

THE PROTECTION OF REFUGEES UNDER INTERNATIONAL HUMANITARIAN LAW

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Abstract

Globally, insecurity can be in form of oppression, disaster and wars within and among nations of the world and has caused people to flee their homelands. These people are being forced to leave their homes, possessions, friends and family, traumatized by killings or other crimes that made them to flee from their indigenous country to a strange or foreign land. Refugee law has to do with establishing the status of a 'refugee' and protecting that status with rights that accrue to the recognition of that status. Hence, refugees are protected by International Law and are eligible to receive aid. In the past, the protection of refugees was primarily based on specific agreements concluded in the framework of the League of Nations before the adoption of the 1951 Convention relating to the status of refugees. At the end of the First World War, persons that were displaced as a result of the war became subject matter of discourse in International Politics/Law. This is majorly attributed to the reason why the United Nations for the first time provided an international mechanism to legally recognize the status of refugees and also their protections. This article explored how refugees are protected under International Law. It adopted doctrinal research methodology that involved the exploration of both primary and secondary sources. Conclusively, it was noted that the protection of refugees has significantly deteriorated over past few decades and it is recommended amongst other things that there is need to further strengthen both local and international institutions to ensure that refugees are well protected.

Introduction

The predominance of the concept of refugee¹ in international arena is basically caused by conflicts, oppression, civil unrest, wars, *et cetera* within the nation-States which are the major reasons why people flee from their indigenous countries to foreign country in most discomforting conditions. The nature of conflicts has changed with the proliferation of internal ethnicity or religious-based struggles in which displacement has become an objective, rather than merely a consequence of war.²

The problems of refugee are expanding day by day and the complications associated with it cannot be over emphasized. The number of refugees and internally displaced persons in need of protection and assistance has increased from 30 million in 1990 to more than 43 million as at today.³ Crisis such as war and civil strife amidst others have been largely responsible for

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¹ For the purpose of this dissertation, the term refugee is defined in the international refugee instruments such as the '1951 Convention Relating to the Status of Refugees' and its '1967 Protocol', the '1969 Organization of African Unity Convention Governing the Specific Aspects' and the '1984 Cartagena Declaration on Refugees'.

² Lubbers R., Forward by the High Commissioner for Refugees, 843 Int'l Rev. of Red Cross 578 ,2001

³ Toole M.J., 'Refugees and Displaced Person of War, Hunger and Public Health'. <<https://jamanetwork.com/journals/jama/article-abstract/407725>>. Accessed on 19/4/2021.

this epidemic of mass migration that has affected almost every region of the world, including Europe. Since 1990, Crude Death Rates⁴ (CDRs) during the early influx of refugees who crossed international borders have been somewhat lower than CDRs reported earlier among Cambodian and Ethiopian refugees.⁵ Nevertheless, CDRs reported earlier among Cambodian and Nepal, Malawi and Zimbabwe since 1990 ranged from five to twelve times the baseline CDRs in the country of origin.⁶

The major challenge faced by refugees is the issue of applying for and obtaining refugee status in the host country.⁷ The procedure for determining this grant is known as Refugee Status Determination (RSD) procedure, which is a legal act by which the conditions or facts giving rise to an asylum seeker's plight are examined by the relevant authority with the aim of determining whether or not asylum seekers are entitled to international protection.⁸ Hence, the major task which is usually not easy that befalls an individual refugee is to take extra steps to ensure that he/she is qualified under the relevant extant convention applicable to him/her to be granted refugee status.

The provisions of international humanitarian law on the protection of refugees apply essentially to the territory of the parties in conflict and refugees who have sought refuge on the territory of a State that is not involved in the conflict. In so far as they have reached the territory of a neutral or non-belligerent State, such refugees are protected by the national law of the host country, by human rights law and the 1951 Refugee Convention if they are refugees as defined in the latter.⁹ The security of the refugees should be guaranteed in the host country which will go a long way to protect them from the constraints they may be subjected to on the grounds of their nationality, not minding the fact that they have fled the country of which they are citizens.

