

PROTECTION OF REFUGEE WOMEN: THE INTERNATIONAL SCENARIO

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Abstract: In this Article the Researcher has tried to explain the significance and ways of International protection available to Refugees under the International Law. The researcher has also explained how the UNHCR deals with the protection of Refugees and the importance of UNHCR as a nodal agency for Refugees in general and refugee women in particular. The paper also deals with the different functions of UNHCR and the sensitiveness with which the UNHCR officials deal with Refugee women issues. More emphasis has been given on the conditions of Refugee women and thus Excom's conclusion on refugee women and international protection has been dealt with elaborately. The paper also deals with international guidelines for the protection of refugee women. Apart from above international Human Rights Instruments which are related with the cause of refugee women is also dealt with.

(A) INTERNATIONAL PROTECTION: MEANING AND IMPORTANCE

A refugee women like a refugee man seeks protection of non- refoulment, asylum resettlement and basic necessities of life in the country of asylum. Refugee is primarily the responsible of states. Throughout its history the United Nations High Commissioner for Refugee (UNHCR) has worked closely with governments and have generously granted asylum to refugees as well as allowed them to remain until conditions were proper and safe for the refugee to return to their homes in safety with dignity. Governments have allowed UNHCR to operate on their territories and have provided financial assistance to refugees both through their own domestic refugee programs and by funding UNHCR's protection and assistance operations.

International protection means elimination of any disability which may arise for the lack of national protection through the conferment of the refugee status on the individuals taking refuge in the country of asylum. The concept can be taken to mean the act of upholding the core human rights declared in the Human Rights Covenant.

Day to day protection activities are necessarily dictated by the needs of

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refugee and asylum seekers but a summary reading of both the UNHCR statute and the 1951 convention gives a general picture. These are first both direct and indirect aspects to the protection activities included intervention on behalf of individual or groups involve protection of the refugee basic human rights for e.g. Non discrimination liberty and security of the person.

UNHCR explains that refugee protection is rights based and rights duties concept. It includes not only maintenance of rights during flight and exile but also the promotion of safety and security and protection of the rights of the refugees. International protection of refugee includes the following:

- i) To promote the granting of asylum to refugees by the host Country and to ensure that the refugee are not forcibly returned to a country where they have reason to fear persecution.
- ii) To ensure that applications for asylum by persons claiming to be refugees are examined within the framework of appropriate procedure and that while their requests are being examined, asylum seekers are protected against forcible return to a Country where they have reason to fear persecution.
- iii) To ensure that refugees are treated in accordance with the recognized international standards and receive an appropriate legal status and, in their country of durable asylum are placed as far as possible on the same footing as nationals of their country in so far as economic and social rights are concerned so that their local integration may be facilitated.
- iv) To promote further accessions to the basic International instruments relating to refugees and to ensure that the standards defined in these instruments are effectively implemented through the adoption of legislative and administrative measures at the National level.
- v) To promote a wider knowledge and understanding at the Universal and Regional level of the recognized international principles for the treatment of refugees and
- vi) To help refugees to cease being refugees either through voluntary repatriation to their counties of origin, or if this is not feasible, through the eventual acquisition of the nationality of their Country of residence.

(B) PROTECTION AND FUNCTIONS OF UNHCR:

A humanitarian and non-political organization UNHCR is mandated by the United Nations to protect refugees and help them find solutions to their flight. At the International level UNHCR promotes international refugee agreements and monitors government compliance with international refugee law. UNHCRs staff promote refugee law among all people who are involved

in refugee protection, including border guards, journalists, NGO's lawyers, Judges and senior Government Officials.

At the field level, UNHCR staff work to protect refugees through a wide variety of activities including responding to emergencies, relocating refugee camps among from border areas to improve safety, ensuring that refugee women have a say in food distribution and social services, reuniting separated families, providing information to refugees on conditions in their home country so that they can make informed decision about return, documenting a refugee need for a resettlement to a second country of asylum, visiting detention centers and giving advice to government on draft refugee laws, policies and practices.

