

**INTERNATIONAL PROTECTION OF SOCIO-ECONOMIC RIGHTS OF
FEMALE REFUGEES: CHALLENGES AND PERSPECTIVES ON
RWANDAN FEMALE REFUGEES IN EASTERN DEMOCRATIC
REPUBLIC OF CONGO**

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Declaration

I declare that this dissertation is my original work and that it has not been submitted for the award of a degree at any other university or institution.

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This dissertation has been submitted for examination with my approval as University Supervisor

Signed: _____
Supervisor

Dedication

I dedicate this work to the almighty God and to my family.

Acknowledgment

I express sincere gratitude to my supervisor Professor Michelo Hansungule who has not only been very critical of my work but also provided useful comments that helped to shape the course of my studies.

To all my friends and colleagues for their encouragement during these stressful days, I say thank you.

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Table of Contents

Declaration	i
Dedication	ii
Acknowledgements	iii

Chapter One: Introduction

1.1 Background	6
1.2 Problem statement	10
1.3 Research questions	10
1.4 Purpose and significance of the study	11
1.5 Literature review	11
1.6 Methodology	16
1.7 Structure of chapters.....	16

Chapter Two: Perspectives on the protection of the socio-economic rights of Rwandan female refugees in the Democratic Republic of Congo

2.1 Introduction.....	19
2.2 Regulatory framework on the protection of refugees in the DRC	20
2.2.1 International instruments ratified by the DRC on the protection of refugees	20
2.2.2 Domestic instruments on the protection of refugees in the DCR.....	21
2.3 Difficulties in the protection of Rwandan female refugees in the DRC	23
2.3.1 Armed conflicts as an obstacle to the protection of Rwandan female refugees	25
2.3.2 Resource and programmatic constraints in the protection of Rwandan female refugees ...	26
2.4 Basic socio-economic rights guaranteed to Rwandan female refugees	27
2.5 Protection of Rwandan female refugees in the DRC.....	31
2.6 Conclusion.....	33

Chapter Three: Legal framework on the protection of the socio-economic rights of Rwandan female refugees

3.1 Introduction.....	34
3.2 Definition of the term ‘refugee’	36
3.3 International and African refugee instruments protecting Rwandan female refugees	41
3.3.1 Convention Relating to the Status of Refugees of 1951 and its 1967 Protocol	41
3.3.2 Convention Governing the Specific Aspects of Refugee Problem in Africa 1969	43
3.3.3 The Cartagena Declaration on Refugees 1984.....	44
3.4 International human rights instruments	46
3.4.1 Universal Declaration of Human Rights 1948	46
3.4.2 International Covenant on Civil and Political Rights 1996.....	48
3.4.3 International Covenant on Economic, Social and Cultural Rights 1996.....	49
3.4.4 Convention on the Elimination of all forms of Discrimination against Women 1979.....	51
3.5 Conclusion.....	52

Chapter Four: Challenges to the international protection of Rwandan female refugees at regional level

4.1 Introduction.....	54
4.1.1 Mandate of the UNHCR	55
4.1.2 The UNHCR’s role in protection the rights of female refugees	57
4.2 Protecting the socio-economic rights of female refugees	59
4.2.1 Specific needs and guaranteed rights of refugee women.....	60
4.2.2 Multidisciplinary approach to the protection of female refugees.....	64
4.3 Conclusion.....	66

Chapter Five: Conclusion and general recommendations

5.1 Concluding remarks	68
5.2 General Recommendations.....	69

Bibliography.....	72
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Chapter One

Introduction

1.1 Background

For centuries the world has experienced diverse forms of natural disasters such as earthquakes, floods, drought and those caused by manmade factors like conflicts and wars. These factors have caused displacements and untold hardship to millions of victims who get caught in the situation. In some cases, the threat or effects of the disaster are so perilous that large numbers of those affected have been forced to flee to different areas within the country or across national borders into neighbouring countries to seek refuge.¹ This phenomenon has created one of the most complex global crises currently confronting the world, which involves the problem of refugees that has been the focus of considerable public concern in recent years.² The American Refugee Committee has noted that over 39 million people all over the world have been forced at one moment or another to flee their homes because of conflicts or natural disasters.³

Thus, states have conditionally or unconditionally received frightened, hungry, war weary victims of persecutions and violence within their territorial boundaries.⁴ The international community has struggled to deal with the issue of refugees without much success due to the increasing numbers and more complex dimensions the problem has taken in recent times. Tamara Wood has noted that large scale movements of people fleeing persecution, conflict, famine, climate-related disasters and human rights abuses continues to strain both the willingness

¹ UNHCR (2012) 'Protecting refugees and the role of the UNHCR' *United Nations High Commission for Refugee* 4.

² Taylor J (2004) 'Refugees and social exclusion: What the literature says' *25:2 Migration Action* 1.

³ American Refugee Committee 'The global refugee crisis' available at: http://www.arcrelief.org/site/PageServer?pagename=learn_globalrefugeecrisis (accessed: 29 April 2013).

⁴ Jastram K & Achiron M (2001) 'Refugee protection: A guide to international refugee law' *Inter-Parliamentary Union and United Nation High Commissioner for Refugees* 5.

and the capacity of the international community to respond.⁵ Beyond the act of just receiving refugees is the equally important obligation according to international treaty requirements for the receiving state to make sure they are provided fair treatment and protection.

As a group, refugees are particularly disadvantaged and thus vulnerable to many policies and actions which tend to violate and deprive them of basic human rights. In this regard protection has been earmarked as a core responsibility that the international community bears towards refugees.⁶ Even though female refugees usually constitute the highest numbers of refugee populations, they have often not been treated equally with their male counterparts.⁷ Meanwhile, female refugees are more vulnerable and therefore by their nature deserve to be accorded particular protection in terms of their basic socio-economic needs such as food, shelter, clothing, education and medical care.⁸ Anders Johnsson has asserted that the international community has however, not been able to respond adequately to the plight of female refugees as a vulnerable group of persons with particular needs.⁹

International instruments like the 1951 Convention relating to the status of refugees and the 1967 Protocol to the Convention were specifically enacted to provide protection to those at risk and in danger who seek asylum.¹⁰ These instruments are fundamental to protecting and regulating the treatment of those who are compelled to leave their homes because of the

⁵ Wood T (2012) 'How are refugees protected by international law?' *Think Africa Press* available at: <http://thinkafricapress.com/international-law-africa/refugee-law> (accessed: 11 September 2013).

⁶ UNHCR (1991) 'Guidelines on the protection of refugee women' *United Nations High Commissioner for Refugees* 1.

⁷ Johnsson AB (1989) 'The international protection of women refugees: A summary of principal problems and issues' 1:2 *International Journal of Refugee Law* 221; UNHCR (2003) *Agenda for Protection* 3rd edition United Nations High Commissioner for Refugees 85.

⁸ Circle of Rights 'Refugees and ESC rights' *Economic, Social and Cultural Rights Activism – A training Resource Module 7* available at: www.umn.edu/humanrights/edumat/IHRIP/circle/module/module7.htm (accessed: 11 September 2013).

⁹ Johnsson (n 7 above) 221.

¹⁰ Erika F *et al* (2003) *Refugee Protection in International Law: United Nation High Commissioner on Refugee's Global Consultation on International Protection* 3.

unfavourable conditions in their country of origin.¹¹ In this regard, one of the core components of international protection is finding durable solutions for refugees.¹²

After the Second World War, the Convention successfully established the framework for the protection of European refugees from persecution by repressive regimes.¹³ In the African context, the 1969 Convention was passed to govern the specific aspects of refugee problems in Africa. These three international instruments are however not the only instruments making provisions for the protection of refugees. They are complemented by other instruments such as the Universal Declaration on Human Rights, the Cartagena Declaration, the International Covenant on Economic Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention on the Elimination of all Forms of Discrimination against Women.

The protection of refugees is primarily the responsibility of the receiving state.¹⁴ With the contribution of international law to complement the national laws of the host country, the protection of the socio economic rights of female refugees is a duty that must be ensured by the world community.¹⁵ In this regard, this study takes a particular interest in the Rwandan female refugees living in the Democratic Republic of Congo (DRC) and investigates to what extent their socio-economic rights are protected both by the DRC and the international community. The DRC is a huge country with enormous problems, notably the on-going armed conflict that has created insecurity in the eastern parts of the country and caused the displacement and movement of large

¹¹ Erika F *et al* (n 10 above) 3.

¹² UNHCR 2003 (n 7 above) 15.

¹³ Erika F *et al* (n 10 above) 4.

¹⁴ Jastram & Achiron (n 4 above) 5.

¹⁵ Grant S (2005) 'International migration and human rights' *Global Commission on International Migration* 15-24.

numbers of refugees.¹⁶ The refugee crisis in the DRC is complex and has been one of the primary factors contributing to the conflict in the region.¹⁷

The refugee crisis has caused the government of the DRC to adopt law No 021/2002 in October 2002 relative to the protection of refugees.¹⁸ With the provisions of the law, the government of the DRC in collaboration with the United Nations High Commission for Refugees (UNHCR) has facilitated the voluntary repatriation of more than 8,000 Rwandan refugees since 2012.¹⁹ Meanwhile, because of insecurity in some areas in the east of the country the UNHCR has been forced to suspend assistance to an estimated 47,500 Rwandans.²⁰ This raises a major concern with regard to the protection of the rest of the Rwandan female refugees living in the region. The challenge results from the fact that the DRC is not only involved in armed conflict but also that the intensity of poverty, coupled with the weak political institutions make it practically difficult for the government of the DRC to be able to ensure protection not only to the refugees but also to its nationals.²¹

This paper therefore seeks to analyse the issues relating to the protection of Rwandan female refugees with regard to their socio-economic rights in the DRC, to investigate the problems they face in the country of refuge and the obligations of the host country in protecting them against human rights violations. I also look at the challenges that the international community is confronted with in its responsibility to help the RDC in providing the necessary protection that Rwandan female refugees require, in relating to their socio-economic rights.

¹⁶ Colville R & Pouilly C (eds) (2007) 'Huge country, huge problem, huge potential: Can DR Congo turn the page?' 1:145 *Refugees – UNHCR* 2.

¹⁷ Search for Common Ground 'Return in Peace: Addressing the Rwandan Refugee Crisis' available at: <http://www.thecommongroundblog.com/2012/10/31/return-in-peace-addressing-the-rwandan-refugee-crisis-retour-en-paix-faire-face-a-la-crise-des-refugies-rwandais/> (accessed: 29 April 2013).

¹⁸ Law No 021/2002 of 16 October 2002 on the Statute of Refugees in the Democratic Republic of Congo.

¹⁹ UNHCR '2013 UNHCR country operations profile - Democratic Republic of the Congo: Working environment' available at: <http://www.unhcr.org/pages/49e45c366.html> (accessed: 29 April 2013).

²⁰ UNHCR (n 19 above).

²¹ Colville & Pouilly (n 16 above) 2.

1.2 Problem statement

The full realisation of the obligations imposed by international and African instruments such as the 1951 Convention and the OAU Convention hinge on the ability of the international community and the host country to find durable solutions to the challenges encountered by female refugees in general. The situation of Rwandan women and girls in the DRC is not only worsened by the fact of living as refugees outside of their country of origin and in an environment in which they are unable to adequately afford their basic needs such as shelter, food, health care, education and security but also because they are further marginalised and exposed to even greater threats as a result of their vulnerability.

Furthermore, the DRC failed to effectively provide protection to Rwandan female refugees because the country on the one hand is very poor and on the other hand because of the continuous conflict in the eastern region of the country. As a result, Rwandan female refugees are still suffering from their human rights violation. Thus, the guarantees of human rights protection provided by refugee conventions and international human rights and African instruments remain an illusion to this category of persons. The supposition therefore, is that for this situation to be remedied there is need for intervention by the international community to ensure that effective protection against human rights abuse is provided to the Rwandan female refugees in the DRC. In dealing with this concern this study is guided by the following questions:

1.3 Research questions

The research responds to the following key questions:

- To what extent are the socio economic rights of female refugees protected by the international community?
- What is the legal framework that gives guarantee to the socio-economic rights of female refugees?
- What are the challenges that the international community is faced with in protecting Rwandan female refugees?

- How are the Rwandan female refugees in eastern DRC protected by the international community to ensure that they enjoy their socio-economic rights?
- What measures are necessary to ensure that Rwandan female refugees are provided effective protection and assistance for the full realisation of their socio-economic rights?

1.4 Purpose and significance of the study

The study critically examines the plight of female refugees and interrogates how the international community responds to their situation, especially with regard to the realisation of their socio-economic rights as defined under international law. The purpose of the study on the one hand, is based on seeking effective and lasting solutions for the protection of female refugees. On the other hand, the study seeks to find out how the international community can overcome the challenges posed by the refugee crisis in the DRC, in strengthening the protection capacity towards the Rwandan female refugees living in the eastern provinces.

This study is intended to make a modest academic contribution to improving the conditions of female refugees around the world in general and most especially the situation of the Rwandan female refugees in the eastern provinces of the DRC. The contribution will be in the form of recommendations in relation with the role played by the international community, including the role of the UNHCR and other humanitarian agencies as well as the responsibility of the DRC to ensure that protection principles are effectively integrated into policy planning and implementation.

