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INTERNATIONAL CONVENTIONS ON THE PROTECTION OF REFUGEES
AGAINST GENDER-BASED VIOLENCE IN AFRICA: A RECIPE FOR
EFFECTIVENESS.

Abiola Ruth Adimula¹

ABSTRACT

Displacement can occur as an incidence of natural disaster or by armed conflict. One of the biggest direct consequence of armed conflict is the creation of refugees and internally displaced persons (IDPs,) resulting in the loss of access to land, property, jobs and traditional support structure. The high insecurity on camps is compounded by deplorable conditions and different types of Gender-Based Violence (GBV). The three specific forms of GBV faced by men and boys in conflict situations are sex-selective massacre, forced recruitment, and sexual violence, while the forms of abuse and violence inflicted on women due to their gender include rape, gang rape, sexual slavery, forced marriage and incest. In protection of the Refugees from GBV, the United Nations has put in place International Agreements to which many nations are signatories, but the extent of compliance with the agreements remain in doubt. The focus of this paper therefore, is to highlight the major international agreements/instruments put in place to protect Refugees, and to evaluate their implementation status in Refugee camps in Africa and offer recommendations for effective implementation.

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INTRODUCTION

Two major causes of displacement are: occurrence of natural disaster, which can be referred to as act of god; and armed conflicts. The causes of conflicts in Africa are diverse, the two most frequent types of conflict in Africa are disputes about borders, between states and intrastate wars involving groups competing for power or demanding secession from the state. Other causes include ancient tribal hatreds, international economic policies, power politics and corruption of the elite. The roots of social conflicts are associated with the struggle for maintaining or challenging a dominant power status, frustration generated by relative deprivation repression of basic needs and differences in cultural norms and values poverty based on the state of insecurity and bad governance. However, the worst crisis, is armed conflict. It is the worst in the sense that its consequences are most devastating and it easily leads to or escalates other crises. For example, in armed conflicts, lives and property are lost or destroyed. With the destruction of industries and other production activities, unemployment is increased, so is poverty. Education is brought to a standstill as schools are closed, budgets for education are cut down in favour of the purchase of military hardware, etc.

Usually, the response of civilians in conflict situation is to flee for dear lives, thereby relocating to a safe place within or outside the borders of the warring country. Where people resettle within the borders of their country they become Internally Displaced Persons (IDPs), if the relocation is outside the borders of the warring country, they are called Refugees.

Thus, this first part of this paper will discuss the meaning of refugee, internally displaced person and gender-based violence, while the second part will identify some international conventions on the protection of the rights of refugees and IDPs and the last part will suggest a way forward to ensure implementation of the relevant international instruments.

Refugees and Internally Displaced Persons

Under Article 1(A) 2 of the 1951 Refugee Convention the term "refugee" shall apply to

any person who:

... owing to well-founded fear of being persecuted for reasons of race,

religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Thus, according to this provision, refugees are defined by three basic characteristics:

- They are outside their country of origin or outside the country of their former habitual residence;
- They are unable or unwilling to avail themselves of the protection of that country owing to a well-founded fear of being persecuted; and
- The persecution feared is based on at least one of five grounds: race, religion, nationality, membership of a particular social group, or political opinion (Rulac, 2011).

Internally Displaced Persons (IDPs) are defined in the 1998 Guiding Principles on Internal Displacement as:

persons or group 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 effect of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

It has been reported that, Internally Displaced Persons (IDPs), now constitute some 22 million persons and there are differences between IDPs and Refugees. Firstly, IDPs are not the subject of a treaty adopted at the universal level, although the Guiding Principles are based on binding international human rights and humanitarian law. Secondly, as opposed to refugees, IDPs have not crossed an international border from their country of origin. Thirdly, the definition of IDPs in the Guiding Principles is significantly broader than the refugee definition, including those displaced by armed conflict, human rights violations and natural disasters, while the refugee definition is restricted to those with a well-founded fear of being persecuted on at least one of the five grounds.

The line between refugee and displaced persons is blurring, and "refugee" is expanding to include economic and humanitarian asylum-seekers. Those favoring a more inclusive definition assert that refugee homelessness can be long or short-term; displacement can result from direct or indirect violence; and asylum may or may not cross an international boundary. Increasingly, a "refugee" is simply coming to mean "someone compelled to leave home"

Thus, one can safely say that, one of the biggest direct consequences of armed conflict (the third, after casualties and injury) is the creation of refugees and internally displaced persons, resulting in the loss of access to

land, property, jobs and traditional support structure. Other negative effects include the lack of access to health and social services, increased mortality and morbidity and increased food insecurity.