It is important to mention that the Protection functions of the UNHCR also include efforts directed towards the Protection of the Refugees from attack on their personal security or physical violence or abusive detention. This aspect of the UNHCR's function has in recent times assumed increasing importance for UNHCR. Direct protection activities, including intervention on behalf of individuals or group's involve protection of the refugee's human rights, e.g. non-discrimination, liberty and security of person. UNHCR is also specifically concerned with the following:

- a) Prevention of the victims of the refugee to a country or territory in which their life or liberty may be endangered.
- b) Access to a procedure for the determination of refugee status
- c) The grant of asylum,
- d) The prevention of expulsion
- e) Release from detention
- f) The issue of identity and travel documents
- g) The facilitation of voluntary repatriation
- h) The facilitation of family reunion
- i) The assurance of access to educational institutions
- j) The assurance of the right to work and the benefit of other economic and social rights.
- k) Treatment generally in accordance with international standards, not excluding access to and by UNHCR. The provision of physical and medical assistance and personal security and
- l) The facilitation of naturalization

Of these, the first four together with the general functions are traditionally considered to be of prime importance with the principle of non-refoulement stating as the essential starting point in the search for permanent solutions. However, the measure to which refugees have been subjected and the conditions under which they most frequently live, have given added

weight to claims for personal security, family union, assistance and international efforts to achieve solutions.

Again Para 8 of the UNHCR Statute specifically asks the High Commissioner to provide protection by no less than the following nine methods.

- i) Promoting the conclusion and notification of International Conventions for the protection of refugees, supervising their application and proposing amendments there to.
- ii) Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection.
- iii) Assisting Governmental and private efforts to promote voluntary repatriation or assimilation within new national communities.
- iv) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of the states
- v) Endeavoring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement.
- vi) Obtaining from governments information concerning the number and conditions of refugees in their territories and the law and regulations concerning them.
- vii) Keeping in close touch with the Governments and the NGOs
- viii) Establishing contact in such manner as they may think best with private organisation dealing with refugee questions.
- ix) Facilitating the coordination of the efforts of private organisation concerned with the welfare of refugees¹:

Thus, the protection functions of UNHCR are mainly promotional and partly operative. In principle, protection functions go beyond general problems, and also extend to individual cases when there is no remedy lying with authorities. Practice has demonstrated the importance of the individual dimensions of the protection function. For e.g. the office of the UNHCR provides legal assistance in domestic proceedings, whenever necessary. This assistance however is formally not regarded as a part of the protection function but rather as a complement to do it.

Another humanitarian aspect of the protection function is to promote the reunification of separated refugee families which is indeed a social duty to be discharged by the UNHCR.

The protection function is financed partly by the regular budget of UN, but mostly from voluntary funds. The protection function is mandatory for the High Commissioner. The cases in which its intervention will be deemed essential and the way in which it intervenes has been left to its discretion.

Here it does not need as in the case with material assistance, to receive a request from a Government before it exercises its discretionary authority.

The function of protection is not based on a genuine super-national power granted to the High Commissioner which Sovereign States are bound to recognize and which obliges them to hold its views and apply its decision. This could only be so, as in the case in the special fields of eligibility, if the states in their sovereignty have decided to delegate to it the powers to take binding decisions on their behalf. Nevertheless, it cannot be denied that the UNHCR statutes confers on it an International authority which has never been challenged and which comprises an element of supra-nationality. The High commissioner derives this authority from his mandate related to protection of refugees as his task relating to supervision of the application of the refugee convention by the State parties.

As the UNHCR Executive Committee has affirmed, refugee protection is primarily responsibility of the State of refugee and is best achieved through effective cooperation among states, UNHCR and other International Organization and actors concerned, in a spirit of international solidarity and burden-sharing. In order to effectively provide protection punitions must always be preferred within the framework of internationally agreed protection principles, including those which underlie the civilian and humanitarian character of refugee work.

A critical aspect of refugee protection is the treatment of refugees put in the camps following flight from persecution. Upon their flight they lose the protection of their homeland yet very often they do not receive from the country of reception the protection that the latter usually provide to its own citizens. The member in refugee camps are very large and providing protection to them is a stupendous task.

According to an estimate more than fourteen million refugees and asylum seekers are in the need of international protection. Approximately 380,000 people are living in refugee camps in Thailand alone. International standards expressly governing the treatment of persons in refugee camps do not exist. In several instances, refugee camps were attacked by criminal or military elements to terrorize the refugee population.

(C) EXCOM'S CONCLUSION ON REFUGEE WOMEN AND INTERNATIONAL PROTECTION:

Refugee women are either way disadvantaged because they tend to be a woman as well as refugee women. It is observed that during the refugee movements, these women tend to risk further violations of their human rights than the refugee man. They also face acute discrimination in food distribution, access to health, and welfare and education service during their stay in refugee camps and settlements. They are often subjected to sexual exploitation and

rape not only during their stay in refugee camps and settlements but also during their flight to a place of safety. It is really noteworthy and sad that despite these problems International refugee instruments make no distinction between male and female refugees². As a result they tend to maintain gender biases. Neither the 1951 Refugee Convention, nor the UNHCR's handbook on Procedures and Criteria for the Determination of the Refugee status addressed the core issue of discrimination on the ground of sex or the problems of violence specifically directed against women.