1.5 Literature review

Much attention has been devoted by international agencies, non-governmental organisations, governments and academics to the plight, needs and rights of refugees in general and particularly on refugee women. Academic contributions to addressing the plight of refugee women include for example, the works of Ninette Kelley who has looked at the major protection challenges that

are evident and continue to confront refugees in the 21st Century.²² Kelly interrogates to what extent states' reaffirmed commitment to the international protection regime, and their endorsement of the Agenda for Protection has made a difference to the situation of refugees.²³ She examines why the challenges to refugee protection occur and points out how emerging opportunities could be explored to provide more effective protection to refugees while preserving the security, sovereignty and economic concerns of host states.²⁴

Anders Johnsson looks at a different dimension to the plight of female refugees. He highlights the problem of gender biases in the refugee protection system.²⁵ As a result he argues that though refugee women usually make up the larger part of the refugee population, little has been done in terms of providing protection to them as a vulnerable group.²⁶ He draws attention to the different problems faced by female refugees and particularly focuses on the question of obtaining refugee status, which he says constitutes one of the major challenges that female refugees are confronted with.²⁷ He argues that the 1951 Convention does not address the core issue of discrimination on grounds of sex as a violation of fundamental rights, or with the problem of violence that is specifically perpetrated against women. He further intimates that such violence is endemic in almost every society, even in the refugee context but the problem has not been considered as sufficient ground for the granting of refugee status to women who flee from such situations to seek refuge elsewhere.²⁸

Kathleen Newland has also further dealt with the dilemma and vulnerability of the category of women and girls who, because of persistent violence and persecution, are forced to flee to other parts of the world in search of protection of their most fundamental human rights.²⁹ She claims

²² Kelley N (2007) 'International refugee protection challenges and opportunities' 19:3 *Int J Refugee Law* 401.

²³ Kelly (n 22 above) 401.

²⁴ Kelly (n 22 above) 401.

²⁵ Johnsson (n 7 above) 221.

²⁶ Johnsson (n 7 above) 221.

²⁷ Johnsson (n 7 above) 221.

²⁸ Johnsson (n 7 above) 221.

²⁹ Newland K (2003) 'Seeking protection: Women in asylum and refugee resettlement processes' *United Nations Division for the Advancement of Women* 2.

that although female refugees are often few in number compared to those that are internally displaced by the same circumstances, the issues they confront raise fundamental women's human rights concerns that require special protection measures.³⁰ She highlights the hurdles that women and girls go through in the refugee determination process and the particular forms of persecution that they face, which gives rise to the need for international protection.³¹

In an analysis of the refugee protection system in relation to the problems faced by refugee women, Jennifer Harris describes the pattern of denying women their basic rights in a refugee-producing home country which tends to replicate itself in a receiving country.³² She highlights some cultural and socio-economic aspects such as illiteracy and little or no previous employment experience which, coupled with difficulties in obtaining legal status render refugee women highly vulnerable and therefore results in unfavorable and discriminatory treatment of women.³³ She argues that because the standard refugee definition does not adequately cover the circumstances of women, the conditions which they continue to experience in the refugee context impact on their basic human rights and therefore entitles them to protection.³⁴ She points out that because of their particularly vulnerable situation refugee women often receive an unequal distribution of provisions such as food, health care and shelter.³⁵ She therefore suggests that refugee women have special protection needs that reflect their gender, including among others protection against discrimination in the delivery of goods and services.³⁶

Sushil Raj has identified that the challenges encountered by female refugees is usually generated at the point where legislation ignores to take consideration of, which explains why such aspects are not captured in the criteria that are implicated in the refugee definition or in protection measures. He explains for instance that the socio-economic problems that female refugees face

³⁰ Newland (n 29 above) 2.

³¹ Newland (n 29 above) 2.

³² Harris JP 'Refugee women: Failing to implement solutions' available at: <http://www.wcl.american.edu/hrbrief/v7i3/refugee.htm> (accessed: 20 May 2014).

³³ Harris (n 32 above).

³⁴ Harris (n 32 above).

³⁵ Harris (n 32 above).

³⁶ Harris (n 32 above).

happen mainly at the level of programming, where the basic insensitivity of officials during operations inhibits fair distribution of food rations, access to healthcare, education, and employment.³⁷ More so, Raj argues that in the absence of a well-founded fear of persecution under the five prevailing grounds for refugee status application, a refugee receiving states may easily dismiss the refugee status application of women whose economic, cultural and social rights are violated as ‘economic migrants’.³⁸ He explains that under a general human rights framework international law is expansionary and women’s rights are increasingly being addressed while under the refugee-specific framework, women’s rights are either not addressed or incorporated under the broader category of persecution.³⁹ Raj’s article thus exposes the deficiency that exists within the international legal framework concerning the status of female refugees, since it fails to address these issues.⁴⁰

In a case study on Sahrawi refugee women, Elena Fiddian-Qasmiyeh exposes the marginalisation of refugee women in the highly ‘idealised’ Sahrawi refugee camps. She gives an accounts of the Sahrawi refugee camps, Sahrawi refugee women, and the National Union of Sahrawi Women, all of which she says are systematically idealised by Western donors and academics as a ‘success story’ meanwhile the failing system which creates a ‘dependency syndrome’ amongst refugees.⁴¹ The case study exposes the much publicised best practice of the National Union of Sahrawi Women that upholds the principle of gender equality and social inclusiveness in official pronouncements, while marginalising women in the allocation of aid.⁴² In relation to this, she cites an interviewee as saying ‘lots of aid is distributed but it doesn’t reach the people who need it the most; to the people who it should reach first’.⁴³ She goes further to illustrate how sections of women within the camp population, girls in particular are systematically excluded from

³⁷ Raj S ‘The gender element in international refugee law: Its impact on agency programming and the north-south debate’ available at: www.worldlii.org/int/journals/ISILYBIHRL/2001/9.rtf (accessed: 20 May 2014) 2.

³⁸ Raj (n 37 above) 4.

³⁹ Raj (n 37 above) 4.

⁴⁰ Raj (n 37 above) 4.

⁴¹ Fiddian-Qasmiyeh E (2010) “‘Ideal’ refugee women and gender equality mainstreaming in the Sahrawi Refugee Camps: “Good practice” for whom?” 29:2 *Refugee Survey Quarterly* 65-67.

⁴² Fiddian-Qasmiyeh (n 41 above) 66.

⁴³ Fiddian-Qasmiyeh (n 41 above) 75.

education and other socio-economic services.⁴⁴ Thus she concludes that despite claims to gender equality and female empowerment in the camps, many women and girls through marginalisation have remained ‘invisible’ and excluded from the socio-economic benefits.⁴⁵ Fiddian-Qasmiyeh’s account paints a picture of the circumstances under which a majority of refugee women are generally subjected.

In a report on sexual violence in the DRC, Sarah Mosely, Talita Cetinoglu and Marit Glad point out that the humanitarian community has faced enormous challenges in trying to protect women and girls from the combined calamity of gender-based violence in society and conflict related sexual violence.⁴⁶ They argue that real change in the shocking level of sexual violence against women and girls in eastern DRC will require changes that go beyond the mandate of humanitarian agencies and civil society organisations, requiring substantial political will and action by national authorities, with concrete and sustained support from the international community.⁴⁷ They further contend that while service provision for survivors of sexual violence is a top priority, protection for women and girls can also be improved in DRC through effective implementation of the new protection framework created for women and girls by UN resolutions 1820 and 1888.⁴⁸

As it will be observed, most of the literature relating to female refugees generally deals with issues regarding protection and the refugee status determination for women, gender and the corresponding concern of sexual violence, vulnerability and marginalisation as well as discrimination in the distribution of goods and services. While these are obviously priority concerns, women’s socio-economic concerns in a refugee situation, which are usually also extensively implicated cannot be ignored. None of the accounts that I have examined above have addressed these socio-economic concerns, particularly with regard to Rwandan female refugees

⁴⁴ Fiddian-Qasmiyeh (n 41 above) 77-80.

⁴⁵ Fiddian-Qasmiyeh (n 41 above) 77-78.

⁴⁶ Mosely S, Cetinoglu T & Glad M (2010) ‘Protection from sexual violence in DRC’ in Democratic Republic of Congo past, present, future? 36 *Forced Migration Review* 14.

⁴⁷ Mosely, Cetinoglu & Glad (n 46 above) 14.

⁴⁸ Mosely, Cetinoglu & Glad (n 46 above) 14-15.

in the DRC in a comprehensive manner the way this study does. The above review is however, not exhaustive of the literature on the protection of female refugees but a scan of the available literature shows that there is a serious dearth of knowledge relating to the situation of Rwandan female refugees living in the DRC . Since no field work is involved, the rest of the study is based on the analysis of the works of prominent scholars on the subject. Thus the study involves a continuous review of data from internet sources, reports, journal articles, books and other academic writings.

1.6 Methodology

The study was conducted mainly through desktop research, relying particularly on primary, secondary as well as internet sources. The following approaches were used:

- The literature review of books, academic articles, works of acclaimed publicists and reports helped to establish the theoretical framework on the issues of rights abuse and concerns relating to the protection of the socio-economic rights of female refugees.
- The analytical method helped in the examination of international and national instruments in which the rights of refugees against abuse and violation are guaranteed.
- The multidisciplinary approach was also employed, especially relating to the fields of psychology, sociology, economics and environment because issues of human rights are cross dimensional and cannot be redressed simply by applying the law. The need for a multidisciplinary approach was necessary in order to understand the causes and consequences of the violation of the socio-economic rights of female refugees and how effectively they could be prevented or remedied.

1.7 Structure of chapters

The study is structured in five chapters including this introductory chapter which sets the pace for the rest of the study.

Chapter two looks at perspectives on the protection of the socio-economic rights of Rwandan female refugees in the DRC. The chapter goes on to examine the regulatory framework on the protection of refugees in the DRC. In this regard, I examine the socio-economic rights guaranteed to Rwandan female refugees by international as well as national laws. I further examine the difficulties faced by the DRC in providing protection to this particularly vulnerable group of persons, especially in the realisation of their socio economic rights. I then proceed to look at how the socio-economic rights of the Rwandan female refugees living in the war-torn eastern region of the DRC could effectively be protected.

Chapter three deals with the legal framework regulating the protection of refugees in general, but more specifically the socio-economic rights of female refugees. For purposes of clarity, I begin by giving a comprehensive definition of the term ‘refugee’ so as to determine the nature and scope of protection provided, to which the Rwandan female refugees in the DRC are entitled. I proceed to examine the international and African refugee protection mechanisms as well as the various international human rights instruments that make provision for protection of the rights of refugees. I argue that the refugee definition as well as the protection provisions in these instruments are generally gender biased and therefore, do not guarantee sufficient protection to female refugees. The instruments also do not take into consideration the vulnerability, special needs and socio-economic rights that are particularly relevant to their circumstances as refugees.

In chapter four, I look at the challenges to the international protection of the socio economic rights of Rwandan female refugees. In doing so; I examine the mandate of the UNHCR in providing international protection and in seeking long-lasting solutions to the problems of Rwandan female refugees. I also examine the measures and mechanisms that are employed by the UNHCR to ensure realisation of the socio-economic rights of Rwandan female refugees. The chapter considers Rwandan female refugees as a special category because of their vulnerability as females; and thus identifies the specific needs that must be considered to ensure effective protection. However, because of the refugee contexts, some of the special needs of Rwandan female refugee are often not considered. I then go on to suggest that the plight of Rwandan female refugees cannot effectively be addressed only from a human rights point of view but that a multidisciplinary approach may also be considered.

The fifth chapter consists of concluding remarks as well as some useful recommendations on how to ameliorate protection of the socio-economic rights of female refugees around the world at large and to the Rwandan female refugees in the eastern region of the DRC in particular.

Chapter Two

Perspectives on the protection of the socio-economic rights of Rwandan female refugees in the Democratic Republic of Congo

2.1 Introduction

The Democratic Republic of Congo (DRC), formerly known as Zaire is located in central Africa. It is the second largest country in Africa in terms of land mass and has a population of over 70 million people.⁴⁹ Though the country ranks among the poorest in the world, having the second lowest GDP per capita globally, it is widely considered to be the richest country in terms of natural resources, with untapped deposits of raw minerals estimated to be worth in excess of USD 24 trillion.⁵⁰



Figure2: Map of the Democratic Republic of Congo (Source: World without Genocide website).

⁴⁹ National Geographic ‘Democratic Republic of the Congo facts’ available at: <http://travel.nationalgeographic.com/travel/countries/democratic-republic-congo-facts/> (accessed: 14 August 2013)

⁵⁰ World without Genocide ‘Democratic Republic of Congo’ available at: <http://worldwithoutgenocide.org/genocides-and-conflicts/congo> (accessed: 20 August 2013)

The country is richly endowed with diverse natural resources such as diamond, gold, coltan, copper, cobalt and timber but in spite of its potential wealth the economy is said to have declined drastically since the mid-1980s due to protracted armed conflict.⁵¹ The DRC occupies a strategic position in terms of migration in the central African region in the sense that it is not only a predominantly refugee producing country but also receives large numbers of refugees from neighboring countries.⁵² Generally, the DRC is host to a substantial population of refugees and asylum-seekers, estimated at about 180.000 who are mostly concentrated in the eastern provinces around the areas of North and South Kivu, Bas-Congo, Katanga, Bandundu and Kasai.⁵³

Of the total number of refugees from different countries that are present in the DRC, Rwandan refugees estimated at 65,500 make up the largest number.⁵⁴ Rwandan refugees in the DRC live in the eastern provinces of the country. The influx of Rwandan, mostly Hutu refugees in the DRC was caused by fearing of Tutsi retribution for the Rwandan genocide 1994 which was instigated and carried out by extremists Hutu.⁵⁵ However, the genocide led to the deaths of up to one million Tutsi and moderate Hutu. After being defeated by Tutsi military, hundred thousands of Rwandan, mostly Hutu fled into Congo and settled in its eastern provinces.⁵⁶

The important question in this regard is to find out how the DRC ensures protection of the refugee populations within its territory. I focus especially on the kind of protection provided to the Rwandan female refugees living in the DRC and enquire whether the protection is effective in terms of the realization of their socio-economic rights.