Gender and Gender-Based Violence

Vann define the term gender, as referring to the different characteristics men and women that are socially determined. Gender refers to the different social roles men and women have in a particular society. It defines culturally acceptable attitudes and behaviour of men and women, including their responsibilities, advantages, disadvantages, opportunities and constraints.

Gender-Based violence (GBV) encompasses a range of acts of violence committed against females because they are females and against males because they are males, based on how a particular society assigns and views roles and expectations for these people. GBV is everywhere, in every society, cutting across all races, religions and socio-economic positions that people may have. But some people in certain situations are more vulnerable to become victims of GBV than others. People living in camps have less protective mechanisms such as social and economic support systems and family and community structures, and are therefore more vulnerable. The United Nations referred to "gender-based" violence to acknowledge that such violence is rooted in gender inequality and is often tolerated and condoned by laws, institutions and community norms; it is not only a manifestation of gender-inequality, but often serves to enforce it.

While men and women can be victims of GBV, women and girls are disproportionately affected. The three specific forms of gender-based violence faced by men in conflict situations are sex-selective massacre, forced conscription, and sexual violence, others are GBV against "lost boys", the orphaned or separated child soldiers. The types of GBV faced by women includes sexual violence, intimate partner or spouse abuse (domestic violence), emotional and psychological abuse, sex trafficking

forced prostitution, sexual exploitation, sexual harassment, harmful traditional practices (e.g. female genital mutilation (FGM), forced marriage, infanticide of girl children) and discriminatory practices based on gender. In addition to these, certain categories of women and girls are particularly at risk of GBV, such as single heads of households and/or without family support; unaccompanied girls, girls in foster families, girls in detention, girls associated with armed forces or groups, mentally and physically disabled girls, child mothers and children born out of rape.

It is noteworthy that, most cases of gender-based violence involve a female survivor and a male perpetrator. The majority of acts of gender-based violence against boys and men are also committed by male perpetrators.

It is pertinent to note that, Africa accounts for the bulk of the world's displacement and the conditions in camps are appalling. The United Nations High Commissioner for Refugees claims that the problem of human displacement in Africa is expanding and becoming increasingly complex. Approximately 4.6 million refugees reside in African border camps. The United States Committee for Refugees in comparing refugee populations to local residents claims that eight of the 20 countries with the highest ratios of refugees per local resident are in Africa.

In Africa, both men and women boys and girls face different forms of GBV. For example, Pavlish, narrated life perspectives of Congolese refugee men and women living in a Rwandan refugee camp. According to her, men's experiences in refugee camps are characterized by poverty, bad nutrition, unemployment, lack of respect from wives, wives prostitution, sexually transmitted diseases, idleness leading to wife-beating, loneliness, isolation and fear of the future among others.

Similarly, in Kakuma Refugee camp, Kenya, the incidence of rape and sexual violence is extremely high and domestic violence is commonplace.

work in group, as cheap labourers in a palm oil company where they earn N50.00 (about 50 pence) per hour or in saw mill companies where they earn about N250 (less than \$2) per day, while labourers from the host community earn between N1,500 and N2,000 (about \$10 - \$15) per day. In the same Oru refugee camp in Nigeria, host communities do not patronize refugees businesses and they do not also interact with them. Not only that, as a result of insecurity in the camp, there are incidences of rape reported. For example, in January, 2012, a 50 year old man in the host community went into the camp to rape a ten year old girl

In Uganda, more than 1.7 million northerners have been displaced by war and they live in harsh and often desperate conditions in camps. In certain districts, up to 95% of the population is internally displaced. Camp conditions have led to acute malnutrition in children and the near-total destruction of social networks, culture and norms. More than 300,000 children under the age of five suffer from malaria, pneumonia, diarrhea and preventable diseases. Many women and girls are forced to trade sex for basic necessities, obviously contributing to the spread of sexually transmitted diseases.

Furthermore, a 1994 survey of 205 Liberian women and children between 15 and 70 years of age found that 49% had experienced at least one incidence of physical or sexual abuse at the hands of Liberian soldiers

the protection of refugees was the putting of international agreements by the United Nations bodies, which most countries are signatories to. No penalties or punishments attached to such instruments if the provisions are not obeyed, respected or implemented. These instruments are discussed below.