This paper seeks to answer the following questions to wit: to what extent has the international framework on refugee been effective in addressing the challenges facing refugees? To what extent has international efforts assisted to protect the rights of refugees? Before delving into the intricacies of this paper, it is apposite to define some relevant terms.

Refugee

A refugee is a person who has been forced to flee his home country due to persecution, race, religion, nationality, political opinion or membership in a particular social group.¹⁰ The persecution a refugee experiences may include harassment, threats, abduction or torture. Refugees leave their homeland due to imminent fear for their lives or those of their family members. Often, they have inadequate warning of the danger and as such are unable to plan

⁴ This is the number of deaths occurring among the population of a given geographical area during a given year.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Ovuoh C.R. & Ovuoh I., 'The Challenges and Protection of Refugees under International Humanitarian Law' (2021) *Orient Law Journal* (Vol.4) p.151

⁸ The UNHCR Handbook of Guideline on Determination of Refugee Status. <<https://www.unhcr.org/publications/legal/3d58e13b4/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>> . Accessed on 17/8/2020

⁹ Neither the Geneva Conventions nor their Additional Protocols defined refugees or stateless persons; rather, they refer to the definitions set forth in the international instruments protecting refugees and stateless persons.

¹⁰ Based on 'Who is a refugee?' from <http://www.hias.org/FAQ/HIAS>.

their departure. Sometimes, these decisions are made so quickly that there is no opportunity to collect important papers like birth certificates or nationality papers. Typically, refugees travel to a refugee camp in a country of first asylum and register themselves for refugee status.¹¹

Armed Conflict

Armed conflict arises whenever there is fighting between States or protracted armed violence between government authorities and organized armed groups or just between organized armed groups. It may also mean any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized armed groups or between such groups within that State, provided that such force or armed violence gives rise, or may give rise to a situation to which the Geneva Conventions of 12 August 1949, including their common *article 3*, apply.¹²

Internally Displaced Persons

Internally displaced persons according to the United Nations Guiding Principles on Internal Displacement,¹³ are “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflicts, situations of generalized violence, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized state border.”

Asylum

Asylum refers to the protection granted to people fleeing persecution based on their race, religion, nationality, political opinion or membership in a particular social group.¹⁴ Asylum encompasses a variety of elements including *non-refoulement*, permission to remain on the territory of the asylum country and humane standards of treatment.

Challenges to the Protection of Refugees

Protection of the rights of refugees and the deterrence of discord between the countries of origin and the asylum countries have currently posed a larger scale of socio-political, economic, ethnic and communal tension to the national and international community.¹⁵ In addition, it has also geared up cynical bilateral relations between the neighboring countries and to some extent, caused a big obstacle in balancing government’s international obligation to provide fair treatment and asylum to those in need.¹⁶

One of the challenges to refugee protection is hinged on the agents of persecution. The 1951 Convention definition of a refugee does not in practice cover every case where an individual flees in fear of violence or human rights abuse. Refugees have been denied recognition even though the harm they fear is linked to their race, religion, nationality, membership of a

¹¹ *Ibid.*

¹² D. Fleck, *The Handbook of Humanitarian Law in Armed Conflicts*, (Oxford University Press, Oxford,1995) 40.

¹³ UN High Commissioner for Refugees (UNHCR), *Guiding Principles on Internal Displacement*, 22nd July 1998 available at <https://www.refworld.org/docid/3c3da07f7.html> . Accessed on 19/6/2023.

¹⁴ UN High Commissioner for Refugees (UNHCR) *Global Report*, 2012.

¹⁵ MD Aktarul (2018) *Challenges to the Protection of Refugees’ Rights in Bangladesh: In Search of a Comprehensive and Effective legal and Institutional Frameworks*. Published at <http://www.researchgate.net/publication/342411052>

¹⁶ *Ibid.*

particular social group or political opinion, and where the facts are not in dispute, including the nature of the likely harm. These denials stem from restrictive interpretations of the Convention.