2.2 Regulatory framework on the protection of refugees in the DRC

⁵¹ Hear Congo 'DR Congo background' available at: <http://www.hearcongo.org/about-2/carreer-2-3/> (accessed: 22 August 2013).

⁵² Chigavazira B *et al* (2012) 'Access to socio-economic rights for non-nationals in the Southern African Development Community' *Open Society Initiative for Southern Africa* 34.

⁵³ Chigavazira B *et al* (n 52 above) 34.

⁵⁴ Chigavazira B *et al* (n 52 above) 34.

⁵⁵ Assessment for Hutu in the Democratic Republic of Congo available at: <http://www.cidcm.umd.edu/assessment.org> (accessed: 04 November 2014)

⁵⁶ As above

2.2.1 International instruments ratified by the DRC on the protection of refugees

The DRC is signatory to a number of international legal instruments relating to the protection of refugees. The DRC is a state party to the 1951 Refugee Convention relating to the Status of Refugees and its Protocol with no reservations.⁵⁷ However, the DRC is also a state party to the 1969 OAU (AU) Convention and the 2005 SADC Convention. In fact, in 1969 the DRC signed the AU Convention and it ratified and deposited in May 1973.⁵⁸ Notwithstanding the fact that most of the refugees currently residing in the DRC have been recognised as refugees on a *prima facie* basis according to article 1.2 of the OAU Convention;⁵⁹ regardless of the fact that the DRC has domesticated all these instruments, protection to the Rwandan female refugees living in the DRC still not guaranteed. Furthermore, the DRC is said to have not yet developed a comprehensive approach to legal migration even though it has one of the highest numbers of migrants, asylum-seekers and refugees on the African continent.⁶⁰

Besides these refugee protection instruments, the DRC has acceded to the Covenant on Economic Social and Cultural Rights, the Covenant on Civil and Political Rights, the African Charter on Human and People's Rights and has also ratified the Convention on the Elimination of All Forms of Discrimination Against Women,⁶¹ which may be interpreted to also provide protection to refugees in general. These instruments have been analysed among others in the previous chapter in highlighting on how they provide protection with regard to the socio-economic rights of female refugees but more specifically to Rwandan female refugees. What is important to highlight is the fact the DRC, on account of the commitments it has undertaken under these instruments is therefore legally or at least morally bound to provide protection to the Rwandan female refugees found within its territorial boundaries.

⁵⁷ UNHCR (2013) 'Submission by the united nation high commissioner for refugees for the office of the high commissioner for human rights' compilation report-universal review: Democratic Republic of Congo' *United Nations High Commission for Refugees* 1.

⁵⁸ UNHCR(n 202 above)

⁵⁹ OAU Convention, article 1.2

⁶⁰ Chigavazira B *et al* (n 52 above) 36.

⁶¹ University of Minnesota 'Ratification of international human rights treaties - Democratic Republic of Congo' available at: <http://www1.umn.edu/humanrts/research/ratification-congo.html> (accessed: 26 September 2013).

2.2.2 Domestic instruments on the protection of refugees in the DRC

The only known legislation that deals with refugee issues in the DRC is Law no. 021/2002 adopted on 16 October 2002 relating to the status of refugees.⁶² The law made provision for the creation of a National Commission for Refugees (NCR), which is entrusted with the management of the affairs of refugees and asylum-seekers.⁶³ The law further mandates the Minister of Interior in collaboration with the UNHCR to issue free refugee identification documents of a validity of 2 years renewable, which are equivalent to resident cards for regular immigrants.⁶⁴

The law does not specifically address the particular needs of female refugees but by implication it equally applies to refugee women as it does to refugees in general. The law in effect makes provision for certain socio-economic rights such as the rights to housing, health care, education, training and employment.⁶⁵ Article 32 of the law guarantees to all refugees including refugee women the right to carry out a professional activity, the right to social assistance, the right to have access to medical care and the right to education.⁶⁶ However, it has been argued that the NCR has not accomplished much in terms of implementation and therefore its responsibility to improve the social well-being of refugees and asylum seekers in the DRC remains questionable.⁶⁷

In addition to the 2002 law, the Constitution of the DRC also recognises the right to asylum and makes provision for a range of economic, social and cultural rights that may be enjoyed equally by Congolese nationals as well as foreign nationals who are legally present in the national territory.⁶⁸ Article 33 of the Constitution guarantees the right to asylum and allows government to grant asylum, defend the human rights and prevent the forceful repatriation of persons who have fled from persecution from their countries because of race, religious beliefs, nationality,

⁶² Chigavazira B *et al* (n 52 above) 36.

⁶³ Chigavazira B *et al* (n 52 above) 36.

⁶⁴ Chigavazira B *et al* (n 52 above) 36; Law No 021/2002 (n 18 above) art 28.

⁶⁵ Chigavazira B *et al* (n 52 above) 36.

⁶⁶ Law No 021/2002 (n 18 above) art 32.

⁶⁷ Chigavazira B *et al* (n 52 above) 36.

⁶⁸ Constitution of the DRC 2006 art 50.

membership in a social group, or political opinion.⁶⁹ The Constitution guarantees the right to nationals as well as to foreigners to engage in commercial activities,⁷⁰ the right to work under fair conditions⁷¹ the right to education,⁷² the right to health and food security⁷³ as well as the rights to decent housing, access to potable water and to electricity.⁷⁴

These national legislations constitute a comprehensive framework for the protection of refugees, including Rwandan female refugees. Anthony Sterne has argued that by allowing refugees into the country, the government accepts the obligation to extend the rights enshrined in the Constitution to such persons.⁷⁵ He argues further that refugees are entitled to the same rights as citizens unless specifically excluded in the Constitution.⁷⁶ As has been stated earlier the state has the responsibility to protect the refugees on its territory. In this regard, the government of the DRC has in collaboration with the UNHCR made efforts at ensuring that the rights of refugees and particularly the socio-economic rights of the Rwandan female refugees living in the eastern parts of the country are fulfilled. The major problem that the government of the DRC has been confronted with is the on-going armed conflict in the region, which makes it difficult for the government, the UNHCR and other agencies to reach out and provide full protection and assistance to the Rwandan refugees in that part of the country.

⁶⁹ Constitution of the DRC2006 art 33.

⁷⁰ Constitution of the DRC2006 art 35.

⁷¹ Constitution of the DRC2006 art 36.

⁷² Constitution of the DRC 2006 art 43. Art. 45 specifically states that ‘education is free’ and that ‘[a]ll persons have access to establishments of national education without discrimination on grounds of place of origin, race, religion, sex, political or philosophical opinions, physical, mental or sensorial condition in accordance with their capacities’.

⁷³ Art 47 of the Constitution of the DRC2006.

⁷⁴ Art 48 of the Constitution of the DRC2006.

⁷⁵ Sterne A ‘Health care for all?: Asylum seekers, refugees and health care’ available at: <http://www.saflii.org/za/journals/DEREBUS/2013/42.pdf> (accessed: 30 September 2013) 2.

⁷⁶ Sterne (n 73 above) 2.

2.3 Difficulties in the protection of Rwandan female refugees in the DRC

The situation of the Rwandan female refugees in the eastern provinces of the DRC has remained deplorable in spite of guarantees of protection by the host country as well as the international community. This has been due to a combination of factors some of which are beyond the actors involved. Patricia Daley has stated that the persistent civil war in the African great lakes region has created a crisis of protection of refugees.⁷⁷ Though the DRC is one of the poorest countries in Africa, it has been receptive to overwhelming numbers of refugees from neighbouring countries such as Angola, Burundi, Congo, Rwanda and Sudan.⁷⁸ These huge numbers of refugees have certainly exceeded the DRC's capacity to provide the necessary protection and assistance.

The tension between the DRC and Rwanda for instance resulted in a mass exodus of Tutsi and Hutu refugees.⁷⁹ And the fact that after his victory, the president Laurent Kabila who was helped by Rwandan militia to oust the president Mobutu decided to strategically expel His Rwandan allies from the country caused insecurity and instability in the country.⁸⁰ Once Kabila expelled the Rwandans out of the country, his former allies regrouped in the eastern provinces of the DRC and began their own rebellion against Kabila. This second rebellion has grown into an international war between the DRC and Rwanda and has caused a major challenge both to the government of the DRC as well as to the international community and in this instance Rwandan female refugees become more vulnerable.⁸¹

⁷⁷ Daley P (2013) 'Refugees, IDPs and citizenship rights: The peril of humanitarianism in the African Great Lakes region' 34:5 *Third World Quarterly* 893-912.

⁷⁸ Chigavazira *et al* (n 52 above) 34.

⁷⁹ Kanere 'Are Rwandan Hutu refugees facing discrimination in the international protection regime?' *Kakuma News Reflectors - A Refugee Free Press* available at: <http://kanere.org/2011/08/21/are-rwandan-hutu-refugees-facing-discrimination-in-the-international-protection-regime-2/> (accessed: 22 August 2013).

⁸⁰ Assessment for Hutu in the DRC (n 55 above)

⁸¹ As above



Figure 3: Rwandan refugees fleeing into Congo (source: World without Genocide)

It is indeed obvious that the government of the DRC is one of the weakest on the African continent, which makes it practically unable to provide adequate and effective protection and assistance not only to refugees but also to its own nationals. Consequently, it is not possible to imagine that it will be able to fully and effectively provide the necessary protection to Rwandan female refugees in spite of the commitments it has undertaken both internationally and domestically to do so. In addition, the instability and insecurity in the eastern DRC due to the ongoing conflict also constitutes one of the greatest issues faces by the DRC in providing protection to the Rwandan female refugees.

2.3.1 Armed conflict as an obstacle to the protection of Rwandan female refugees

The eastern provinces have been experiencing the worst situation of instability and insecurity due to the persistent armed conflict in the area. The conflict is fueled by invasion of the Rwandan army to hunt down Rwandan refugees and force them to return to Rwanda.⁸² This situation has posed a great barrier to addressing the problem of refugees in eastern DRC,⁸³ and has caused many displacements of both nationals and refugees to inaccessible areas in the bushes and

⁸² Free Thinker (2009) 'Rwandan refugees in Congo on the brink of extermination' available at: <http://hungryoftruth.blogspot.com/2009/01/fdlr-is-fighting-to-defend-hutu.html> (accessed: 29 August 2013).

⁸³ The Impact of armed conflict on children in the Democratic Republic of Congo, Watch list on children and armed conflict available at: www.watchlist.org (accessed: 28 August 2013).

forests.⁸⁴ Under the circumstances, Rwandan female refugees become even more vulnerable as they become victims of rape, cruel and degrading treatment which makes them to go through more traumatising experiences on a daily basis.

To this date, the fighting in the eastern provinces continues to cause instability, which has made access to essential necessities such as medical care, water, food and shelter for Rwandan female refugees very difficult.⁸⁵ As a result of this situation the capacity or the political willingness of the government of the DRC has significantly been limited such that it is unable to effectively provide protection and assistance to the refugees. The UNCHR has also been unable to properly carry out its duties because of inaccessibility to the areas where the refugees have been forced to hide in bushes for safety purposes. This has undoubtedly left the Rwandan female refugees in the area in even more precarious circumstances.

2.3.2 Resource and programmatic constraints in the protection of Rwandan female refugees

Rwanda experienced the worst of violent conflicts during the genocide in 1994 resulting from the social and political change that took place in the country.⁸⁶ Even after the situation in Rwanda has stabilised, a large number of Rwandan refugees have remained in the DRC and only an estimated 450.000⁸⁷ are said to have returned to Rwanda as compared to the over 1.5 million that came into the DRC. The continuous presence of Rwandan refugees in the eastern provinces has had a crucial effect on the domestic politics of the DRC in terms of resource allocation for refugee protection.

⁸⁴ As above.

⁸⁵ Jayakumar K 'Conflict in the Democratic Republic of Congo' available at: <http://www.transconflict.com/gcct/gcct-members/africa/middle-africa/democratic-republic-of-congo/conflict-in-drc/> (accessed: 28 August 2013).

⁸⁶ Murison J 'Rwanda: A research guide' available at <http://www.forcedmigration.org/research-resources/expert-guides/rwanda/fmo027.pdf> (accessed: 28 August 2013).

⁸⁷ Minorisa-Inshuti (1997) 'Goma/Bukavu: Testimony of a direct eye witness' available at: <http://hungryoftruth.blogspot.com/2009/01/gomabukavu-testimony-of-direct-eye.html> (accessed: 29 August 2013).