The 1951 Refugee Convention relates to the protection of refugees. It is the cornerstone of refugee protection. The Convention is tailored to the fact that, that, the right of a country of refuge must be at least equal to those of the country of origin. Refugees are protected by the principle of non-refoulement, meaning that they cannot be forced to return to their country of origin if they have a reasonable fear that to do so would end in persecution. The Convention was introduced in the wake of the Holocaust in Europe after World War II. The UN High Commissioner for Refugees (UNHCR) generally accepts those fleeing from persecution. However, a number of governments (including the United States and the United Kingdom) determine the status of asylum seekers on the basis of individual fears of persecution.

Another instrument is the Declaration on the Rights of the Child and Children in Emergency and Armed Conflict which

In Budumbram Refugee camp, Ghana, high level of discrimination against refugees has been identified. In that place, nationals see the Liberian refugees as second class citizens and those responsible for all forms of crimes in the host community. Research has also shown that in Budumbram refugee camp in Ghana, forced prostitution is common among females to make ends meet, while men face a lot of assaults on insinuation of being responsible for negative happenings within the camps and in the host community.

Also, in Oru refugee camp, Nigeria, refugees are denied daily paid work in company of people from host communities. Instead, refugees are made to work in group, as cheap labourers in a particular road construction company where they earn N50.00 (about 30 pence) per hour or in saw mill companies where they earn about N250 (less than \$2) per day, while labourers from the host community earn between N1,500 and N2,000 (about \$10 - \$15) per day. In the same Oru refugee camp in Nigeria, host communities do not patronize refugees businesses and they do not also interact with them. Not only that, as a result of insecurity in the camp, there are incidences of rape reported. For example, in January, 2012, a 50 year old man in the host community went into the camp to rape a ten year old girl.

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Furthermore, a 1994 survey of 205 Liberian women and children between 15 and 70 years of age found that 49% had experienced at least one incidence of physical or sexual abuse at the hands of Liberian soldiers

during the 1989-1997 civil war. Similarly, during the mass genocide and unrest in Rwanda in 1994-1995, estimates of the number of rapes ranged from 15,700 to 250,000-500,000; while Twenty-seven percent (27%) of the 3803 refugees in Kanembwa camp in Burundi experienced sexual violence since becoming a refugee.

International Instruments on Protection of Refugees

In response to the above stated situations, the global response toward the protection of refugees was the putting in place of certain international agreements by the United Nations and other relevant bodies, which most countries are signatories to. But because there are no penalties or punishments attached to such international instruments, the provisions are not obeyed, respected or implemented. Some of these instruments are discussed below.

The 1951 Refugee Convention relates to the status of refugees and it is the cornerstone of refugee protection. The basic principle of the Convention is tailored to the fact that, that, the rights of refugees in the country of refuge must be at least equal to those of other resident foreigners in that country. Refugees are protected by the principle of non-refoulement, meaning that they cannot be forced to return to their home country if they have a reasonable fear that to do so would endanger their lives. The Convention was introduced in the wake of the refugee movements in Europe after World War II. The UN High Commissioner for Refugees (UNHCR) generally accepts those fleeing from conflict as refugees. However, a number of governments (including the US and most European governments) determine the status of asylum seekers on the basis of individual fears of persecution.

Another instrument is the Declaration on the Protection of Women and Children in Emergency and Armed Conflict which was proclaimed by

General Assembly resolution 3318 (XXIX) of 14 December 1974. The General Assembly, having considered the recommendation of the Economic and Social Council contained in its resolution 1861 (LVI) of 16 May 1974, expressing its deep concern over the sufferings of women and children belonging to the civilian population who in periods of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence are too often the victims of inhuman acts and consequently suffer serious harm. The Declaration among other things provides that women and children belonging to the civilian population in circumstances of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence, or who live in occupied territories, shall not be deprived of shelter, food, medical aid or other inalienable rights, in accordance with the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration of the Rights of the Child or other instruments of international law.

Furthermore, by virtue of the 1991 UNHCR Guidelines on the Protection of Refugee Women prepared by the Office of the United Nations High Commissioner for Refugees in Geneva (July 1991), guidelines was put in place to protect female refugees recognizing their particular vulnerability in addition to the basic needs shared with all refugees. Refugee women and girls have special protective needs that reflect their gender, their need, for example, protection against manipulation, sexual and physical abuse and exploitation, and protection against sexual discrimination in the delivery of goods and services.