Problematic interpretations of the Convention, which reduce its scope and render it less responsive to protection needs, are numerous. Some jurisdictions have insisted that refugees be 'singled out' for persecution. Others have expanded the ambit of the exclusion clauses under *Article 1F* with regard to what constitutes a serious non-political crime and through increased use of the notion of 'acts contrary to the purposes and principles of the UN'.¹⁷ In different countries and contexts, refugee protection has been denied to asylum-seekers when the persecution has taken place in wartime;¹⁸ when systematic oppression and abuse of women has taken place in the family or societal context;¹⁹ and when the persecutor cannot be shown to be *motivated* by one of the Convention grounds.²⁰

One area of interpretation causing concern relates to the debate about 'agents of persecution' where the question is whether the source of threat affects the individual's well-founded fear of persecution under the Convention? In some cases, refugee recognition has been denied to persons who fear harm from non-State actors, while the State is unable to protect them, or where no State can be said to exist.

In at least four Western countries, for refugee status to be granted to those in fear of persecution by non-State actors, the State must have the capacity to protect and the non-State agents must themselves possess a certain State-like character. Refugee status is thus refused where the State is unable to exercise effective protection, even if willing to do so, and where the State is 'failed' or fragmented.

Another challenge to refugee protection is seen in the criminalizing of illegal departure of supposed refugees. The Universal Declaration of Human Rights proclaims the right of everyone to leave and return to his or her own country, a right which has been repeated subsequently in other binding human rights instruments. This right, like the right to seek and enjoy asylum, may seem empty if one has nowhere to go. The right to leave one country and the right to enter another are nonetheless distinct.

States have long made entry difficult.²¹ Some methods-re-admission agreements and the 'safe third country' notion for instance put a principled gloss on turning asylum-seekers away, relying on the argument that they could have found asylum elsewhere. There is also the

¹⁷ UNHCR 1996.

¹⁸ See, The Canadian *Guidelines on Civilian Non-Combatants Fearing Persecution in Civil War Situations*, March 1996.

¹⁹ For a discussion of this issue, see *IJRL* 1997.

²⁰ 'In 1992 the US Supreme Court in *INS v. Zacarias*... required all applicants to provide evidence of the persecutor's intent. Under the framework established in *Zacarias* case, a failure to prove intent is fatal to the claim, regardless of the egregiousness of the feared persecution' (Musaloet *aL*1997:286). The reference for *INS v. Zacarias* 502 U.S. 478 (1992).

²¹ Fitzpatrick has noted that 'the states of traditional asylum have pursued two types of structural revisions in their asylum systems, driven by the challenge posed by the backlogs and by dramatic attitudinal shifts among policy makers and large segments of the public. The first approach involves streamlining the refugee determination process. The second involves erection of deterrence, exclusion, and diversion barriers to stem the flow of asylum-seekers. These measures have resulted in startling reductions in asylum application rates since 1992. Between 1992 and 1994, applications in Europe plummeted by two-thirds, while combined application in Western Europe, North America and Australia fell from approximately 825,000 in 1992 to an estimated 425,000 in 1994. Despite these precipitous drops, pressure remains to tighten access to asylum even further' (1994:31).

notion that it is in the best interest for people to stay in their region of origin. At the Edinburgh Summit in 1992, twelve EU Member States declared that 'in line with the views of UNHCR, displaced persons should be encouraged to stay in the nearest safe areas to their homes, and that aid and assistance should be directed towards giving them the confidence and the means to do so.²² Entry is further frustrated by the imposition of visa requirements, carrier sanctions, and interdiction at sea.²³