Figure 4 Rwandan refugees camps in east of DRC following the genocide in 1994

Because of inadequate resources, there has been serious deterioration in the management of the refugee camps established by the government of the DRC and the UNHCR. As a result, the Rwandan female refugees living in the camps are deprived of essential protection against harm or rights violation.⁸⁸ They live in fear as a result of the killings and disappearances which have become a regular phenomenon.⁸⁹ According to Doctors without Borders (DWB), Rwandan female refugees are being threatened and killed by the militia for not wanting to return to Rwanda.⁹⁰ The plight of the Rwandan female refugee's is reported to be becoming more severe as they suffer from assault and injury and are also subject to sexual violence perpetrated by the militia.⁹¹ In some instances, they are obliged to render humiliating services to men who are in charge of the food distribution in return for food rations.⁹² Because of the harsh living conditions some of the Rwandan female refugees have simply integrated among Congolese villagers,

⁸⁸ 'Rape and prostitution: The plight of refugee women at a DRC camp available at: <http://observers.france24.com/content/20130415-rape-prostitution-refugee-women-dr-congo-camp> (accessed: 30 August 2013).

⁸⁹ DWB 'Breaking the cycle: Calls for action in the Rwandese refugee camps in Congo and Tanzania' available at: <http://www.doctorswithoutborders.org/publications/article.cfm?id=1465> (accessed: 29 August 2013).

⁹⁰ DWB (n 86 above).

⁹¹ DWB (n 86 above).

⁹² DWB (n 86 above).

making their actual numbers uncertain and therefore also making it practically difficult to reach out and provide them with the necessary assistance and protection.

2.4 Basic socio-economic rights guaranteed to Rwandan female refugees

The Law No 02/2002 relating to the protection of refugees in the DRC mandates the NCR to focus on matters regarding refugee protection. This law makes provision for refugees to enjoy certain socio economic rights that are equally guaranteed to Congolese nationals; namely, the rights to exercise a professional activity, social assistance, health care, education, training and employment.⁹³ The realisation of these rights are intended not only to ensure the well-being of refugees but to also acknowledge the fundamental values of dignity and the inherent worth of the human being irrespective of status. With regard to the socio-economic rights of refugees, it was decided in the South Africa case of *Minister of Home Affairs v Watchenuka* that human dignity has no nationality and that it is inherent in all people – citizens and non-citizens alike – simply because they are human.⁹⁴

There is a wide range of socio-economic rights provided by international human rights law as well as the Constitution of the DRC. However, given the circumstances this range of socio-economic rights cannot readily be available to Rwandan female refugees because by nature the rights are limited by the qualifications of progressive realisation and availability of resources. Those that are fundamentally necessary for the protection of Rwandan refugee women include the following:

- **Right to housing**

Housing forms an indispensable part of ensuring human dignity and it is essential for healthy and decent living.⁹⁵ Recognised under international law, the right to housing is enshrined in article

⁹³ Law No 021/2002 (n 18 above) art 32.

⁹⁴ *Minister of Home Affairs and Others v Watchenuka and Others* [2004] 1 All SA 21 (SCA) para 25.

⁹⁵ Circle of Rights ‘The rights to adequate housing’ *Economic, Social and Cultural Rights Activism – A Training Resource Module 13* available at: <http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module13.htm> (accessed: 11 September 2013).

25(1) of the UDHR, which provides that everyone has the right to housing among others.⁹⁶ Article 11(1) of the ICESCR also provides that ‘states parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family’. Therefore, every state that is signatory to the Convention has the duty to mobilise all the resources through national effort as well as through international cooperation to ensure the well-being of all people living within its territory.⁹⁷ This includes refugees.

The Constitution of the DRC also guarantees the rights to have access to decent housing.⁹⁸ However, it is evident that the quality of housing provided to refugees cannot be said to meet the decency standard. In fact the DRC government faces great challenges in providing decent housing to its national. Therefore, access to shelter is inadequate to a large number of the Rwandan female refugees living in the eastern provinces of the DRC. As a result of their large numbers, female refugees are forced by the circumstances to live in inappropriate camp conditions, often without privacy and security or sensitivity to the cultural values and human dignity that are most valuable to women.

- **Right to food**

Undoubtedly, the right to food can be considered as a fundamental human right and its basis can be traced to the UDHR.⁹⁹ The Constitution of the DRC also recognises the right to everyone to have access to food.¹⁰⁰ In spite of these provisions, access to food remains very challenging for Rwandan female refugees living in the Kisangani and the Lulingu (Shabunda) camps in South Kivu also because of the fact that there is a humanitarian crisis that had to be addressed in a political and logistical context that limited access.¹⁰¹ Consequently, the food rationing that Rwandan refugee women get is usually insufficient to ensure their well-being and the one of

⁹⁶ Universal Declaration of Human Rights (UDHR) art 25(1).

⁹⁷ International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 art 2; see also art 22 of the UDHR.

⁹⁸ Art 48 of the Constitution of the DRC.

⁹⁹ Art 25 of the UDHR.

¹⁰⁰ Art 47 of the Constitution of the DRC.

¹⁰¹ Jasper S ‘Responding to the crisis in Congo-Zaire: Emergency feeding of Rwandan refugees May-July 1997’ available at: www.fex.ennonline.net/3/responding (accessed: 28 October 2013).

their family or community.¹⁰² On the other hand, the refugees that are living outside of the refugee camps are often left out in the process of food distribution. Thus a large proportion of Rwandan refugee women who are unable to find a place in the refugee camps and have consequently integrated in the local villages among Congolese are unfairly denied the right to food, which is essential for their survival.

A BBC report has stated that access to food for refugees in the DRC was impossible as the country was facing a humanitarian crisis.¹⁰³ According to the UNHCR the needs of Rwandan female refugees are significant but because of insecurity, access to the area is difficult and as a result access to food is a problem for Rwandan female refugees living in the area.¹⁰⁴

- **Right to health care**

Notwithstanding the fact that the Constitution recognises equal access to health care and food for all,¹⁰⁵ the reality on the ground is different. According to CARE, the situation of access to health care was critical; many cases of malnutrition were reported in many refugee camps. Therefore, adequate access to health care for Rwandan female refugees is fundamentally ineffective.¹⁰⁶ There is no report of measures that are being taken to ensure effective health care for Rwandan female refugees living in the eastern DRC.¹⁰⁷ The International Committee of the Red Cross (ICRC) has observed that the health situation has worsened for the refugees due to the conflict that has severely weakened the health care system.¹⁰⁸ As a result of hunger and malnutrition the

¹⁰² Jasper (n 98 above).

¹⁰³ ‘Rwandan refugees in Goma Zaire (DRC)’ available at: http://www.youtube.com/watch?v=TwxvRL_FfBk (accessed: 10 September 2013).

¹⁰⁴ UNHCR ‘High Commissioner Guterres visits CAR refugees in DR Congo’ available at: <http://www.unhcr.org/5167e6af9.html> (accessed: 17 September 2013).

¹⁰⁵ Art 47 of the Constitution of the DRC.

¹⁰⁶ Jasper (n 98 above).

¹⁰⁷ United Nation General Assembly, Report of the Special Rapporteur on the Situation of Human Rights in the DRC, fifty third session item 113(c) of the provisional agenda.

¹⁰⁸ ICRC (2009) ‘Democratic Republic of Congo: Improving access to health care in the Nord Kivu’ *Interview* available at: <http://www.icrc.org/eng/resources/documents/interview/congo-kinshasa-interview-261109.htm> (accessed: 19 September 2013).

prevalence of diseases such as malaria, tuberculosis, cholera, dysentery and death have been reported by local NGOs.¹⁰⁹

- **Right to education**

The right to education is guaranteed in the 2006 Constitution of the DRC. Article 43 of the Constitution provides that primary education is free and compulsory for all.¹¹⁰ Free and compulsory for all means that the right extends and can be enjoyed by the refugees living within the territory of DRC. In addition, article 45 stipulates that education is free and available to everyone without any kind of discrimination based on sex, origin, religion, political or philosophical opinion, physical, mental or censorial condition in accordance with their capacities.¹¹¹

In spite of these constitutional guarantees of free education, Law No 25/95 of 17 November 1995 (amending the School Act No 008/90 of 6 September 1990), which governs the education system in the DRC excludes refugees from the right to free education. In terms of this law, the right to education must be of equal access only to Congolese citizens. Consequently public education is guaranteed free only to citizens and not to refugees. According to these dispositions, refugees are confronted with a challenge on the basis of their human right to education. Most refugee children can only attend school in the camps and are not allowed to attend public schools, which are reserved for nationals. Due to resource constraints, the UNHCR is also often confronted with the challenge to conveniently support the education needs of refugees.

In terms of the legal and human rights of Rwandan female refugees in the DRC, the on-going conflict in the eastern provinces, the large scale of internally displaced persons, the high poverty rate in the country and the weak judicial system constitute great challenges that inhibit the

¹⁰⁹ ‘Priority health interventions which impact nutrition in emergencies’ available at: http://www.unicef.org/nutritioncluster/files/mod15_health_interventions-technical_notes.doc (accessed: 19 September 2013).

¹¹⁰ Art 43 of the Constitution of the DRC.

¹¹¹ Art 45 of the Constitution of the DRC.

government of the DRC and the international community from ensuring that Rwandan female refugees have adequate access to their socio economic rights.¹¹²

2.5 Protection of Rwandan female refugees in the DRC

The plight of Rwandan female refugees in the DRC continues to pose great concerns. In spite of the overwhelming challenges that the country is facing the government, in cooperation with the UNHCR has relentlessly and continue to make efforts to provide protection and assistance to the remainder of the Rwandan refugees who are still living in the DRC.¹¹³ The cessation clauses of the 1951 Refugee Convention and the 1969 OAU (AU) Convention provide for the termination of refugee status once fundamental and durable changes have taken place in the country of origin and the circumstances that led to the flight of refugees no longer exist.¹¹⁴ In accordance with these provisions, the UNHCR has in its ‘Comprehensive Strategy for the Rwandan Refugee Situation’ recommended the termination of refugee status for Rwandan refugees with effect from 30 June 2013.¹¹⁵ Prior to the recommendation the UNHCR had pursued a strategy of voluntary repatriation, local integration, retention of refugee status for people still in need of international protection, and the invocation of the cessation clause as a way of bringing the situation of Rwandan refugees to a proper closure.¹¹⁶

Meanwhile, NGOs have expressed deep concerns about the lack of arrangement for alternative statuses and exemptions for Rwandan refugees.¹¹⁷ They cite persistent human rights violations and the restriction of civil rights in Rwanda as pertinent reasons why Rwandan refugees may fear

¹¹² Foreign & Commonwealth Office (2013) *Human Rights and Democracy: The 2012 Foreign & Commonwealth Office Report* Human Rights and Democracy Department - Foreign and Commonwealth Office 161.

¹¹³ UNHCR (n 19 above).

¹¹⁴ UN News Centre ‘As end of refugee status approaches, UN working to ensure proper closure for Rwandans’ available at: <http://www.un.org/apps/news/story.asp?NewsID=45297&Cr=africa&Cr1=refugee#.Ukk-ZdJyCE4> (accessed: 30 September 2013).

¹¹⁵ UN News Centre (n 111 above).

¹¹⁶ UN News Centre (n 111 above).

¹¹⁷ Executive Committee of the High Commissioner’s Programme (2013) ‘NGO statement on Africa – Extended version’ *Standing Committee 56th Meeting* 3.

returning to the country.¹¹⁸ NGOs further draw attention to reported incidents of persecution and harassment of Rwandan asylum seekers and refugees abroad by agents of the Rwandan Government and therefore, interrogate why the UNHCR's policies should be based on the assumption that the reasons for Rwandans to become refugees 'have ceased to exist.'¹¹⁹ The prevailing circumstances in Rwanda as it is reported may not provide a conducive environment for the return of Rwandan female refugees as this may further jeopardise their vulnerability. Thus, NGOs have urged the suspension of UNHCR's cessation recommendations for Rwandans until fully functioning procedures are in place for refugees to access protection if they cannot return because of compelling reasons arising from past persecution.¹²⁰

The former governor in charge of the eastern province has affirmed that the government of the DRC and the UNHCR will continue to provide protection to Rwandan female refugees and to ensure that they are ready to return to their country of origin or to resettle in a third country.¹²¹

2.6 Conclusion

In this chapter, I focused on the specific case of Rwandan female refugees living in the DRC and I examined how their socio-economic rights are guaranteed and protected. I looked at how the DRC as a refugee host country, in spite of the challenges that it faces, which include high levels of poverty and persistent conflict in the eastern region the country, has struggle to deal with the refugee crisis in the region. Thus, I examined the legal framework on the protection of refugees in the DRC. I established that the government has in deed acceded to or ratified a number of international and regional instruments that impose legal obligations or moral responsibilities on the country to ensure the protection of the refugees found within its territory. I also examined the domestic commitments undertaken by the government of the DRC, in respect of which I

¹¹⁸ Executive Committee (n 114 above) 3.

¹¹⁹ Executive Committee (n 114 above) 3.

¹²⁰ Executive Committee (n 114 above) 1.

¹²¹ IRIN 'No consensus on implementation of cessation clause for Rwandan refugees' available at: www.irinnews.org/report/98409/ (accessed: 28 October 2013).

highlighted constitutional provisions that may be interpreted to apply to the protection of refugees as well as the 2002 law, which is relative to the protection of refugees.

In spite of this, the protection or realisation of the socio-economic rights guaranteed to Rwandan female refugees poses overwhelming challenges to the government of the DRC. I identified that these challenges arise as a result of the armed conflict in the eastern region of the country and also because of resources and programmatic constraints to the effective implementation of the socio-economic rights of Rwandan female refugees. I went further to look at the socio-economic rights guaranteed to the Rwandan female refugees by the Constitution of the DRC and also by Law No 02/2002 relating to the protection of refugees in the DRC, among which I identified the rights to shelter, food, healthcare and education. The different perspectives that I examined, point to the fact that in spite of the challenges the government of the DRC in collaboration with the international committee remains committed to finding durable solutions to the refugee crisis in the eastern region of the country.