The first case in which women refugees received particular attention was related to piracy attacks in the South China Sea. Protection of women refugees however, could not find place in the agenda of the UNHCR Executive Committee until 1985 EXCOM Conclusion no.39. In that conclusion the Executive Committee noted that Refugee women and girls constitute the majority of the world refugee population .It also noted that these women are exposed to special problems in the International field. The Committee further recognized that these problems result from the vulnerable situations which frequently expose these women to physical violence, sexual abuse and discrimination. It also stressed that this problem needs the most urgent attention of the Governments and the UNHCR. The EXCOM then called upon the States to continue to support UNHCR programmes established with the view to secure protection for the refugee women and provide them with access to the UNHCR Assistance Programmes meant for refugee women especially those which were aimed at helping refugee women become self sufficient through educational and income generating projects³. However, at that time the primary question was not so much the physical security and systematic discrimination which women faced during the flight and in the refugee camps, but whether these women might constitute a particular social group, the membership of which could give rise in appropriate circumstances to a well-founded fear of persecution⁴ Nevertheless EXCOM made the following recommendations:

EXCOM Conclusion no. 39 also recommended that States, individually, jointly and in cooperation with UNHCR, redefine and reorient existing programmes and where necessary establish new programmes to meet the specific problems of refugee women, in particular to ensure the safeguard of their physical integrity and safety, and their equality of treatment. Women refugees should participate in the formulation and implementation of such programmes. The Conclusion No.39 is as follows:

- i) It stressed the importance of a more detailed knowledge and understanding of the special problems of refugee women in the international protection field and of gathering statistical, sociological and other data concerning refugee women and girls in order to identify and implement appropriate mechanisms to ensure their effective protection.

- ii) It requested the High Commissioner to report regularly to members of the executive Committee on the needs of refugee women, and on the existing and proposed programmes for their benefits.
- iii) It further recognized that States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a 'particular social group' within the meaning of Article 1A (2) of the 1951 United Nation Refugee Convention (UNRC)⁵.

By the EXCOM No.54, the Executive Committee expressed appreciation for the note on refugee women and recognized the interdependence of the problems and special needs of refugee women in it. It also recognized that with regard to international protection, there are situations in which refugee women face particular hazards, especially threats to their physical safety and sexual exploitation, and called for the reinforcement of the preventive measures initiated by the office and concerned agencies to enhance the physical security of refugee women on the host government to strengthen the support of the office's protection activities as they relate to women, and for relevant governments to support the special resettlement programme for women at risk.

The Committee supported the high Commissioner's recognition of refugee women as a vital economic force and of the need to promote their participation as agents, as well as beneficiaries in the planning of protection and assistance programmes. It also requested the High Commissioner to introduce further effective measures towards the integration of women's issues within the programme- planning cycle at all stages, in particular: check lists within technical sector guidelines, gender issues in the Executive Committee Country Chapters, detailed reference in the UNHCR Programme Manual. The Committee also recommended that all project documents submitted for funding purposes should include a paragraph of the impact on the problems and special needs of refugee women and that the periodic narrative report should also refer to this aspect as well. The Committee stressed the ongoing need for an active senior level steering Committee to co-ordinate, integrate and oversee the process throughout UNHCR, and urged the High Commissioner to explore and build upon the experience obtained by other United nations Organizations, donor community and NGO's and adopt this information to UNHCR's specific orientation.

The EXCOM also encouraged the High Commissioner in his public information activities on refugee women and called upon him to expand activities in this area in future. The High Commissioner was urged to develop training modules to be offered to UNHCR staff and implementing partners to increase their awareness of the specific needs of refugee women and practical means of addressing these needs and finally in addition it requested

the High Commissioner to provide at the fortieth session of the Executive Committee, a detailed progress report on the implementation of the policies and programmes of the UNHCR internal guidelines relating to the International Protection of refugee women and NGO's to actively support the High Commissioner in the implementation of this programme⁶.

UNHCR informed the Executive Committee in details during 1988 regarding the situation in one African State, where 33 attacks had been made by irregular armed forces against 21 out of 26 refugee settlements in the Southern part of that country, the result was that 25 refugees died, 100 were injured, 300 to 400 were abducted and 150 refugee women were raped⁷.

In EXCOM Conclusion No.60, the Executive Committee had recommended the office of the High Commissioner on progress towards promoting the participation of refugee women as agents as well as beneficiaries in the planning and implementation of protection and assistance programmes. The Committee noted with serious concern that the basic rights of refugee women continued to be violated in a number of situations, including through threats to their physical safety and sexual exploitation and called upon for the reinforcement of preventive measures. It urged the states and concerned agencies to strengthen their support of UNHCR's protection activities relating to refugee women, inter alia by providing resettlement places for women at risk. In that conclusion The High Commissioner was requested to provide at the forty first session of the executive Committee, a policy framework and organizational work plan for the next stages in mainstreaming of refugee women's issues within the organization with particular attention to the needs for the female field workers to facilitate participation of refugee women.