Prospects to the Protection of Refugees

In the face of rapidly shrinking protection space, it is imperative to find ways to safeguard the institution of asylum while responding to the concerns raised by States. Current failures to ensure access to and the quality of asylum have been attributed to perceived shortcomings in the 1951 Convention and its 1967 Protocol,²⁴ leading some to call for revisiting its parameters and scope. There are certain risks in such an exercise, as reopening this discussion could inadvertently result in many of the hard-won advances made in negotiating international refugee protection being undermined. It would also be an exercise that would not address the deeper issue, which is not the Convention itself, but the failure of political will — both to abide by or fully implement the Convention in the face of populist opposition arising out of fear, misinformation, and xenophobia, and to address more concertedly the root causes of displacement. Principled leadership is urgently required to counter damaging narratives that harm both refugees as well as the institution of asylum itself at a time when it is needed more than ever before.²⁵

The 1951 Convention was crafted 65 years ago as both a moral and legal response to people who were fleeing their countries for many of the same reasons people are fleeing today. It has been applied successfully over the years in situations of mass influx to ensure admission to territory and protection on a group basis or through accelerated procedures, and it is equally well positioned to do so today. It was designed from the start to protect individuals at risk for a variety of reasons, including persons fleeing armed conflict and other situations of violence that may accompany changes in political systems.²⁶ It does not distinguish between refugees fleeing from situations of war or peace, and it recognizes that persons fleeing situations of armed conflict or violence may well fear persecution on the basis of one or more of the Convention grounds.²⁷

The application of the Convention has evolved to address modern forms of persecution, such as those related to gender, sexual orientation, children, and gang-related violence. It can also accommodate new approaches to large-scale movements such as the strategic use of refugee status determination or temporary protection in the immediate term, complemented by

²² This position is contradicted by the EU's own action in the Treaty of Amsterdam, which restricts the possibilities for asylum-seekers from an EU country from remaining in their region of origin, apart from Norway or Switzerland.

²³ See, *inter alia*, *The Role of Airline Companies in the Asylum Procedure* (Danish Refugee Council 1988).

²⁴ Convention relating to the Status of Refugees (Geneva, 28 July 1951) 189 U.N.T.S. 137, entered into force 22 April 1954. <http://www.refworld.org/docid/3be01b964.html>; Protocol relating to the Status of Refugees (New York, 31 Jan. 1967) 606 U.N.T.S. 267, entered into force 4 Oct. 1967. <http://www.refworld.org/docid/3ae6b3ae4.html> (hereinafter referred to as the [1951] Convention and its [1967] Protocol).

²⁵ Prospects for Responsibility Sharing in the Refugee Context by Office of the United Nations High Commissioner For Refugees (UNHCR), *Journal on Migration and Human Society*, (JMHS) Volume 4 No.3 (2016): 45-59.

²⁶ *Ibid.*

²⁷ *Ibid.*

community-based protection approaches to identify individuals with specific needs, such as unaccompanied or separated children, survivors of sexual and gender-based violence, or victims of trafficking.

It is an ironic turn of events that some of the countries that so greatly benefited from refugee protection in the past following the adoption of the 1951 Convention are the same ones now closing their borders. The need to find more effective ways to implement the 1951 Convention to protect persons from persecution has clearly become more pressing than ever. The 1951 Convention and its 1967 Protocol, complemented now by regional instruments and customary law, are still widely acknowledged as the main legal tool on refugee protection. It is not something that is worth losing at such a critical juncture. As has been seen so many times in recent years, departures from the fundamental principles of international refugee protection have neither reduced nor stalled refugee movements. Rather, they have resulted in ineffective management of large-scale influxes, the diversion of refugee movements, the creation of tensions between States as burdens and costs are shifted from some onto others, and ultimately, the re-victimization of those most in need of protection and support.

These challenges necessitate the need to consider how things might be done differently to ensure that refugees are able to access and enjoy asylum, and that the countries affected by refugee movements can count on international support. The provisions for the reception and treatment of refugees are set out clearly within the 1951 Convention and its 1967 Protocol, but compliance with these provisions is inconsistent, and gaps in implementation create practical problems that may lead refugees to move onward. Also, if more States acceded to, and implemented fully, the 1951 Convention and other refugee law instruments, it may be possible to realize more widely shared and consistent approaches to asylum and refugee protection.