Chapter Three

Legal framework on the protection of the socio-economic rights of Rwandan female refugees

3.1 Introduction

Refugees have existed as far back as hostilities have occurred but history has never known refugee problems of such magnitude as during the present century.¹²² Besides hostilities and displacements caused by natural disasters, states' responsibility to protect their citizens has often been compromised by human rights abuses, which has also been the forced citizens to leave their country of origin to seek freedom and safety in other countries, particularly with the hope to secure enjoyment of their fundamental rights.¹²³ Such has been the case of hundreds of thousands of women who have not only fled their country of origin because of situations of conflict or natural causes but also because of situations that relate particularly to their vulnerability as women.

A UNHCR report has established that persons fleeing persecution get exposed to even greater risks which may further violate their rights and stand in the way of securing the protection to which they are entitled by law.¹²⁴ Thus, the refugee context often becomes even more precarious for female refugees as the UNHCR Executive Committee has identified that:

While forcibly displaced men and boys also face protection problems, women and girls can be exposed to particular protection problems related to their gender, their cultural and socio-economic position and their legal status, which mean they may be less likely than men and boys to be able to exercise their rights and

¹²² Melander G *et al* (1978) *African Refugee and the Law* Scandinavian Institute of African Studies 9.

¹²³ Jastram & Achiron (n 4 above) 8.

¹²⁴ UNHCR (2011) 'Guidelines for protecting women and girls during first entry and asylum procedures in Greece' *Athens: United Nations High Commissioner for Refugees* 3.

therefore that specific action in favour of women and girls may be necessary to ensure they can enjoy protection and assistance on an equal basis with men and boys.¹²⁵

Refugee receiving states bear the primary responsibility to provide protection and humanitarian assistance to refugees within their territorial boundaries and in the event that the state is unwilling or incapable of performing such functions; may be supported by the international community.¹²⁶ The international community usually steps in to ensure that the fundamental rights of refugees are respected because they are no longer protected by their country of origin.¹²⁷

In this regard, different instruments have been put in place at international and regional levels to provide for the protection of refugees. Because the plight of refugees raise general human rights concerns, guarantees of protection can therefore also be invoked under human rights instruments. Thus, besides the specific refugee instruments there are a number of human rights instruments both at international and regional levels that also generally guarantee protection for the fundamental rights of every individual, including refugees. These instruments set the standards in terms of vulnerability, violation of rights or exposure to the risk of violation and therefore establish the necessary protection and assistance mechanisms,¹²⁸ which I deal with in this chapter.

The chapter thus focuses on establishing the legal framework regulating the international protection of the rights of refugees, particularly focusing on the protection of the socio-economic rights of female refugees. The purpose of the chapter is therefore to identify within the generic concept of refugees, the particular circumstances of female refugees and to determine how the instruments mentioned make provision for the socio-economic rights of this category of persons.

¹²⁵ Executive Committee Conclusion No. 105 (2006) 'Women and girls at risk' 27:4 *Refugee Survey Quarterly* 170-185.

¹²⁶ Norwegian Refugee Council (2008) *Camp Management Toolkit* The Camp Management Project 55.

¹²⁷ Jastram & Achiron (n 4 above) 8.

¹²⁸ UNHCR (2006) *Human Rights and Refugees Protection: Self-study Module 5 Vol. II* United Nations High Commissioner for Refugees.

The chapter proceeds by first looking at the definition of refugees, in which case I argue that the definition does not take into account the particular circumstances of female refugees and therefore also are not sufficiently covered under the type of protection and assistance that the instruments make provision for. It goes on to examine the international and regional refugee protection instruments. It then further looks at the international human rights instruments that also make provision for the protection of refugees in terms of universal human rights standards.

3.2 Definition of the term ‘refugee’

The term refugee is taken in its broader context to mean any person who has escaped his or her country of origin because of the conditions or personal circumstances that they found to be intolerable.¹²⁹ The Free Dictionary gives a literary definition of a refugee to mean a person who has fled his country to another country for reasons arising from political oppression, religious persecution or natural catastrophes.¹³⁰ The Oxford Dictionary also defines a refugee literally as ‘a person who has been forced to leave their home, because there is a war or for political, religious or social reasons’.¹³¹ From a human rights or humanitarian point of view, the definition of a refugee takes a more specific dimension. Human Rights Education Associates (HREA) considers the individual and collective capacity of the concept of refugees by defining it as ‘[p]eople who are forced to flee their homes due to persecution, whether on an individual basis or as part of a mass exodus due to political, religious, military or other problems’.¹³² The International Red Cross Committee (ICRC) defines refugees as people who because they are at risk or have been victims of persecution in their country of origin have crossed an international border.¹³³

¹²⁹ Goodwin-Gill GS & McAdam J (1996) *The Refugees in International Law* 3rd edition.

¹³⁰ The Free Dictionary ‘Refugee’ available at: <http://www.thefreedictionary.com/refugee> (accessed: 08 May 2013).

¹³¹ Hornby AS (2005) *Oxford Advanced Learner’s: International Students Edition* 1224.

¹³² HREA (2003) ‘Study guide: The rights of refugees’ *Human Rights Education Associates* available at: <http://www1.umn.edu/humanrts/edumat/studyguides/refugees.htm> (accessed: 08 May 2013) 1.

¹³³ ICRC ‘Refugees and displaced persons protected under the international humanitarian law’ available at: <http://www.icrc.org/eng/war-and-law/protected-persons/refugees-displaced-persons/overview-displaced-protected.htm> (accessed: 29 April 2013).

Though the concept of refugees varies considerably, the HREA has pointed out that it has indeed become an issue of increased international concern and therefore has led to general consensus as to who a refugee is.¹³⁴ In establishing the proper meaning of a refugee, the concept has been distinguished from other confusing concepts such as economic migrants, who are people that migrate for economic reasons and internally displaced persons, which refers to persons who are being persecuted or displaced by natural disasters but remain within their own country and do not cross an international border.¹³⁵

In the broadest sense, refugees are considered as people who have been forced to leave their countries of origin. Meanwhile, the legal definition of refugees is much narrower and responds to certain criteria which must be met before a person could be considered a refugee. The legal definitions of refugees are contained in international instruments such as the United Nations Refugee Convention as well as in the two regional refugee instruments, namely; the African Refugee Convention and the Cartagena Declaration.¹³⁶ According to the 1951 Convention Relating to the Status of Refugees, a refugee is defined as 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.¹³⁷

However, the difficulty is that while this definition has been used by international organisations such as the United Nations,¹³⁸ the term refugee continues to be misunderstood because of the narrow scope of the definition. The definition has been highly debated because of its failure to address and recognise present day refugee movements that may result from diverse causes

¹³⁴ HREA (n 129 above) 1.

¹³⁵ HREA (n 129 above) 2.

¹³⁶ Circle of Rights (n 8 above).

¹³⁷ Art 1(2) of the Convention Relating to the Status of Refugees 1951.

¹³⁸ UNHCR 2006 (n 125 above).

including persecution on account of gender.¹³⁹ While in their countries of origin female refugees may have been subject to harmful traditional practices, excluded from meaningful participation in community structures.¹⁴⁰

They may also have been victims of dehumanizing sexual practices and gender based violence and once displaced, they are further isolated and exposed to continuous vulnerability due to the breakdown of family and community support structures and values.¹⁴¹ For instance, a joint report published by African Rights and Redress has stated that:

Throughout the genocide, rape was used systematically and routinely against Tutsi women as a weapon to further political and military goals. The very young, including children aged five, as well as women in their seventies, were subjected to rape, often repeated assaults, sexual tortures and gang-rape. Married women, including many who were pregnant at the time, were raped in front of their husbands and father-in-laws, and mothers were raped together with their daughters, sometimes in front of very young children. Women were raped in their homes, in the fields and in places of refuge such as churches, hospitals, schools and camps for the displaced, often after they had suffered unimaginable physical torture. Many subsequently died. Others were kept as “wives” for the duration of the genocide, and some were taken forcibly across the border into the camps in Tanzania, the DRC or Burundi. They were violated by strangers, as well as neighbours, friends and people with whom they had previously interacted in an official capacity.¹⁴²

Apart from the conflict and the genocide, these above stated circumstances certainly could have constituted valid reasons for women and girls to flee the country. However, these aspects have hardly been taken into account as legal criteria for determining refugee status. As such female refugees are unfairly biased not only in the process of refugee status determination but also in the provision of protection and assistance.

The African Convention defines a refugee far more expansively and thus offers protection to a wider group of persons. According to the African Convention, a refugee is a person who:

¹³⁹ Raj (n 37 above) 3.

¹⁴⁰ Executive Committee Conclusion No.17 (XXXVIII) on Refugee Children 3.

¹⁴¹ Executive Committee Conclusion (n 137 above) 3.

¹⁴² African Rights & REDRESS (2008) ‘Survivors and post-genocide justice in Rwanda: Their experiences, perspectives and hopes’ *African Rights & REDRESS* 86.

Owing to a 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;

The term ‘refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.¹⁴³

The African Convention is thus seen as effectively complementing the 1951 Convention due to the fact that it considers a wider category of persons who may qualify to be considered as refugees because they meet the criteria.¹⁴⁴ Consequently, the expanded nature of this definition gives the possibility to states to extend protection to a broader category of persons, especially those who flee en masse from a situation of civil war or violence without requiring them to be individually scrutinised for asylum determination.¹⁴⁵ However, Sushil Raj has stated that the OAU Convention also comes short of addressing the specific rights of female refugees, particularly those fleeing persecution on account of their gender.¹⁴⁶

Furthermore, the Latin American Countries have adopted a non-binding declaration on refugee protection called the Cartagena Declaration,¹⁴⁷ which defines refugees in almost the same terms as the OAU Convention. According to the Declaration, refugees are considered to include not just those persons specified in the 1951 Convention but also, ‘those who have fled their country

¹⁴³ Art 1 of the OAU Convention Relating to the Status of Refugee Problem in Africa 1969.

¹⁴⁴ According to art 8(2) of the African Refugee Convention ‘The present convention shall be the effective regional complement in Africa of the 1951 United Nations Refugee Convention on the status of refugees’.

¹⁴⁵ Whitaker BE (2002) ‘Changing priorities in refugee protection: The Rwandan repatriation from Tanzania’ 21:1&2 *Refugee Survey Quarterly* 336.

¹⁴⁶ Raj (n 37 above) 3.

¹⁴⁷ Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama 1984.

because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order'.¹⁴⁸ As it will be noted the Cartagena Declaration also defines refugees in very general terms, meanwhile there are circumstances that particularly relate to women and girls, which may force them to leave their countries to seek refuge in another country. These particular circumstances are not captured in the qualification that the Declaration gives of who a refugee is and therefore it is unlikely that the protection and assistance that is guaranteed by the Declaration would adequately cover female refugees.

Newland has rightly stated that the ways that women experience persecution often differ from the ways men experience it.¹⁴⁹ Although female refugees do flee persecution on grounds of violation of civil and political rights, there are times when the root causes of their flight are obviously rooted in violations of their economic, social and cultural rights, most often within the vicinity of homes or closed communities.¹⁵⁰ Violence committed by spouses or close relatives is the most common form of violence against women, and usually women are unable to avail themselves of 'national protection' against such persecutions.¹⁵¹ Yet it has been difficult for women seeking asylum on these grounds to justify their claims in relation to the conventional grounds for refugee protection and assistance.¹⁵²

Women and girls may flee a country when cultures, traditions and social practices prevent them from engaging in basic life-sustaining economic activities primarily on account of their gender and not only on account of race, religion, nationality, political opinion or membership of a particular social group as defined by convention.¹⁵³ This therefore raises the question of the

¹⁴⁸ Part III art 3 of the Cartagena Declaration.

¹⁴⁹ Newland (n 22 above) 4.

¹⁵⁰ Module 7 'Refugees and ESC rights' available at: www.umn.edu/humans/edumat/IHRIP/circle/module/module7.html (accessed: 28 October 2013).

¹⁵¹ Newland (n 22 above) 4.

¹⁵² Newland (n 22 above) 4.

¹⁵³ Newland (n 22 above) 4.

protection of the socio-economic rights of female refugees, which I move on to interrogate by looking at the kind of protection and assistance guaranteed by various instruments.

3.3 International and African refugee instruments protecting Rwandan female refugees

International legal instruments protecting the rights of refugees take the form of treaties, agreements, conventions or protocols and declarations, which may become binding or not on the contracting states that have ratified them.¹⁵⁴ While the instruments may not be signed by every state, they provide a framework of international standards that provide for the protection of refugees.¹⁵⁵ This section examines the nature and scope of protection provided to female refugees in relation to their socio-economic rights.

3.3.1 Convention Relating to the Status of Refugees of 1951 and its 1967 Protocol

The Refugee Convention of 1951 has been the principal governing legal standard under which the legal status, rights and obligations of refugees have traditionally been defined and enforced.¹⁵⁶ Both the Convention and the 1967 Protocol deal with the definition and status of refugees, the obligations imposed on member states and the international community to provide protection.¹⁵⁷ States have the duty to protect every person who is covered by the Convention and the Protocol definitions. In so doing, states party to the treaty reaffirm that both treaties are important to the international refugee protection regime.

