/asylum-international-law/> (Accessed on 22/10/2026)

²⁴ Ibid

²⁵ Universal Declaration of Human Rights., article 14 (1)

²⁶ 1951 Convention Relating to the Status of Refugees., article 33

²⁷ United Nations High Commissioner for Refugees., 'Rights and Duties' Available at <https://help.unhcr.org/global/rights-and-duties/> (Accessed on 22/10/2026)

²⁸ Asylum (International Law)., Op Cit

²⁹ The Right to Seek and Enjoy Asylum., Op Cit

obligations with regard to them³⁰. In particular, it has been pointed out that some states have adopted punitive migration policies which undermine the ability of people seeking asylum to enjoy this right³¹. Failure by states to allow individuals seeking asylum to enjoy this right could force such persons to return back to countries where they face persecution, violence, conflict and grave human rights abuses³². Consequently, there is need for enhanced legal protection of the right to asylum towards protecting vulnerable persons fleeing from human rights abuses in their home countries.

3.0 Strengthening Protection of Asylum as a Fundamental Human Right

Asylum is a fundamental human right. The United Nations High Commissioner for Refugees (UNHCR) observes that observes that asylum is the protection granted by states to persons who are outside their own country of nationality or habitual residence, and are seeking safety from persecution, serious harm, human rights abuses or for other compelling reasons³³. UNHCR further notes that protection of the right to asylum includes protection from being returned to danger (*non-refoulement*), permission to remain in the asylum country, humane treatment, and access to durable solutions including grant of the status of refugee³⁴. The right to asylum is a fundamental human right whose realisation is necessary towards effectively protecting people fleeing conflict, violence, war, persecution or other serious events compelling them to leave their own country and seek refuge elsewhere³⁵.

In light of current concerns, it is imperative to strengthen protection of the right to asylum. It has been pointed out that the right to asylum is the prerequisite for the enjoyment of the basic rights by a refugee³⁶. Consequently, it is imperative for states to grant and promote the right to asylum in order to enable all individuals to enjoy refugee status and protection as envisaged under the Convention Relating to the Status of Refugees. In particular, codifying the right to asylum under national laws including the Constitution and Acts of Parliament is key towards effective protection of this right³⁷. It has been observed that some states do not recognise the right to asylum a situation that can put vulnerable individuals in danger of grave human rights abuses due to persecution, conflict, war and violence³⁸. Codifying this right through national laws is therefore necessary towards ensuring that states allow persons seeking asylum enjoy this right towards protecting fundamental human rights.

³⁰ Weis. P., 'The Right of Asylum: In the Context of the Protection of Human Rights in Regional and Municipal Law' Op Cit

³¹ Amnesty International., 'Refugees, People Seeking Asylum, and Migrants' Op Cit

³² Ibid

³³ United Nations High Commissioner for Refugees., 'Asylum and Refugee Status' Available at <https://help.unhcr.org/global/asylum-and-refugee-status/> (Accessed on 22/10/2026)

³⁴ Ibid

³⁵ Ibid

³⁶ Weis. P., 'The Right of Asylum: In the Context of the Protection of Human Rights in Regional and Municipal Law' Op Cit

³⁷ Ibid

³⁸ Asylum (International Law)., Op Cit

At a national level, the *Refugees Act*³⁹ of Kenya grants the right to asylum. According to the Act, asylum means the protection granted to a person in Kenya who is outside his or her country of nationality or habitual residence, who is fleeing persecution or serious harm or for other reasons⁴⁰. The Act allows people to seek asylum in Kenya with special protection accorded to vulnerable individuals including children, women, persons with disabilities, the elderly, and persons or groups of persons who have been traumatized as a result of persecution, conflict, or violence in their home countries⁴¹. In addition, the Act embraces the principle of *non-refoulement* and prohibits asylum seekers from being expelled or extradited from Kenya to a country where they are likely to face persecution and human rights abuses⁴². National laws can therefore ensure effective protection of asylum as a fundamental human right.

In addition, complying with the principles of refugee protection is key towards strengthening asylum as a fundamental human right. In particular, the principle of *non-refoulement* plays a key role in ensuring effective protection of the human right to asylum. *Non-refoulement* is a key principle of international law with emphasis on refugee protection which prohibits a country from expelling or returning a person to a country or territory where they are likely to face persecution, torture, inhumane treatment or human rights violations⁴³. The International Organization for Migration notes that the principle of *non-refoulement* applies to all migrant persons, including asylum seekers, regardless of their migration status, and protects them from expulsion and return to places where they may be at risk of serious human rights abuses⁴⁴. It has been argued that the inclusion of the principle of *non-refoulement* in various international instruments, including the *Convention Relating to the Status of Refugees*, and its general recognition as a cornerstone principle of both refugee and human rights law has led to its acceptance as a norm of customary international law⁴⁵. Consequently, the principle and obligation of *non-refoulement* extends to all state in the international community⁴⁶. Consequently, it is vital for all states to apply the principle of *non-refoulement* in order to promote asylum as a fundamental human right.

International cooperation is also necessary towards promoting asylum as a fundamental human right. For example, it has been observed that through cooperation among states, it is possible to

³⁹ Refugees Act., No. 10 of 2021., Government Printer, Nairobi

⁴⁰ Ibid, S 2

⁴¹ Ibid, S 20 (1), and 21

⁴² Ibid, S 29

⁴³ Office of the United Nations High Commissioner for Human Rights., 'The Principle of Non-Refoulement under International Human Rights Law' Available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> (Accessed on 22/10/2026)

⁴⁴ International Organization for Migration., 'IML Information Note on the Principle of Non-Refoulement' Available at https://www.iom.int/sites/g/files/tmzbd12616/files/our_work/ICP/IML/2023-updated-impl-information-note-on-non-refoulement.pdf (Accessed on 22/10/2026)

⁴⁵ Ibid

⁴⁶ Ibid

put in place appropriate and enabling migration policies that can allow people to seek asylum in cases of human rights violations⁴⁷. With millions of people being displaced all over the world due to conflict, wars, violence and other acts impacting human rights, international cooperation can allow states to negotiate towards coming up with common migration and asylum policies towards effectively protecting human rights for vulnerable individuals⁴⁸. It is therefore necessary to embrace cooperation among states towards effectively protecting asylum as a fundamental human right through common international and regional approaches.

Through the foregoing initiatives, it is possible to effectively upholding asylum as a fundamental human right at all levels.

4.0 Conclusion

With millions of people being displaced around the world, the right to asylum plays a fundamental role towards protecting vulnerable persons fleeing from human rights abuses in their home countries. However, current challenges including failure by some states to recognise and protect this right exposes individuals to the threat of persecution, violence, inhumane treatment and other human rights abuses. Consequently, there is need to recognise and protect asylum as a fundamental human right all over the world including through codification of the right to asylum under national laws, upholding the principle of *non-refoulement*, and fostering international cooperation.

⁴⁷ Amnesty International., 'Refugees, People Seeking Asylum, and Migrants' Op Cit

⁴⁸ Asylum (International Law)., Op Cit

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