In addition, the 1995, UNHCR Guidelines on the Protection of Refugees Against Sexual Violence calls upon the international community, in cooperation with UNHCR and other international organizations, to mobilize the resources necessary to ensure the provision of protection and material assistance in host countries. This support should be based on international solidarity, cooperation, burden and responsibility-sharing as

inadequate protection or poorly distributed assistance can increase the vulnerability of refugees and asylum-seekers to sexual abuse and exploitation. The UNHCR should also continue its cooperation with other actors to ensure protection from exploitation and abuse of refugees and asylum-seekers, including the Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises, and other coordination mechanisms.

Though the 1998 Guiding Principles on IDPs are not binding, but they are based on, and consistent with existing international legal instruments. The provisions include that the national government must ensure that displaced persons (IDPs) enjoy the same rights as other citizens of the same country and protection from arbitrary displacement and from violent treatment.

More importantly, UN Security Council Resolution 1325, an international instrument relating to women, peace and security was adopted on 31st October, 2000, which expressed concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons. To this end, the Council reaffirmed the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts and called for a number of actions which includes, increasing female participation in decision-making with regard to conflict prevention and resolution; equal participation and full involvement in all efforts for the maintenance and promotion of peace and security; and embracing a gender perspective during repatriation, settlement, rehabilitation, reintegration and post-conflict reconstruction.

Some of the provisions of the resolution documented in UN Peace Women Report of 2002 seek to protect the refugees from sexual and gender-based violence by calling on all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls as civilians, in particular the obligations applicable to them under the

Geneva Conventions of 1949 and other relevant laws, take special measures to protect women and girls from Gender-Based Violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict. Other provisions are, put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes including those relating to sexual violence against women and girls, and exclude these crimes, where feasible from amnesty provisions. The document further calls for respect of the civilian and humanitarian character of refugee camps and settlements take into account the particular needs of women and girls, including in their design and that all involved in the planning for disarmament, demobilization; and reintegration should consider the different needs of female and male ex-combatants and to take into account the needs of their dependants.

Moreover, Protocol to the African Charter on Human and Peoples Rights of Women in Africa (Maputo Protocol) is a ground-breaking women's rights legal instrument that expands and reinforces the rights provided in other human rights instruments. The Protocol provides a broad range of economic and social welfare rights for women. Importantly, it was produced by Africans and pays attention to the concerns of African women. The Protocol which was adopted by the African Union (AU) on July 11, 2003 entered into force on November 25, 2005 and 49 out of the 53 AU member countries have signed the Protocol, while 31 of those countries have ratified it.

This instrument highlights issues on HIV and AIDS, trafficking, widow inheritance and property grabbing. The Protocol sets forth the reproductive rights of women to medical abortion when pregnancy results from rape or incest or when the continuation of pregnancy endangers the health or life of the mother. It explicitly calls for the legal prohibition of female genital mutilation (FGM). It calls on state parties to integrate gender perspective in policy decisions, ensure protection of women from sexual and verbal violence, punish the perpetrators of violence against women, implement programmes for the rehabilitation of women victims, ensure

equal refugee status and that women refugees are accorded the full protection and benefits guaranteed under international refugee law.

Above all, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), was adopted in October, 2009 and came into force on 6th December 2012, currently, it legally binds 15 African countries and it is a continental instrument that binds governments to provide legal protection for the rights and well-being of those forced to flee inside their home countries due to conflict, violence, natural disasters, or development projects. It reaffirms that national authorities have the primary responsibility to provide assistance to IDPs and recognises the critical role that civil society organisations, and the communities which take them in, play in assisting IDPs and obliges governments to assess the needs and vulnerabilities of the forcibly displaced, and the host communities, in order to address the plight of people uprooted within their borders.