The 1951 Convention was the first international treaty dealing with the issue of refugees and therefore covers the most fundamental aspects of their life and welfare.¹⁵⁸ Lauren Gilbert has

¹⁵⁴ UNHCR 2012 (n 1 above).

¹⁵⁵ International Catholic Migration Commission 'Protecting refugee women' available at: www.icmc.net/appendices/special-protection-issues (accessed: 28 May 2013).

¹⁵⁶ Gilbert L (1995) 'Rights, refugee women and reproductive health' 44 *The American University Law Review* 1218.

¹⁵⁷ Jastram & Achiron (n 4 above) 10.

¹⁵⁸ Chapter IV, arts 20-24 of the Refugee Convention of 1951.

stated that the Refugee Convention was founded on the principles set forth in the Universal Declaration of Human Rights that ‘human beings shall enjoy fundamental rights and freedoms without discrimination.’¹⁵⁹ The Convention spells out the most basic definition of who may be considered a refugee and by implication, who may not be considered a refugee and therefore also delineates the legal status of refugees and outlines their rights and duties in the country of refuge.¹⁶⁰

The Convention specifies who a refugee is, guarantees protection and spells out a set of human rights and freedoms ascribed to refugees, which should at least be equivalent to those enjoyed by foreign nationals living legally in a given country and in many cases those of citizens of that state.¹⁶¹ As mentioned earlier, the Convention guarantees to those who fall within the refugee definition a broad range of civil and political as well as economic, social and cultural rights, thus in principle creating in those refugees lawfully in the country of asylum a privileged class of non-nationals.¹⁶² It also recognises the international scope of refugee crises and the necessity of international cooperation including the sharing of responsibilities among states in undertaking the duty to resolve problems created by the movement of refugees.¹⁶³ As amended by the 1967 Protocol, the 1951 Convention is the most comprehensive international instrument that provides protection to refugees.¹⁶⁴

However, neither the Convention nor the Protocol takes the plight of female refugees specifically into consideration. Female refugees are particularly more vulnerable than their male counterparts and therefore, by their nature deserve particular protection, which neither the Convention nor the Protocol pays attention to. The recognition of a refugee implies that the person has been granted a status according to the national law of the host country. Although, the definition contained in

¹⁵⁹ Gilbert (n 153 above) 1219.

¹⁶⁰ Gilbert (n 153 above) 1219.

¹⁶¹ Arts 7 of the Refugee Convention of 1951.

¹⁶² Gilbert (n 153 above) 1220; see Refugee Convention 1951 art 3, 4, 8, 15, 16, chap iii and chap iv.

¹⁶³ Arts 35 of the Refugee Convention of 1951.

¹⁶⁴ Icelandic Human Rights Centre ‘Refugees’ available at: <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/humanrightsconceptsideasandfora/Undirflokkur/refugees/> (accessed: 27 May 2013).

the Convention is applied broadly, it is limited by the fact that the well founded persecution must be based on the grounds mentioned in article 1(a).¹⁶⁵ However, personal circumstances for instance, especially relating to women who face gender issues such as marital rape or the risk of torture or cruelty, inhuman or degrading treatment may force them to leave their country of origin. Unfortunately, this does not constitute one of the grounds on which asylum may be sought.

Particularly relevant to this study are the welfare provisions granted to refugees by the Convention, similar to the socio-economic rights provisions in human rights treaties. The Convention makes provision for such rights as the right to fair rationing,¹⁶⁶ housing,¹⁶⁷ education,¹⁶⁸ public relief and assistance,¹⁶⁹ gainful employment,¹⁷⁰ labour relations and social security,¹⁷¹ among other fundamental rights, freedoms and privileges similarly enshrined in international and regional human rights treaties.¹⁷² Female refugees are therefore, granted these rights for the simple reason that they are human beings and generally on the basis of the equality and non-discrimination provisions in the treaties.¹⁷³ Meanwhile the language of the texts of the treaty is fundamentally gender biased.¹⁷⁴

3.3.2 Convention Governing the Specific Aspects of Refugee Problem in Africa (1969)

The 1969 Convention otherwise currently known as the African Union (AU) Convention is a regional legal instrument governing refugee protection in Africa.¹⁷⁵ The Convention

¹⁶⁵ Art 1(a) of the Refugee Convention of 1951.

¹⁶⁶ Art 20 of the Refugee Convention of 1951.

¹⁶⁷ Art 21 of the Refugee Convention of 1951.

¹⁶⁸ Art 22 of the Refugee Convention of 1951

¹⁶⁹ Art 23 of the Refugee Convention of 1951

¹⁷⁰ Arts 17 & 18 of the Refugee Convention of 1951.

¹⁷¹ Art 24 of the Refugee Convention of 1951.

¹⁷² IJRC 'Refugee law' *International Justice Resource Center* available at: <http://www.ijrcenter.org/refugee-law/> (accessed: 27 May 2013).

¹⁷³ See art 4 & 5 of the 1951 Refugee Convention, art 4 of the OAU (AU) Refugee Convention of 1967.

¹⁷⁴ Johnsson (n 7 above) 221.

¹⁷⁵ Sharpe M 'African Union refugee definition' *FAHAMU Refugee Programme* available at: <http://www.refugeelegalaidinformation.org/african-union-refugee-definition> (accessed: 28 May 2013).

acknowledges the refugee definition of the 1951 Convention but expanded it to include people who are compelled to leave their country not only as a result of persecution but also owing to external aggression, occupation or foreign domination.¹⁷⁶ The AU Convention definition is therefore broader than the one contained in the 1951 Convention because it looks beyond the geographic and temporal limits of the 1951 Convention¹⁷⁷ and consequently more appropriate to the reality of the developing world. It also recognises non state groups as perpetrators of persecution and does not require a refugee to show the link between him or her and the future danger. It simply acknowledges that it is adequate for the refugee to consider the harm sufficient to force him or her to abandon his country of origin. This clause provides that the Convention shall cease to apply to any refugee who has committed a non-political crime outside his country of refuge after the admission to that country as a refugee.¹⁷⁸

Consequently, refugees should be afforded a special place with regard to international and regional human rights instruments. More specifically they should not face certain restrictions which are imposed to aliens in relation to certain provisions in human rights instruments and particularly those relating to socio economic rights.¹⁷⁹ In addition to international and regional refugee Convention, international human rights law and international humanitarian law play a significant role in guaranteeing international protection of refugees.

3.3.3 The Cartagena Declaration on Refugees 1984

The Cartagena Declaration is a non-binding multilateral regional instrument that is applicable to refugees as opposed to other regular and irregular migrants.¹⁸⁰ Reed-Hurtado has described the

¹⁷⁶ OAU (AU) Convention Governing the Specific Aspects on Refugee Problems in Africa 1969.

¹⁷⁷ The Convention enable states to make a declaration when becoming party, according to which the words events occurring before the 1 January 1951 are understood to mean event only occurring in Europe. This geographical limitation has been removed with the adoption of the 1969 Convention governing the Specific Aspects of Refugee Problems in Africa available at: www.unhcr.org/refworld/docid/3b00flcc50.html (accessed: 17 July 2013).

¹⁷⁸ Art 1(4)(f) of the 1969 Convention.

¹⁷⁹ Rosa da Costa (2006) *Legal and Protection Policy Research Series, Rights of Refugees in the Context of Integration: Legal Standard and Recommendations* United Nations High Commissioner for Refugees 10.

¹⁸⁰ The Cartagena Declaration on Refugees (1984) Colloquium on the International Protection of Refugees in Central America, Mexico and Panama.

Declaration as one of the greatest accomplishments in the development of refugee protection in Latin America.¹⁸¹ This Declaration is the most frequently invoked source that considers the definition of refugee in its broadest sense. The Declaration extends the definition of refugees to include persons who have fled their country of origin because their life has been threatened by generalised violence.¹⁸² In the early 1980s, the refugee crisis in Central America led to the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama.

The Declaration was a result of a protection-motivated process to respond to the failure of the Organization of American States (OAS) to that crisis.¹⁸³ The objectives were focused on creating and maintaining humanitarian space based on solidarity and respect for basic human rights.¹⁸⁴ The expanded conception and the definition of a refugee was only one element of this initiative which originated from the Tlatelolco Colloquium of 1981.¹⁸⁵ After this process, the Cartagena Declaration definition became commonly used on issues of refugee protection and quickly gained legal force through widespread incorporation into national legal frameworks. Although a non-binding instrument, the Declaration reaffirms the 1951 Convention on the status of refugees and encourages states to incorporate it into their national laws to provide protection and assistance to refugees.¹⁸⁶ The Cartagena Declaration, though not specifically gender sensitive can be said to be a bit more accommodative of the plight of female refugees.¹⁸⁷

Gilbert has stated that while it is important to explore how the Refugee Convention can be used more effectively to address the rights and needs of refugees, other international covenants, including the Economic Covenant, the Civil and Political Covenant, and the Convention on the

¹⁸¹ Reed-Hurtado M (2013) 'The Cartagena Declaration on Refugees and the protection of people fleeing armed conflict and other situations of violence in Latin America' *United Nations High Commissioner for Refugees* 3.

¹⁸² Cartagena Declaration, Conclusion No.3.

¹⁸³ Reed-Hurtado (n 178 above) 4.

¹⁸⁴ Reed-Hurtado (n 178 above) 4.

¹⁸⁵ Colloquium on Asylum and the International Protection of Refugees in Latin America Tlatelolco Mexico 11-15, May 1981.

¹⁸⁶ Part III art 1 of the Cartagena Declaration.

¹⁸⁷ See part III art 3 of the Cartagena Declaration.

Elimination of all Forms of Discrimination Against Women may provide valuable mechanisms for addressing the rights and needs of refugee women.¹⁸⁸ These conventions are examined in the sections below.

3.4 International human rights instruments

Refugees are first and foremost human beings and therefore should not be denied the basic human rights to every single person in various human rights instruments. Particularly important to refugees are the rights to non-discrimination, equality and survival and fortunately, the problems that they encounter generally reflect human rights concerns. A UNHCR document on human rights and refugee protection has established that:

International human rights law helps to protect refugees by setting standards that establish what might be considered persecution and by providing mechanisms to protect refugees and asylum-seekers against *refoulement* and expulsion, arbitrary detention, threats to life and physical security, lack of shelter, food, education, or medical care, sexual abuse, or separation from family members.¹⁸⁹

Thus, refugee protection and assistance is not only guaranteed by those specific instruments discussed above but also by human rights instruments. Since the focus of this study is on the protection of the socio-economic rights of Rwandan female refugees, the proceeding sections focus on the scope of protection and assistance guaranteed by various human rights instruments from which female refugees in general may benefit.

3.4.1 Universal Declaration of Human Rights (UDHR) 1948

The UDHR is the first international instrument that recognises the equal enjoyment of human rights for everyone. It is of great juridical value because it forms the basis for an authoritative interpretation of human rights and the international freedoms that UN member States commit to uphold.¹⁹⁰ Thus, article 2 of the UDHR recognises the rights of every individual to be entitled to

¹⁸⁸ Gilbert (n 153 above) 1223.

¹⁸⁹ UNHCR 2006 (n 125 above) 4.

¹⁹⁰ Laulerpacht H (1948) 'The Universal Declaration of Human Rights' 25 *British Yearbook of International Law* 365.

certain in alienable rights and freedoms without discrimination of any kind such as race, color, religion, sex, nationality, language or other opinion, national or social origin, property, birth or other status.¹⁹¹ According to this provision female refugees on the basis of the fact that they are human beings are entitled to the enjoyment of the same human rights as everyone else. The UDHR in fact recognises the right of everyone without any form of discrimination, to seek asylum and to enjoy protection from persecution.

At the center of the international refugee regime is the fundamental right of any individual to seek and enjoy asylum from persecution in other countries.¹⁹² Accordingly, article 14 stipulates that ‘everyone has the right to seek and enjoy in other countries asylum from persecution’. According to this provision, any person that qualifies to be considered a refugee in another country has the right to seek asylum in order to be lawfully established in that country.¹⁹³ Thus, the declaration does not only recognise the rights of male but also female refugees on the basis of equality to seek asylum in order that they may lawfully be established in the country of refuge and also obtain the enjoyment of basic rights equally with the citizens of the country.

It accords the right to refugees that have legally been recognised the possibility to access or to claim certain basic rights that are indispensable to personal dignity and the development of personality.¹⁹⁴ In fact, according to the provisions of the UDHR the country of refuge is responsible to protect the refugees that are found within its territory and consequently must ensure that they enjoy the same human rights with nationals as long as they are law abiding. Thus, according to article 14(2) the rights may be limited in the case where a political offence that is subjected to prosecution has been committed, in which case asylum may not be granted. The UDHR provision that deals with the question of refugees could therefore be considered as the point of departure for refugee policy in the second half of the twentieth century.¹⁹⁵

¹⁹¹ Art 2 of the UDHR.

¹⁹² ‘UNHCR at 50: What future for refugee protection’ available at: http://www.essex.ac.uk/armedcon/story_id/000603.pdf (accessed: 22 August 2013) 2.

¹⁹³ UN General Assembly, Draft Convention relating to the Status of Refugees, 14 December 1950, A/RES/429 available at: <http://www.refworld.org/docid/3b00f08a27.html> (accessed: 16 July 2013).

¹⁹⁴ Art 22 & 25(1) of the UDHR.

¹⁹⁵ Lauerpacht (n 187 above) 365.