In addition the Committee requested the High Commissioner to provide a detailed progress report on the implementation of his Office's policies and programmes for refugee women, on both protection and assistance activities. In particular the High Commissioner was requested to prepare a revised and expanded version of the internal guidelines relating to the international protection of refugee women. The ongoing need for active senior management support to co-ordinate, integrate and oversee the implementation of those conclusions was stressed and the participation of senior managers in the forthcoming gender impact and analysis orientation seminar was fully encouraged. The Committee also noted with satisfaction the recruitment of a senior Coordinator for Refugee Women, the production of guidelines to field offices to identify the special needs and encourage the participation of refugee women, and the publication of the revised bibliography on refugee women and urged the high commissioner to develop a methodology for systematically addressing gender issues in refugee programmes and as a basis for these requested the High Commissioner to collect and analyze the demographic, anthropological and socio-economic information on refugee populations, in particular data on gender roles and

responsibilities and to ensure that such information is used in planning UNHCR programmes.

The EXCOM encouraged the High Commission for the following things:

- a) In development of training materials and courses to increase awareness of the specific needs on potential of refugee women and its initiative to involve non-governmental organizations in this training; call upon it to expand this area in future with a view to improve the programmes and planning for projects in particular to develop components to address the special protection concerns of refugee women.
- b) Additional efforts being made by it for raising public awareness of the specific situation of refugee women.
- c) In Sharing its experience in this sector with other United Nations Agencies and strongly supporting it in taking a lead role in presenting the situation of refugee women at the Thirty-Fourth session of the Commission on the status of women in 1990.

The Executive Committee also stressed the need for ongoing attention to the systematic collection and dissemination of documentation with regard to Refugee Women, both within UNHCR and in cooperation with other organizations and finally the executive committee called upon the operational partners to support the High Commissioner by expanding their own activities in gender impact training, including provision for an assessment of impact on refugee women in the project agreements and self-evaluation reports, and exchanging information with other organizations having experience in women's issues⁸.

In 1990, UNHCR for the first time considered the possibility of developing a policy on refugee women, while also looking at their specific needs in the refugee discrimination context, and in that of physical safety. With respect to physical safety of women refugees, UNHCR noted that special measures were needed in camps and settlements in order to protect them from abuse, especially women heads of household and single women. UNHCR Executive Committee urged States, the UN relevant organizations as well as NGOs as appropriate to ensure that the needs and resources of refugee women were fully understood and integrated to that extent which was possible into their activities and programmes. This and the EXCOM Conclusion No.64 set the following aims in promoting measures for improving the International Protection of Refugee Women:

- i) Promote energetically the full and active participation of refugee women in the planning, implementation and evolution/monitoring of all sectors of refugee programmes.
- ii) Increase the representation of appropriately trained female staffs across all levels of all organizations and entities which work in refugee

- programmes and ensure direct access of refugee women to such staff.
- iii) Provide wherever, necessary skilled female interviewers in procedures for the determination of refugee status and ensure appropriate access by women asylum-seekers to such procedures, even when accompanied by the male family members.
 - iv) Ensure that all refugees and the staff of relevant organizations and authorities are fully aware of and support the rights, needs and resources of refugee women and take appropriate specific action.
 - v) Invite UNHCR to develop comprehensive guidelines on the protection of refugee women⁹.

(D) INTERNATIONAL GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN:

The Guidelines recognized the role of the national law of the Country of asylum in the protection of refugee women. It noted in particular that the signatories to the 1951 Convention or the 1967 Protocol have agreed to cooperate with UNHCR in the exercise of its functions and in particular its duty of supervising the application of the provisions of the Convention and Protocol (articles 35 and II, respectively). Further, national laws and policies determine what legal status an individual receives, where she has to live and what assistance will be provided to her. Also offences like rape and physical attack will be punishable under the national law. A further legal framework within the national framework is provided by the legal codes and processes adopted for international use in refugee camps. It is particularly important that these instruments of self-governance have been provided for the protection of refugee women. The guidelines stress that international protection of refugee women must be understood in its widest sense. The intrinsic relationship which exists between protection and assistance is truer in relation to refugee women, female adolescents and children. Protection concerns can often be best addressed through assistance related measures. Conversely, the planning and implementation of assistance can have direct, and sometimes adverse, consequences for the protection of refugee women if they ignore their special needs.