An integrated approach is required, combining complementary and mutually reinforcing measures to ensure the safety of both refugees and host communities. The provisions in the 1951 Convention are set out specifically to achieve this. They provide the legal basis for reception, registration, and screening measures to ensure that persons who may pose threats to security do not take advantage of large-scale movements of refugees to try to enter countries for the purpose of endangering public safety.²⁸ Early screening measures also help to identify individuals at risk, such as victims of trafficking, survivors of sexual and gender-based violence, or children at risk, and to connect them with the appropriate procedures and support services. Efforts to bring smugglers and traffickers to account for their crimes not only need to be in keeping with the international legal framework on combating trafficking, but also be sensitive to the protection and support needs of the victims as part of an integrated approach.²⁹

Protection of Refugee Women

There is indeed debate when it comes to separating women's rights from universal human rights. Women are, of course, entitled to enjoy all universal human rights - those relating to inequality, family rights and violence against women are particularly important. International instruments which protect refugees do not distinguish between "male refugees" and "female

²⁸ *Ibid.*

²⁹ *Ibid.*

refugees”.³⁰ For example, *article 2* of the Universal Declaration of Human Rights (UDHR) states:

*Everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind such as race, colour sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*³¹

It is clear from a number of conventions that those who drafted them had only male refugees in mind. In fact, decades of refugee-orientated treaty-making have been exclusively male-focused, a trend which has been extended to African instruments on the status of refugees. Statistics illustrate that women constitute the majority of the world’s poor and illiterate. Women also earn far less than men, in general, and often work without pay.³² Even more seriously, women are frequently subjected to abuse and torture on account of their gender. Women have now been singled out for attention as a “group” of persons deserving special protection. This is partly as a result of the degree of discrimination that women experience in some cultures and practices, thereby inhibiting true equality.³³

As *article 1* of the Declaration on the Elimination of Discrimination against Women, 1967, notes: “discrimination against women, denying or limiting, as it does, their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.”³⁴ The situation is aggravated when one considers the doubly-disadvantaged situation pertaining to women refugees. Refugees are, of course, also subject to discrimination and have borne the brunt of numerous atrocities over long periods of time.³⁵ Not until 1985 did the United Nations begin to discuss the need for particular protection to women refugees.³⁶ That year saw the adoption of a landmark conclusion on the global protection of refugee women.

In May 1985, the International Seminar on Refugee Women was held in Soesterberg, in which sexual violence against refugee women and asylum policies were discussed.³⁷ Not more than 37 delegates from 23 European and international refugee relief organisations attended and made a number of recommendations which were handed to HedyD’Ancona, member of the European Parliament at the time. These recommendations include the following: social and institutionalized forms of women’s oppression (which violate international legal standards and the contents of human rights) serve governments as forms of persecution, which may lead to the granting of refugee status to be recognized; in line with

³⁰ Anders B. Johnson, “The International Protection of Women Refugees: A Summary of Principle Problems and Issues,” *International Journal of Refugee Law* 1 (1989): 222.

³¹ (United Nations, 1948, art.2).

³² Smith, Rhona. *Textbook on International Human Rights*. Oxford: Oxford University Press, 2012.

³³ Ibid, 359. As Smith notes, international human rights law is moving towards a focus on “categories” of persons and on providing protection for such persons. The United Nations (UN), in particular, has made great efforts in creating a suitable legal framework for the protection of women

³⁴ Other international instruments / documents which protect women’s rights, in general, include: the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962), the 1957 UN Convention on the Nationality of Women, the 1993 Declaration on the Elimination of Violence against Women, discussed briefly, below, and the Beijing Platform for Action.