3.4.2 International Covenant on Civil and Political Rights 1966

The main international treaty on civil and political rights (ICCPR) stipulates that states have the responsibility to protect the civil and political rights of all individuals within its territory regardless of nationality.¹⁹⁶ The ICCPR also guarantees freedom of movement and prohibits forced expulsion. States have the duty to ensure freedom of movement to any person within its territory; this freedom must be equal to the one offered to the nationals of the country.¹⁹⁷

As argued earlier, the ICCPR also does not make any specific provision pertaining particularly to women but only guarantees accessibility to the rights on the basis of equality and non-discrimination. It stipulates that states party to the Covenant must ensure that the rights enshrined in the ICCPR are applied 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’.¹⁹⁸ This implies that the rights contained in the Covenant must be applied equally to females in all circumstances including when they are refugees. Article 7 of the ICCPR has been interpreted to prohibit the return of refugees to situations where they might suffer from torture or other cruel inhuman and degrading treatment.¹⁹⁹ Moreover, almost all of the Covenant’s provisions are equally applicable to both citizens and non-citizens,²⁰⁰ which mean that refugees are also covered by the guarantees of protection provided by the Covenant.

3.4.3 International Covenant on Economic, Social and Cultural Rights 1966

The ICESCR²⁰¹ is the most comprehensive treaty that guarantees protection of the socio-economic rights of every individual. This means that concerns relating to the basic socio-

¹⁹⁶ HREA (n 129 above) 1-3.

¹⁹⁷ International Covenant on Civil and Political Rights (ICCPR) 1966 art 2.

¹⁹⁸ ICCPR (n 194 above) art 2.

¹⁹⁹ ‘Interpretation of torture in the light of the practice and jurisprudence of international bodies’ available at: http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf (accessed: 12 September 2013) 6.

²⁰⁰ ICCPR (n 194 above) art 7.

²⁰¹ International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.

economic rights of refugees are also covered by the ICESCR.²⁰² Female refugees are in greater need of protection and assistance in terms of the socio-economic rights guaranteed by the ICESCR. However, the covenant does not make provision for any special consideration for women. Female refugees are thus only covered under the equality clause, which ensures that the protection provided by the treaty covers every individual without discrimination of any kind.²⁰³

The Covenant provides that states have the obligation to provide to everyone an adequate standard of living for himself and his family including food, clothing and housing and the continuous improvement of living conditions.²⁰⁴ In the case where the person is a refugee, he or she equally has the right to enjoy the right to adequate standard of living in accordance with the provisions of this article. In essence, the state where the refugee is found has the obligation to ensure that they enjoy these basic rights. It is especially so for female refugees who are more vulnerable than their male counterparts. In this regard, the Covenant stipulates that:

[E]ach state party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the Covenant by all appropriate means, including particularly adoption of legislature measures.²⁰⁵

Article 12 also provides that states must ensure that every person within its territory enjoys the right of access to the highest attainable standards of physical and mental health. Female refugees must be provided with all the necessities in relation to their mental health such as medicine, food and water.²⁰⁶ The right to education is also recognised for everyone.²⁰⁷ Everyone includes female refugees as *de facto* beneficiaries of the right, which does not only give them the opportunity to

²⁰² The People's Movement for Human Rights Education 'Human rights and refugees: What are the human rights of refugees?' available at: <http://www.pdhre.org/rights/refugees.html> (accessed: 28 May 2013).

²⁰³ ICESCR (n 198 above) art 2(1).

²⁰⁴ ICESCR (n 198 above) art 11.

²⁰⁵ ICESCR (n 198 above) art 2(2).

²⁰⁶ ICESCR (n 198 above) art 12.

²⁰⁷ ICESCR (n 198 above) art 13.

participate in the full development of their human personality and build a sense of dignity but also to help them participate in a free society.

These rights provided for by the ICESCR are however, not always easy to achieve because they are subject to progressive realization as well as the availability of resources and therefore neither nationals nor non-nationals can necessarily expect to benefit fully from the rights.²⁰⁸ Though the ICESCR provides for at least enjoyment of the minimum core of the rights²⁰⁹ it is unlikely that refugees would enjoy the same benefits as nationals, especially in the case where the resources of the refugee host state are limited. This limitation is contained in article 2(3) which provides for the possibility of positive discrimination against non-nationals.

Like with the other international human rights instruments examined above, the lacuna with the ICESCR is that it is not gender responsive, especially to the special needs of female refugees. Sushil Raj has accurately argued that ‘the impact of refugee movements affects women fleeing persecution differently and therefore necessitates the need for a gender specific approach to emergency programming and community rehabilitation’.²¹⁰ She argues further that female refugees are particularly disadvantaged in terms of programming, where the basic insensitivity of officials during operations inhibits fair allocation of food distribution, access to healthcare, education, and employment.²¹¹

²⁰⁸ ICESCR (n 198 above) art 2(1).

²⁰⁹ See Committee on Economic, Social and Cultural Rights, general comment 3, ‘the nature of states parties, obligations’(fifth session1990) U.N.Doc E/1991/23 annex III, page 86 1991 reprinted in compilation of general comments and general recommendations by Human Rights Treaty bodies, U.N.Doc HRI/GEN/1?Rev.6p.14 (2003) in this general comment, the committee states in para 10 that “any state party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing or of the most basic form of education is, *prima facie* failing to discharge its obligation under the Covenant”.

²¹⁰ Raj (n 37 above) 2.

²¹¹ Raj (n 37 above) 2.

3.4.4 Convention on the Elimination of Discrimination Against Women 1979

Discrimination and inequality between men and women is a phenomenon that interferes with the enjoyment and advancement of women's rights.²¹² As women are generally subject to discrimination, female refugees also face discrimination of many kinds. As a vulnerable group, they are often relegated to second place especially when they face intolerable conditions such as living in refugee camps.

Like other human rights treaties, the CEDAW applies to all women regardless of their nationality, citizenship or other legal status, including immigration or marital status.²¹³ Considered as the international bill of rights for women,²¹⁴ the CEDAW sets out a range of civil and political rights as well as social, economic and cultural rights for women and deals with a variety of issues on which women face discrimination including the economy, the family, employment and health.²¹⁵

Article 9 of the Convention specifies that the state shall provide equal protection to women and men on the bases of acquiring, changing or retaining their nationality.²¹⁶ Notably, international human rights law reinforces the non-discriminatory basis of international law which impact on the protection of refugees. Although the 1951 Convention and its 1967 Protocol do not contain provisions prohibiting discrimination on the basis of sex or gender, the CEDAW has consolidated and advanced many achievements for women's rights and has also influenced other areas of international law.²¹⁷ Thus, all the rights enumerated under the Convention have been

²¹² Edward A (2009) 'Displacement, statelessness and question of gender equality and the convention on the elimination of discrimination against women' *United Nations High Commissioner for Refugees* 5.

²¹³ See UN General Assembly, Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live : resolution / adopted by the General Assembly, 13 December 1985, A/RES/40/144 available at: <http://www.refworld.org/docid/3b00f00864.html> (accessed: 18 July 2013).

²¹⁴ Byrnes A & Connor J (2010) *The International Bill of Rights for Women: The Impact of the CEDAW Convention*

²¹⁵ Edwards (n 209 above).

²¹⁶ Art 9 of the Convention on the Elimination of Discrimination Against Women 1979.

²¹⁷ UNHCR 2006 (n 125 above) 85-88. Goal 6 of the Agenda specifically calls on governments to 'consider acceding to the CEDAW as a priority objective' for protection.

applied in many settings to strengthen the international legal protection system for refugee women.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa²¹⁸ makes provision for the enjoyment of equal rights by both women and men in terms of access to refugee status determination procedures and that female refugees are accorded the full protection and benefits guaranteed under international refugee law.²¹⁹ The Protocol further advocates for increased participation of women in refugee determination, protection and management of refugee camps especially on issues relating to female refugees.²²⁰ Besides all the international and regional instruments on the protection of refugees, the UNHCR has ascertained that numerous guidelines and policies on protecting refugee women also exist but they are not adequately applied and implemented.²²¹

3.5 Conclusion

The purpose in this chapter has been to examine the legal framework on the protection of the socio-economic rights of female refugees. To be able to determine to what extent the socio-economic rights of female refugees are protected by the range of international instruments in force, I first of all tried to establish who can be considered a refugee. The different definitions provided by refugee protection instruments is fundamentally gender biased and therefore poses challenges to the effective protection of female refugees. The qualification of who refugees are is defined in very general terms without addressing the specific rights of female refugees, particularly those fleeing persecution on account of their gender.²²² There are circumstances that particularly relate to women and girls, which may force them to become refugees, which are

²¹⁸ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa adopted by the 2nd Ordinary Session of the Assembly of the African Union, Maputo 2003.

²¹⁹ ACHPR Protocol on Women's Rights (n 215 above) art 4(2)(k).

²²⁰ ACHPR Protocol on Women's Rights (n 215 above) art 10.

²²¹ UNHCR 2003 (n 7 above) 17.

²²² Raj (n 37 above) 3.

usually not considered when it comes to qualifying who a refugee is. It is unlike that the protection and assistance that is guaranteed by law adequately covers female refugees.

I therefore went on to look at the international and regional refugee protection instruments as well as the international human rights instruments that make provision for the protection of refugees in general and female refugees in particular. I established that these instruments actually do not provide any protection specific to the circumstances that particular to refugee women except on the basis of equality and non-discrimination.

Chapter Four

Challenges to the international protection of Rwandan female refugees at the regional level

4.1 Introduction

International protection entails taking all necessary measures to ensure that Rwandan female refugees are adequately protected and that they enjoy their fundamental rights in host countries.²²³ But this protection of Rwandan female refugee remains a major concern when it comes to the enjoyment of their basic rights.²²⁴ I argued that this challenge stems from the fact that the status of refugees in general has not adequately been determined by the various regional and national instruments; this includes Rwanda female refugees. Consequently, Rwandan female refugees are thus exposed to particularly difficult circumstances in the country of refuge because the country usually is unable to provide their basic needs such as clothing, sanitary material, education and adequate shelter. The UNHCR²²⁵ as the most prominent agency that ensures refugee protection is also faced with enormous challenges in its task of providing international protection and assistance to Rwandan female refugees and in helping most of the African countries to seek durable solution for their plight.²²⁶ These are the issues that render the protection of female refugees less effective.

Protection is guaranteed by a number of humanitarian and human rights instruments, which I have examined in the previous chapter. However, the United Nations Children's Fund (UNICEF) has established that the reality on the ground is a blatant disregard for humanitarian and human rights laws by parties to conflicts and therefore, women and girls continue to be subject to sexual

²²³ UNHCR 1991 (n 6 above) 1.

²²⁴ UNHCR 'Note on Refugee women and international protection' available at: www.unhcr.org/3ae68ccd0.html#_ftn1 (accessed: 12 July 2013)

²²⁵ UNHCR at 50 (n 189 above) 2.

²²⁶ UNHCR at 50 (n 189 above) 2.

and gender-based violence and other human rights violations during their stay in the host country.²²⁷ As the principal UN agency mandated to protect and assist refugees, the UNHCR has accomplished much in coordination with the actions of other actors, to determine where things have gone wrong regarding the protection of Rwandan female refugees in the DRC.²²⁸ Following is an analysis of UNHCR's mandated responsibilities with regard to the protection of socio economic rights of Rwandan female refugees.

4.1.1 Mandate of the UNHCR

The UNHCR is a humanitarian non-political organisation mandated by the international community to help governments in providing protection and assistance to refugees.²²⁹ The statute of the office of the UNHCR mandates the High Commissioner to provide international protection to refugees and to seek long-lasting solutions to their problems.²³⁰ The General Assembly identified a protection role for the UNHCR in relation to international agreements on refugees according to which states party to the 1951 Convention as well as the 1967 Protocol agree to cooperate with the UNHCR and in particular to 'facilitate its duty of supervising the application of the provisions' of the Convention and Protocol.²³¹

However, as the problem of refugees has grown in complexity, especially with regard to the plight of Rwandan female refugees living in the eastern DRC, the mandate of the UNHCR has also grown in its capacity to meet the challenge in protecting this group of refugees. Founded in

²²⁷ UNICEF (2005) 'The impact of conflict on women and girls in west and central Africa and the UNICEF response' New York: UNICEF 1.

²²⁸ UNHCR 'Statement by Dennis McNamara, Director, Division of International Protection, UNHCR, to the House Committee of International Relations, Sub-Committee on International Operations and Human Rights – hearing on "Rwanda: Genocide and the continuing cycle of violence"' available at: <http://www.unhcr.org/42b81cd22.html> (accessed: 28 Mars 2014).

²²⁹ UNHCR 'History of UNHCR: A global humanitarian organisation of humble origins' available at: <http://www.unhcr.org/pages/49c3646cbc.html> (accessed: 14 August 2013).

²³⁰ UNHCR 1991 (n 6 above) 2; Statute of the Office of the United Nations High Commissioner for Refugees (General Assembly Resolution 428 (V) of 14 December 1950) para 1.

²³¹ Goodwin-Gill GS (2008) 'Convention relating to the status of refugees protocol relating to the status of refugees' *United Nations Audiovisual Library of International Law* 6. See art 35 of the 1951 Convention; article II of the 1969 Protocol.