The guidelines recommend that programmes should be planned in consultation with the beneficiaries and implemented with their participation. Refugee women should be involved in planning the protection and assistance activities. This is also necessary because a large proportion of refugees are women, many of whom are solely responsible for their dependent children. Participation itself promotes protection. Internal protection problems are often due to much of the people's feelings of isolation, frustration, lack of belonging to a structured society and lack of control over their own future and any other form of social problem. Refugee participation also helps in building the

values and sense of community that contributes to reducing the protection problems. Relief officials often point to cultural constraints in involving women in the Country of origin. However, this perception is based on a superficial understanding of the socio cultural roles of women. Prior to flight, women typically have opportunities to express their concerns and need, sometimes through their husbands, but in refugee camps, many women are unable to participate through such traditional mechanisms as these have broken down. It is essential, therefore that the organizations working with refugee women have the opportunity to contribute to the activities being planned. Guidelines on the protection of refugee

women were drafted for the use of UNHCR personnel¹⁰.

In 1992 the US representative remarked in the Executive Committee 'protection of women was still not of sufficient concern to many UNHCR offices.'

EXCOM Conclusion No.73 says Protection of the refugee women and sexual violence condemned persecution through sexual violence, which not only constitutes a gross violation of human rights as well as when committed in the context of armed conflict, a grave breach of humanitarian law, but is also a particularly serious offence to human dignity. The conclusion urged states to respect and ensure the fundamental right of all individuals within their territory to personal security, inter alia by enforcing relevant national laws in compliance with International legal standards and by adopting concrete measures to prevent and combat sexual violence including:

- i) the development and implementation of training programmes aimed at promoting respect by law enforcement officers and members of military forces of the right of every individual at all times and under all circumstances to security of person, including protection from sexual violence.
- ii) Implementation of effective, non discriminatory legal remedies, including the facilitation of the filing and investigation of complaints against sexual abuse, the persecution of offenders, and timely and proportional disciplinary action in cases of abuse of power resulting in sexual violence.
- iii) Arrangements facilitating prompt and unhindered access to all asylum-seekers, refugees and returnees for UNHCR and, as appropriate, other organizations approved by the governments concerned, and
- iv) Activities aimed at promoting the rights of refugee women, including through the dissemination of the guidelines on the protection of refugee women and their implementation, in close cooperation with refugee women, in all sectors of refugee programs.

The EXCOM also called upon States and UNHCR to ensure the equal access of women and men to refugee status determination procedures and to all forms of personal documentation relevant to refugees freedom of movement, welfare and civil status, and to encourage the participation of refugee women as well as men in decisions relating to their voluntary repatriation or other durable solutions. Recognition as refugees of persons whose claim to refugee status is based upon a well founded fear of persecution, through sexual violence, for reasons of race, religion, nationality, membership of a particular social group or political opinion. The EXCOM also recommended on the development by states of appropriate guidelines on women asylum seekers, in recognition of the fact that women refugees often experience persecution differently from refugee women. It further recommended that refugee victims of the sexual violence and psycho-social care, including culturally appropriate counseling facilities, and generally by considered as persons of special concern to States and to UNHCR with respect to assistance and the search for durable solutions; that in procedures for the search for durable solutions; that in procedures for the determination of refugee status, asylum-seekers who may have suffered sexual violence be treated with particular sensitivity. The committee reiterated the importance of ensuring the presence of female field staff in refugee programmes, including emergency operations, and the direct access of refugee women to them. The EXCOM supported the High Commissioner's efforts, in coordination with other intergovernmental organisations competent in this areas, to develop and organize training course for authorities, including camp officials, eligibility officers, and other dealing with refugees on practical protection measures for prevention and responding to sexual violence and the establishment by States of training programmes designed to ensure that those involved in the refugee status determination process are adequately sensitized to issues of gender and culture. The committed encouraged the High Commissioners to pursue actively her efforts, in corporation with bodies and organizations dealing with human rights, to increase awareness of the rights of refugees and the specific needs and abilities of refugee women and girls and to promote the full and effective implementation of the Guidelines on the Protection of Refugee Woman. And above all the High Commissioner was urged to include the issue of sexual violence in future progress reports on the implementation of the Guidelines on the Protection of Refugee Women; Requests the High Commissioner to issues as an Executive Committee document and disseminate widely the note on Certain Aspects of Sexual Violence against Refugee Women¹¹.

The following year UNHCR produced a comprehensive note on certain aspects of sexual violence against women because persecution through sexual violence not only constitutes a gross violation of human rights and when committed in the context of armed conflict, a grave breach of humanitarian law, but it also a particularly serious offence to human dignity.