³⁵ There are now over 20 million estimated refugees which fall within the UN High Commissioner for Refugee’s remit today: Smith, *International Human Rights*, noted above, 377. There are also numerous “internally displaced persons” who are forced to abandon their homes, although they still live within their own countries.

³⁶ Johnson, “The International Protection of Women Refugees”, noted above, 223.

³⁷ Marijke Meijer, “Vrouwenonderdrukkingen de status van vluchteling,” *Nemesis* 1, No. 6 (1985): 273.

the resolution adopted by the European Parliament on 13 April 1984, the governments' oppression of women that takes place under the above recommendation is defined as persecution within the meaning of the Refugee Convention; and also, governments should recognize that persecution for membership of a particular social group may also include persecution of social status on the basis of sex.

These recommendations were brought to the attention of governments and organisations.³⁸ An international network was also established to promote the above recommendations.³⁹ According to the seminar, women refugees can be categorized as follows (which are not mutually exclusive or exhaustive):⁴⁰

1. Women who fear persecution on the same Convention grounds, and in similar circumstances, as men. That is, the risk factor is not their sexual status, *per se*, but rather their particular identity (i.e. racial, national or social) or what they believe in, or are perceived to believe in (i.e. religion or political opinion).
2. Women who fear persecution solely for reasons pertaining to kinship, i.e. because of the status, activities or views of their spouses, parents, and siblings, or other family members.
3. Women who fear persecution resulting from certain circumstances of severe discrimination on grounds of gender or acts of violence either by public authorities or at the hands of private citizens from whose actions the State is unwilling or unable to adequately protect the concerned persons.
4. Women who fear persecution as the consequence of failing to conform to, or for transgressing, certain gender-discriminating religious or customary laws and practices in their country of origin.

Also, three policy recommendations stemmed from the UNHCR: the Policy on Refugee Women (1990), the Guidelines on the Protection of Refugee Women (1991) and the Guidelines on Sexual Violence against Refugees: Prevention and Response (1995) were adopted.

Protection of the Refugee Children

Usually, more than half of any refugee populations are children. Refugee children are children first and foremost, and as children, they need special attention. As refugees, they are particularly at risk with the uncertainty and unprecedented upheavals which are increasingly marking the post-Cold War era. In order to improve and enhance the protection and care of refugee children, UNHCR has adopted a Policy on Refugee Children, endorsed by the UNHCR Executive Committee in October 1993.⁴¹ The UNHCR Guidelines on Refugee Children, first published in 1988,⁴² have been updated in the light of the new Policy. At their core lies the realization of the need which children have for special care and assistance.

³⁸ *Ibid*, 273

³⁹ It was planned that this would be presented at the World Conference on Women in Nairobi during July 1985 and that progress would also be discussed at a later event in Frankfurt. *Ibid*, 274.

⁴⁰ Immigration and Refugee Board, *Guideline 4 – Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act* (Ottawa: Immigration and Refugee Board, 1996).

⁴¹ UNHCR,(1994) Refugee Children: Guidelines on Protection and Care.

⁴² UN High Commissioner for Refugees (UNCHR), Guidelines on Refugee Children, August 1988, {Accessed 28th July, 2022}UNHCR,(1994) Refugee Children: Guidelines on Protection and Care.

⁴² UN High Commissioner for Refugees (UNCHR), Guidelines on Refugee Children, August 1988, Accessed 28th July, 2022.

Refugee children face far greater dangers to their safety and well-being than the average child. The sudden and violent onset of emergencies, the disruption of families and community structures as well as the acute shortage of resources with which most refugees are confronted, deeply affect the physical and psychological well-being of refugee children. It is a sad fact that infants and young children are often the earliest and most frequent victims of violence, disease and malnutrition which accompany population displacement and refugee outflows.⁴³

In the aftermath of emergencies and in the search for solutions, the separation of families and familiar structures continue to affect adversely refugee children of all ages. Thus, helping refugee children to meet their physical and social needs often means providing support to their families and communities. These are the concerns reflected in the Guidelines, which define the goals and objectives, the principles and practical measures for the protection and assistance of refugee children.