Challenges of Implementation of International Conventions

In the opinion of this author, despite that most countries of the world are signatories to these international Laws, Conventions, Resolutions and Guiding Principles, there are no adequate protection for women and children undergoing displacement and discrimination against women participation in decision making in camps and civil societies still exist as a result of gender inequality. The provisions of the international agreements are mere letters which are not being implemented or respected, because there are no penalties attached to non compliance. For example, in spite of the provisions of Art. 1 (A) 2: "... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion . . .", a South African High Court Gauteng, in the case of LUMUMBA V. THE REFUGEE APPEAL BOARD & 5 others, refused to grant asylum to the Applicant, who fled

Democratic Republic of Congo (DRC) with his late father during the war that started in June, 1997 and became a refugee in South Africa, in the face of obvious persecution that may arise being a member of opposition party. On appeal to The Refugee Appeal Board, the Board upheld the decision of the High court and dismissed the Applicant's application with order to pay cost.

Not only that, on the provision of equal rights of refugees to that of nationals in the 1951 Refugees Convention, high level of discrimination against refugees has been identified in Budumbram Refugee camp, Ghana, where nationals see the Liberian refugees as second class citizens and those responsible for all forms of crimes in the host community. Also, in Oru refugee camp, Nigeria, refugees are denied daily paid work in company of people from host communities, instead, refugees are made to work in group, as cheap labourers.

Sometimes, even the national government who has the responsibility to protect the refugees rights of non-discrimination are the violators. For example in Guinea, on 9th September 2000, Guinean President LansanaConté proclaimed over the national Radio that Sierra Leonean refugees in Guinea should be arrested, searched and confined to refugee camps in violation of Article 2 of the African Charter.. His speech incited soldiers and civilians alike to engage in mass discrimination against Sierra Leonean refugees. Thus, the Sierra Leonean refugees in Guinea alleged that, the consequences of the speech had been that these persons were the direct victims of harassment, deportations, looting, stealing, beatings, rapes, arbitrary arrests and assassinations. It is further alleged that the President made no effort to distinguish between refugees and rebels and that the Government is therefore directly responsible for the violation of this fundamental precept of international law: Non-discrimination. To buttress this fact, the statements made under oath by several refugees indicate that their refugee camps were direct targets and taken together with accounts of

numerous other abuses, constitute tangible evidence that the Sierra-Leonean refugees in this situation had been targeted on the basis of their nationality and had been forced to return to Sierra Leone where their lives and liberty were under threat from the on-going war. Unfortunately, the international Panel set up to hear this case only promised the affected Sierra Leoneans compensation which execution could not be established.

Recipe for Effective Implementation of International Conventions

There is no doubt that the international instruments on the protection of the rights of refugees and IDPs are choked with challenges of implementation preventing these category of people from enjoying such rights. To curtail these problems, the recipes suggested for effective implementation of international Agreements on the protection of Refugees from GBV are as follows:

First and foremost, African countries, signatories to these international agreements should domesticate, implement and respect the provisions of the agreements in their respective territories.

Also, there is a need for advocacy and sensitization of refugees especially in the camps, about the existence of these international agreements and procedure of obtaining redress by survivors.

In addition, the United Nations should give teeth to the Conventions to bite violators, by attaching penalties against non-compliance, and ensure punishment of violators, this will serve as deterrence.

Further, the UN should set up a monitoring authority to ensure implementation of these agreements in affected domains; this will serve as enforcement mechanism to make institutional compliance.

More importantly, The UN should establish human rights courts across the continents and put in place procedure for survivors of GBV to follow, in order to obtain redress against perpetrators in the court. Similarly, Practice Direction to adopt in the court should be formulated for Judges, to ensure fairness in the administration of justice in the courts.

Above all, international Non-Governmental Organisations (NGOs) should support refugees by coordinating refugee women for economic and social empowerment and other benefiting projects. This will reduce the vulnerability of refugee women and make them equipped to pursue their protection rights; Provision of welfare items to the refugees on the camp by NGOs will also help.

Finally, Legal Practitioners and Human Rights Activists should come to the aid of Refugees by advocating implementation of these international agreements and assisting Refugees on pro bono basis to pursue their rights.

Conclusion:

From the foregoing, it is certain that many of those who live in refugee camps have lost loved ones, homes, economic status, traditional support systems and cultural structures to wars and violence. Their harrowing experiences are typically compounded in the camps by poverty, insecurity, different types of GBV, discrimination (and so on) and the unsafe conditions in camps in Africa present a fertile ground where crimes against humanity thrives. It is therefore the combined efforts of the African leaders, the UN, international NGOs, human rights activists and similar bodies that can enable refugees enjoy their protection rights under the Law by each body/authority speaking out.