The UNHCR Executive Committee recommended that refugee victims of sexual violence and their families be provided with adequate medical and psycho-social care including culturally appropriate counseling facilities, and generally be considered as persons of special concern to states and to UNHCR with respect to assistance and the search for durable solution¹² and encouraged the High Commissioner, to pursue actively her efforts, in cooperation with bodies and organizations dealing with human rights, to increase awareness of the rights of refugees and abilities of refugee women and girls and to promote the full and effective implementation of the Guidelines on the Protection of Refugee Women.

(E) PROTECTION OF REFUGEE WOMEN AND INTERNATIONAL HUMAN RIGHTS INSTRUMENTS:

The concept of providing international protection to refugee and viewing it as a solution to human rights abuses was developed with the establishment of the United Nations.

Article 1(3) of the UN charter proclaims that the primary purpose of the united nation is “promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language or religious. Under article 55 & 56 member states pledge themselves to take action in cooperation with the UN to achieve this purpose. Article 13(1) of the charter confers powers on the general assembly to initiate studies and make recommendations to assists in the realization of human rights. Similar power has been conferred on the UN economic and social council (ECOSOC). ECOSOC may also set up commission for the promotion of human rights.

The important international instruments include:

- i) The 1948 universal declaration of human rights:

As we know that the declaration was established “as a common standard of achievement for all persons and all nations”. It states that human rights and fundamental freedom should be universally recognized and observed by all member states.

Article (2) of the Universal Declaration of Human Rights says that the right and freedom set forth in the Declaration applies to everyone, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion national or social origin, property, birth or other states. Since the declaration provides for the rights and freedoms of all human beings therefore it includes in it refugees too. However, there are specific articles which provide refugee protection.

Article 13 of the Universal Declaration says that:

- i) Everyone has the right to freedom of movement and residence within the border of each state.

- ii) Everyone has the right to leave any counting, including his own, and to return to his country.

Article 14(1) of the Universal Declaration also provide protection to refugees as it specifically mentions that:

- i) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

Article 15 of the universal declaration says that:

- i) Every one has the right to a nationality and
- ii) No one shall be the arbitrarily deprived of his nationality non denied the right to change his nationality.

- 2) International Covenant on Civil and Political Rights has several provisions that inclusively apply to the provisions of refugees.

They include article 12(2), 12(4) and 13

Article 12(2) of the ICCPR states that any person shall be free to leave any country including his/her own.

Article 12(4) of the ICCPR states that: no one shall be arbitrarily deprived of the right to enter his/her own country. However article 13 of the ICCPR is of greater importance, as it states that aliens (including refugee) who are lawfully residing in the territory of a state party may be expelled only in pursuance of a decision reached in accordance with law, the refugee has the right unless issues of national security are involved) to be allowed to submit reasons against her expulsion have the case reviewed and be represented before a competent authority.

Article 26 of the ICCPR states that, all persons are equal before the law and are entitled without any discrimination to the equal protection of law. It further, states that there shall be no discrimination and equal guarantee for effective protection against discrimination on ground of race, sex etc. Thus, ICCPR also guarantees refugee women equal protection against any sort of discrimination.

In addition to the above provision the covenant also discuss about the protection of right to life, torture, slavery etc. It further addressed the access to public employment and the right to opinion, expression, assembly and association all of which are important in determining the right of refugee women and all others of concern to the international community. While ICCPR does not directly deal with asylum and refugee protection it can within its mandate refer to the asylum policies of signatory states if such a need arises.

The International Covenant on Economic and Social Rights provides for the right to work, just conditions for employment, medical care and basic education, amongst other related rights. Thus though not directly it supports for refugee women's equal rights for employment, rights for just condition for employment, medical care and also basic education for refugee women

and children and all other related rights necessary for life.

Article 2(3) of the ICESCR state that developing countries, with due regard to human rights and their national economy, may determine to what extent they can guarantee the economic rights of non-nationals. In other words, the social and cultural rights envisaged in this covenant are available to all persons legally residing in the territory of the state party. Thus, all refugee women should be guaranteed equal economic right like any other national of the county in which the woman is residing.

One of the most important rights that ICESCR secures is the rights to self determination, contained in article 1(1) of the covenant. Thus extending it to a refugee women it would imply that the country of asylum, if it is a signatory to this Covenant must allow persons residing in its territory to practice their own culture and social habits, as well as to educate themselves and pursue economic activities, imposing only the reasonable restrictions provided for in the instrument.