The 1951 Refugee Convention and the 1967 Protocol (Relating to the Status of Refugees) set standards that apply to children in the same way as to adults:

- (1) a child who has a "well-founded fear of being persecuted" for one of the stated reasons is a "refugee";
- (2) a child who holds refugee status cannot be forced to return to the country of origin (the principle of non-refoulement); and
- (3) no distinction is made between children and adults in social welfare and legal rights.⁴⁴

One article in the Convention sets standards which are of special importance to children: refugees must receive the "same treatment" as nationals in primary education, and treatment at least as favorable as that given to non-refugee aliens in secondary education.⁴⁵

The 1969 Organization of African Unity Convention (Governing the Specific Aspects of Refugee Problems in Africa) broadened the definition of "refugee" to include persons in Africa who flee from war and other events that seriously disrupt public order. The OAU Convention makes no distinction between children and adults. The 1984 Cartagena Declaration also expanded the concept of refugee, and although the standard is not legally binding, States in Latin America do apply it.

The treaty which sets the most standards concerning children is the 1989 Convention on the Rights of the Child (CRC). It is worthy of note that the CRC is not a refugee treaty. However, refugee children are covered because all CRC rights are to be granted to all persons under 18 years of age⁴⁶ without discrimination of any kind.⁴⁷

The Convention on the Rights of the Child is important to refugee children because it sets comprehensive standards. Virtually every aspect of a child's life is covered, from health and education to social and political rights. Some of the standards are specific, for example the articles on juvenile justice,⁴⁸ adoption⁴⁹ and family rights.⁵⁰ Some social welfare rights are

⁴³ *Ibid.*, above.

⁴⁴ UNHCR,(1994) Refugee Children: Guidelines on Protection and Care.

⁴⁵ (art. 22), 1989 Convention on the Rights of the Child (CRC).

⁴⁶ (art. 1), 1989 Convention on the Rights of the Child (CRC).

⁴⁷ (art. 2), 1989 Convention on the Rights of the Child (CRC).

⁴⁸ (arts. 37 and 40), 1989 Convention on the Rights of the Child (CRC).

⁴⁹ (art. 21), 1989 Convention on the Rights of the Child (CRC).

⁵⁰ (arts. 5, 9 and 14.2), 1989 Convention on the Rights of the Child (CRC).

expressly qualified by the State's financial capability. Rights to health,⁵¹ education,⁵² and to an adequate standard of living⁵³ are called "progressive rights" because they increase along with the State's economic development. However, these social welfare rights are not just principles or abstract goals. Because they are "rights," the prohibition against discrimination⁵⁴ means that whatever benefits a State gives to the children who are its citizens, it must give to all children, including those who are refugees on its territory.

The Convention on the Rights of the Child has gained importance to refugee children because of the near-universal ratification of the treaty (155 State parties by March 1994). The CRC standards have been agreed to by countries in every region of the world, countries of every population and geographical size and stage of economic development, and representing every type of political system and religious tradition. Because the standards are universal, the CRC can be used as a powerful tool for advocacy: a country cannot claim its uniqueness as an excuse for not living up to universal standards. The widespread ratification of the CRC is important for other reasons as well. When a State is a party to the CRC but not to any refugee treaty, the CRC may be used as the primary basis for protecting refugee children. Even when a State has not ratified the CRC, UNHCR still advocates its observance because its standards are universal.

UNHCR also applies the CRC to its own work by using the rights as guiding principles. The UNHCR Policy on Refugee Children states, "as a United Nations convention, (the CRC) constitutes a normative frame of reference for UNHCR's action."⁵⁵

One of the guiding principles in the Policy states: "in all actions taken concerning refugee children, the human rights of the child, in particular his or her best interests, are to be given primary consideration".⁵⁶ At the beginning of each chapter of these Guidelines, the rights in the CRC are stated as UNHCR's standards. For the well-being of refugee children, UNHCR advocates the observance of CRC standards by all States, international agencies and non-governmental organizations.