The convention relating to the rights of the child establishes the various rights pertaining to children, including the freedom of expression, association education, religion, medical care, privacy, legal access to courts and the rights against sexual exploitation. Refugee children include young girls and talking in the context, the Convention provides that a child seeking refugee status (either unaccompanied or otherwise) shall receive appropriate protection and humanitarian assistance in the enjoyment of rights set forth in the convention and other International Human Rights or humanitarian instruments.

In other words, a state that is a party to CRC but is not a signatory to any instrument relating to refugee, and which has not enacted any national legislation on this subject, is still obliged to provide adequate protection and assistance to the refugee child.

Article 22(2) also provide for the state party to co-operate with the United Nations or any related organisation to protect and assist such a child and to trace the parents or other family members of the refugee child in order to facilitate family reunification.

Many of the articles of CEDAW confer rights on women that already exist in other legal instrument such as ICCPR, ICESCR, CERD and CATIP. However, these rights have been emphasized keeping in mind that despite these various instruments, discrimination against women continues to exist. There are special provisions in it which recognizes the additional and important role that women hold in the state, the community and the family for e.g. Health care rights, socio economic rights.

This convention requires that state parties ensure the protection of women from sexual exploitation, their proper medical care and their right to education and employment. These rights are extremely important in the refugee context, since refugee women are especially vulnerable.

Article 6 of CEDAW has a great impact in the context of refugee women. Since this article states that it is the duty of the state parties to take appropriate measure including legislation to suppress all forms of traffic in women and exploitation of prostitution of women. As we know refugee women, specially the ones who are single or unattached are subjected to immoral trafficking and forced prostitution, Article 6 of CEDAW imposes an obligation on the country where these women have taken asylum to take appropriate measures to provide protection to these women.

Article 12 is another article of CEDAW which states that it is the duty of the State to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including there related to family planning.

Refugee women, being women should be ensured health care as they have to take care of their little ones too. These women being vulnerable and since had undergone such traumatic experiences, require special treatment in context of health care services. Even during pregnancy, as it is often seen these women suffer from unwanted pregnancy, which is the result of most of the time rape, and other sexual torture, therefore it is the duty of the state in which they have taken asylum to treat them at par with men and provide them with adequate amenities during this period. Article 12(2) of CEDAW speaks that the state parties shall ensure to women (in this context refugee women) appropriate services in connection with pregnancy, confinement and post natal period, granting free services where necessary as well as adequate nutrition during pregnancy and lactation.

Even article 10¹³ speaks about elimination of discrimination against women in terms of education, and treats them at par with men. Refugee women when come to the country of asylum are often treated with revulsion and they are not given equal opportunity for education as men are considered to be the lead earner, they are given preference to women in terms of providing education but it is highly mistaken that most of the times refugee women are single women and they have to earn the bread and run the family so they should be given equal importance in term of education opportunities.

Similarly article 11 of CEDAW speaks about equal opportunities in term of employment for women. The host country where the refugee women have taken refugee should provide equal opportunities in term of employment for women. Most of the time, refugee women lose their husband and male heads of their family and they have to earn to run the family. Here, it is the duty of the host country to provide equal opportunity to these women in terms of employment as otherwise these women will have no option then to move on to immoral means to feed themselves and their children.

The two important articles pertaining to refugee under this connection

are article 2 and 3 of Convention against torture and other cruel, inhuman or degrading treatment or punishment

Under article 2 of the CATIP, the state parties should take legislative, administrative judicial or other measure to prevent acts of torture. This convention does not allow any exception to the obligation imposed on the state party. Thus it is one of the most effective human rights instrument and is often used when the refugee 1951 convention fails there are a number of judgments given by International Judicial Bodies including the European Court of Human Rights, that prohibit the non refoulement of persons to countries where they have been tortured or anticipate possible torture or other cruel inhuman or degrading treatment or punishment.

Article 3 of the convention against torture and inhuman treatment is one of the most important provisions in International Human Rights law relating to refugee. It is one of the few Articles apart from article 33 of the 1951 convention to provide for non-refoulement. Under this provision it is stated that "no state party shall expel return or extradite a person to another state where there are substantial grounds for believing that she would be in danger of being subjected to such torture". To determine whether there are such grounds, competent authorities are required to take into account various relevant considerations such as consistent patterns of gross, flagrant or mass violation of human rights. Given that refugee often flee from persecution in the form of torture; this provision is extremely relevant in protecting their right of non-refoulement.

The ICERD defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, color, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedom in the political, economics, social, cultural or any other field of public life.

While this Convention does not prevent a State from discriminating between Citizens and non-citizens residing within its territory, it does not allow human rights violation on the part of the state against non nationals.

ICERD sets out a regime against discrimination- a factor that creates refugees as well as problems for the country of asylum.

Under the convention of Convention on the prevention and punishment of the crime of genocide (CPCG), genocide is a crime under International Law and thus perpetration of this crime should be punished, regardless of the fact whether they are acting in a public or private capacity.

It is a well known fact that the act of genocide leads to massive refugee influx- and most of the time the number is so huge that it is impossible for the International Community to even cope with it.

Legally speaking, this Convention does not directly, talks about refugee

protection. However, it attempts to deal with mechanisms that prevent the problem of refugees from arising in the Country of origin.

The convention on Declaration on the Human Rights of individual who are not Nationals of the Country in which they live (DRICL) does not have a binding effect; however it articulates the various rights and obligations of the States and the Foreigners.

Article 4 of this Convention says that aliens (in this context Refugees and Refugee women) should observe the laws of the State in which they reside and respect the customs and traditions of the people in the State

Article 5 states that aliens shall be treated according to the domestic and relevant international obligations of the State in which they are present. Thus, the Refugee Women should be given the same rights as any other women residing in the Country of their asylum.

It further states that aliens are protected against arbitrary arrest or detention, and are given the right to be equal before the Courts and other judicial and administrative authorities. Thus, all these rights should be provided to Refugee Women too.

The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna in June 1993, contains important provisions in the field of Human Rights of Women. Part 1, paragraph 18, reads as follows

“The Human Rights of Women and of the girl child are an inalienable integral and indivisible part of Universal Human Rights. The full and equal participation of women in political civil, economic, social and cultural life, at the national, regional and international level and the eradication of all forms of discrimination on ground of sex are priority objectives of the international community”.

“Gender based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support”.

“The human rights of women should form an integral part of the United Nation human rights activities, including the promotion of all human right instruments relating to women”.

“The world conference on human rights urges governments, institutions, inter government and non governmental organizations to intensify their efforts for the protection and promotion of human rights of women and girls-child”.

It is further stated, in Para II, paragraph 37 of the Vienna declaration and programme of Action that:

“The equal status of women and the human rights of women should be integrated into the mainstream of United Nations system wide activity. These issues should be regularly and systematically addressed throughout relevant United Nations bodies and mechanism. In particular, steps should be taken to increase cooperation and promote further integration of objectives and goals between the commissions on the status of women, the commission on human rights, the committee on the elimination of discrimination against women, the United Nation development fund for women, the United National development programme and other United Nations agencies. In this context, cooperation and coordination should be strengthened between the centre for human rights and the division for the advancement of women”.

In particular, in part II, paragraph 38 of the Vienna declaration and programme of Action.

“The world conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all form of sexual harassment, exploitation and trafficking in women, the elimination of gender bias on the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices cultural prejudices and religious extremism. The World Conference calls upon the General Assembly to adopt the draft declaration on violence against women and urges states to combat violations of the human rights of women situations of armed conflict and violations of the fundamental principles of International Human rights and Humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery and forced pregnancy, require a particularly effective response.”

With regard to the effective integration of the human rights of women into United Nations activities, Para II, paragraph 40 states:

“Treaty monitoring bodies should disseminate necessary information to enable women to make more effective use of existing implementation procedures in their pursuit of full and equal enjoyment of human rights and non discrimination. New procedure should also be adopted to strengthen implementation of the commitment to women’s equality and the human rights of women. The Commission on the states of women and the committee on the elimination of all forms of discrimination against women should quickly examine the possibility of introducing the rights of petition though the preparation of an optional protocols to the convention on the (CEDAW). The World conference on human right welcomes the decision of special reporter on violence against women at its fiftieth session”.

The UN declaration on the elimination of violence against women recognizes that like other group of women there are women belonging to

minority groups, migrant women, and refugee women. These women are especially vulnerable to violence. Any act of gender-based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Violence against women shall be understood to encompass but not be limited to the following.

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, domestic related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-espousal violence and violence related to exploitation.
- (b) Physical, sexual and psychological violence occurring within the general community including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere trafficking in women and forced prostitution.
- (c) Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occur.

Article 2 of the covenant argues: women are entitled to equal employment and protection fall human rights and fundamental freedoms in the political economic, social, cultural, civil or any other field. These rights include interalia:

- (a) the right to life
- (b) the right to equality
- (c) the right to liberty and security of person
- (d) The right to equal protection under the law.
- (e) The right to be free from all forms of discrimination
- (f) The rights to the highest standard attainable of physical and mental health.
- (g) The rights met to be selected to torture, or other cruel inhuman or degrading treatment or punishment.

The declaration provides that the organs and specialized agencies of the United Nations system should, within their respective fields of competence, contribute to the recognition and realization of the rights and the principles set forth in the present declaration.

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