Conclusion

In conclusion, the concept of refugee has gained international attention sequel to crisis and terrorism that surrounds most countries of the world and the conundrum of mass displacement of persons from their home countries continue to persist. It was noted that part of the functions and roles of the International Humanitarian Law is to provide for and protect refugees and other displaced persons all over the world. However, due to the activities of the nation States, the International law most times lacks the sufficient mechanism to both tackle the bottlenecks and adequately harness their essence towards protecting refugees and other displaced persons.

In the bid to restore and sustain an effective protection of refugees, States are enjoined to rise up to the occasion to stem this ugly tide by committing to protect these refugees and internally displaced persons. It is far from enough to enact laws and regulations that protect refugees, the States must ensure that laws are observed. Most states through their local

⁵¹ (art. 24), 1989 Convention on the Rights of the Child (CRC).

⁵² (art. 28), 1989 Convention on the Rights of the Child (CRC).

⁵³ (art. 27), 1989 Convention on the Rights of the Child (CRC).

⁵⁴ (art. 2), 1989 Convention on the Rights of the Child (CRC).

⁵⁵ UNHCR,(1994) Refugee Children: Guidelines on Protection and Care.

⁵⁶ *Ibid.*

legislations and enactments, tend not to give adequate protections to these refugees, who most often have limited access to the basic amenities and rights in the host country.

The aged long international protection of refugee is considered to be part of the responsibilities of the international community under the umbrella of International Humanitarian Law. This was even captured in the premise of the first organizational arrangements to be constructed under the League of Nations and was also a front liner in other subsequent international humanitarian organizations and treaties. The essence of these protection was based on the fact that these refugees no longer enjoy the normal relationship of a citizen to that State based on the fact that they are outside their country of origin and now carry Stateless status, hence, the need for them to be assisted by the international community through its agencies for their adequate protection.

Recommendations.

In order to address and curtail the issues associated with the status and protection of refugee under the International Humanitarian Law, it is recommended that the United Nations and other sister agencies charged with the responsibilities of protecting the refugee should always provide an arena to facilitate discussions on ways to enhance the status and protection of refugees. The UN should jointly undertake projects in this regard as well as taking cognizant of clattering viewpoints, ideologies, cultures, traditions among others.

Ensuring self-reliance for refugees in countries of asylum is also important towards ensuring the protection and well-being of refugees. It is not only a moral and legal responsibility, but also makes good economic sense irrespective of the search for long term solutions. Studies have outlined the economic, social and cultural contributions that refugees can make to their host communities when the right policies are put in place.

Central to self-reliance is ensuring that refugees can develop their skills and have access to livelihood opportunities to support themselves and their families and contribute to their communities. Also, access to education and work allows refugees to live with dignity and plan for the future. It also capacitates them to contribute to not only their countries of asylum, but also their countries of origin, should a possibility of returning home come up.

The international and national government should encourage labour mobility schemes within the country of asylum. This will enable refugees increase their levels of income and standard of living. The benefits of labour mobility are massive as employment and improved household income contribute to self-reliance and resilience, reduce negative coping mechanisms, prepare refugees for longer term solutions either in or outside the country, reduce dependency on humanitarian aid, or facilitate a path to permanent residency or naturalization. This can be achieved through enhancing, building self-reliance in countries of asylum, for example by including refugees in development planning and facilitating their right to work.⁵⁷

Furthermore, the host country should be encouraged to implement “protection-sensitive” border procedures and systems for receiving individuals who arrive in mixed movements to ensure the security of both refugees and host communities. The UNHCR and other agencies charged with the protection of refugees should play a stronger role in using the various international channels to guide and protect refugees in situation where national governments are abusing refugees and hindering them from enjoying the rights accruable to them under the international law.

⁵⁷ *Ibid.*