1950, the UNHCR has expanded from a relatively small agency to a big organisation, which currently offers legal protection and assistance to refugees across the world. The UNHCR's main activities are to lead and coordinate international action for the worldwide protection of refugees and to seek solutions to refugee problems.²³² Perhaps more than any other U.N. agency, the UNHCR is in the business of saving lives and in coordination with non-governmental partners in effectively mobilising its own staff and relief agencies to meet the needs of refugees fleeing violence, conflict and disaster in their own countries.²³³ In accordance, Lauren Gilbert has stated that the UNHCR has been more responsive than most other international agencies to the special protection and assistance needs of women.²³⁴

The UNHCR's international mandate therefore involves taking all necessary measures to ensure that Rwandan female refugees are adequately protected and most especially that their socio-economic rights are well catered for.²³⁵ It also ensures legal and practical protection to this category of refugees through government measures and steps to ensure the mobilisation and co-ordination of resources for their survival and well-being. At the international level, the UNHCR promotes accession by states to international agreements related to refugees in general and monitors government compliance with international refugee law.²³⁶ It is also concerned with engaging in a constant effort with states to explain, clarify and build upon the existing body of international law relating to the Refugee Convention.²³⁷

In 2001, the UNHCR drew up a set of objectives called Agenda for Protection which continues to serve as a guide to government and humanitarian organisations in their role to strengthen worldwide refugee protection.²³⁸ The UNHCR's protection and assistance mandate entails

²³² UNHCR 'UNHCR - Our Core Values and Goals' *UNHCR Mission Statement* available at: <http://www.unhcr.org/pages/49ed83046.html> (accessed: 19 July 2013).

²³³ Gilbert (n 153 above) 1214.

²³⁴ Gilbert (n 153 above) 1214.

²³⁵ UNHCR 2003 (n 7 above) 85.

²³⁶ Art 33 of the Refugee Convention of 1951.

²³⁷ UNHCR (2009) 'Protecting refugees and the role of the UNHCR' *United Nations High Commissioner for Refugees* 19.

²³⁸ UNHCR 2009 (n 234 above) 19.

ensuring that the rights of Rwandan female refugees living in the African continent are protected and that basic needs such as food, shelter, water, sanitation, medical care and education are provided.²³⁹ In this regard, the UNHCR ensures and coordinates the proper management of refugee camps and in doing so it also ensures that gender is appropriately mainstreamed in its programming in order that the rights of Rwandan female refugees are adequately protected.²⁴⁰ The UNHCR also works to seek durable solutions to Rwandan refugees' plights by facilitating their return to the country of origin when conditions so warrant, by helping them to integrate in the country of refuge or to enable them to relocate to a third country.²⁴¹ UNHCR staff work at field level to protect Rwandan refugees through a wide range of activities including responding to emergencies, relocating refugee camps away from border areas as it has been the case for Rwandan refugees living in the Eastern part of DRC to improve their safety.²⁴² In order to be effective in accomplishing the goal of protecting refugees in general and Rwandan female refugees in particular, the UNHCR works in collaboration with governments and in partnership with other international agencies and non-governmental organisations (NGOs) as partners.

4.1.2. UNHCR's role in protecting the rights of Rwandan female refugees

The difficulties faced by the UNHCR in performing its function to protect female refugees in general have often resulted in irreparable human rights suffering and loss of life. In the Central Africa sub-region for instance, where murderous ethnic and political conflicts are endemic the international community has been unable to respond effectively and on time to protect refugees.²⁴³ In the case of Rwanda refugees, the group eligibility process masked the fact that among those granted protection were persons involved in the massacre and killings of others, as well as the planning to commit the genocide.²⁴⁴ As such, the plight of Rwandan female refugees

²³⁹ UNHCR 2009 (n 234 above) 21.

²⁴⁰ UNHCR 2009 (n 234 above) 21.

²⁴¹ UNHCR 2009 (n 234 above) 19.

²⁴² UNHCR 'Protection: A net safety' available at: <http://www.unhcr.org/pages/49c3646cc8.html> (accessed: 23 July 2013).

²⁴³ Fontaine P-M (2006) 'The governance of refugees problem in Africa: A research agenda' 25:4 *Refugee Survey Quarterly* 67-84.

²⁴⁴ Lawyers Committee for Human Rights (1995) *African Exodus: Refugee crisis, Humans Rights and the 1969 OAU Convention*

has been exacerbated by harsh and intolerable camp conditions, which could be attributed to the fact the host governments were unable to provide adequate protection, ensure proper food distribution as well as guarantee appropriate conditions for voluntary repatriation.²⁴⁵ The fact that the host governments are unable to ensure the enforcement of the relevant international and regional standards of protection for such individuals has created enormous problems for Rwandan female refugees in terms of physical security. As interventions are usually planned not taking into consideration the particular circumstances and needs of Rwandan refugee women, the failure on the part of the government of DRC and the UNHCR to keep members of the ousted Rwandese government and the army away from the refugees has allowed the militia to continue to exert violence and control over Rwandan refugee camps.²⁴⁶ The UNHCR has made progress in creating policies, guidelines and other tools to protect refugee women but has had difficulty translating these into practical measures in the field.²⁴⁷

Thus, in 1991 the UNHCR adopted Guidelines on the Protection of Refugee Women, which recognise the particular problems faced by women in the refugee context and developed recommendations for addressing their situation.²⁴⁸ The Guidelines call for ‘integrating the resources and needs of refugee women include Rwandan female refugees into all aspects of programming so as to assure equitable protection and assistance activities’.²⁴⁹ They seek to respond to the particular needs and risks faced by Rwandan women and girls and the effectiveness of UNHCR protection activities in relation to these needs and risks for the purpose of establishing gender equality.²⁵⁰ In assessing effectiveness of implementation of the guidelines it was established that there has been enhanced protection activities for female refugees in accordance with the guidelines in the areas of:

- improving capacity for gender-sensitive status determination;

²⁴⁵ Lawyers Committee for Human Rights (n 241 above)

²⁴⁶ Lawyers Committee for Human Rights (n 241 above)

²⁴⁷ WCRWC (2002) *UNHCR Policy on Refugee Women and Guidelines on Their Protection: An Assessment of Ten Years of Implementation* Women’s Commission for Refugee Women and Children 2.

²⁴⁸ Gilbert (n 153 above) 1214.

²⁴⁹ WCRWC (n 244 above) 1.

²⁵⁰ WCRWC (n 244 above) 1.

- use of national laws for enforcing protection and human rights;
- increasing enrolment of girls in schools;
- increase measures in organising and including refugee women in camp management;
- direct involvement of women in food distribution;
- increase involvement of more female staff in health and education programs
- wider availability of reproductive health services
- provision of safe housing and counseling for victims of trauma or violence²⁵¹

It is noted however, that the guidelines have not absolutely been effective in ensuring protection to refugee women in general. Implementation of the guidelines is said to be uneven and incomplete, mostly occurring on an *ad hoc* basis rather than in a globally consistent and systematic manner.²⁵² The assessment report also reveals that positive actions tend to be sporadic, and are often insufficient to provide refugee women with equitable protection.²⁵³ The assessment report further notes that significant progress has been made but much more needs to be done to implement the Guidelines so as to improve protection for female refugees. It also highlights the fact that preventable abuses, which range from sexual and gender-based violence to deprivation of basic services such as food, shelter and health care continue to be perpetrated against female refugees because of inconsistency in implementation of the Guidelines.²⁵⁴

4.2 Protecting the socio economic rights of Rwandan female refugees

The adversity that women and girls face in refugee situations is often closely related to their socio-economic well-being. Thus, it is often difficult for refugee women to fully enjoy the rights to a minimum level of subsistence. Even though the socio-economic rights of Rwandan female refugees are protected under general human rights standards, the full enjoyment of the rights poses problems because of the progressive nature of their realisation and the resource availability constraint, which sometimes constitutes a major hindrance for the host state to make them

²⁵¹ WCRWC (n 244 above) 2.

²⁵² WCRWC (n 244 above) 2.

²⁵³ WCRWC (n 244 above) 2.

²⁵⁴ WCRWC (n 244 above) 5.

effective. On the other hand, the 1951 Refugee Convention does not have provisions relating to the socio-economic rights of female refugees that are found in other refugee or human rights instruments.²⁵⁵

4.2.1 Specific needs and guaranteed rights of Rwandan female refugee

The reality of becoming a refugee affects women and men in different ways.²⁵⁶ Refugee women have many of the same needs as refugee men, but since refugee situations may expose women and girls to a wider range of risks of human rights violations, they also have some specific additional needs.²⁵⁷ Female refugees are generally more vulnerable than men in terms of violation of their basic rights as well as in terms of exposure and subjection to persistent violence and discrimination, especially on the basis of gender.²⁵⁸ As it might be the case, female refugees frequently face violent situations which, more often than not force them to leave their country of origin.²⁵⁹ Besides that they are also subject to physical and sexual attacks in the course of their flight, especially when crossing borders.²⁶⁰ They are exposed to the dangers of being tortured, raped or kidnapped by pirates, border guards, army and resistance units or even male refugees who may also take advantage over them.²⁶¹

This deplorable situation does not only reside in the fact that they are subject to such violations but also in the fact that they are especially vulnerable because of the disrupted social protection mechanisms and also because as foreigners in a foreign country they are exposed to many

²⁵⁵ The Cartagena Declaration does, however, include the following conclusion in part III, paragraph 11 ‘to make a study, in a country in the area which have a large number of refugees, of the possibilities of integrating them into the productive life of the country by allocating to the creation or generation of employment the resources made available by the international community through UNHCR, thus making it possible for refugees to enjoy their ECS’ in Refugees and ESC Rights module 7.

²⁵⁶ Johnsson (n 7 above) 221.

²⁵⁷ UNHCR 2006 (n 125 above) 11.

²⁵⁸ UNHCR 2006 (n 125 above) 11-21; UNHCR 2011 (n 121 above) 3.

²⁵⁹ Nicolson F ‘Refugee women ‘survivors, protectors and providers’ *United Nations High Commissioner for Refugees* available at: <http://www.unhcr.org.uk/resources/monthly-updates/november-2011-update/refugee-women-survivors-protectors-providers.html> (accessed: 12 August 2013).

²⁶⁰ UNHCR 1991 (n 6 above) 6.

²⁶¹ UNHCR 1991 (n 6 above) 6.

difficult circumstances.²⁶² This gives rise to certain specific needs for Rwandan refugee women, which include the basic physical requirements of food, shelter and primary health care.²⁶³ In terms of human rights requirements, these are not just ordinary needs that may or may not be realised but rather are legal entitlements, guaranteed by international law, which must be respected, promoted and fulfilled.

The needs of Rwandan refugee women are multiple in the sense that they first of all have to be lawfully established in the country of refuge before they can be able to enjoy their basic rights. Enjoying the basic rights in the country of refuge is however, not always possible because of discriminatory practices in the process of acquiring refugee status and also continuous violation or threats of violation of their rights.²⁶⁴ In fact, problems usually arise in establishing the facts sufficient to lead to the granting of refugee status.²⁶⁵ Few countries actually have female staff involved in the refugee status determination process.²⁶⁶ The lack of female staff has often been cited as a major barrier to the protection of refugee women and girls in general.²⁶⁷ The relative absence of female staff poses a serious obstacle both to obtaining information from refugee women and girls and in addressing the protection issues they face.²⁶⁸ This is usually the case for instance, when a female refugees are required to narrate their ordeal, few of them are able to talk especially when they are in the presence of often only male interviewers.²⁶⁹ It is established that some refugee women avoid seeking medical help unless a female medical staff is available.²⁷⁰

Though Rwandan women and girls suffer sexual and gender based violence throughout their refugee experience, including during flight, in refugee settings and upon return many cases

²⁶² UNHCR 1991 (n 6 above) 1.

²⁶³ UN High Commissioner for Refugees (UNHCR) Progress Report on Refugee Women, 25 May 1998, SC/1998/INF 1, available at: <http://www.refworld.org/docid/49997afa0.html> (accessed: 12 August 2013).

²⁶⁴ UNHCR 1991 (n 6 above) 2-3.

²⁶⁵ Johnsson (n 7 above) 223.

²⁶⁶ Johnsson (n 7 above) 223.

²⁶⁷ WCRWC (n 244 above) 3.

²⁶⁸ WCRWC (n 244 above) 3.

²⁶⁹ Johnsson (n 7 above) 223.

²⁷⁰ WCRWC (n 244 above) 3.

however, go unreported. This often happens because of lack of awareness about the problem and little coordinated efforts to prevent abuses or to respond when abuses occur.²⁷¹ This situation remains difficult for Rwandan female refugees along escape routes, in border areas as well as in camp and urban settlements.²⁷² Therefore, they remain exposed to rape, abduction or prostitution in return for relief goods.²⁷³

Coupled with physical violence which renders refugee women particularly vulnerable is the fact that many of them are deprived of proper documentation which makes them unable to prove that they are legally established in the country of refuge.²⁷⁴ Refugee women are also in need of basic necessities such as food, water and relief supplies because the lack of these necessities could be the principal cause of mortality as a result of malnutrition, which makes them more susceptible to diseases that may become difficult to cure.²⁷⁵ Lack of food and health care constitutes a major contributor to death among refugee women.²⁷⁶ When refugee women have limited access to basic necessities their survival may be compromised and this may affect pregnant and disabled women adversely.²⁷⁷ The UNHCR has in recent years recognised the gravity of the problem of sexual violence against refugee women and has taken measures to address the situation.²⁷⁸

The area where the link between protection and assistance for Rwandan female refugees is critically important is in reproductive health care.²⁷⁹ Lauren Gilbert has argued that even though violence against women often has far-reaching implications for women's reproductive health,

²⁷¹ WCRWC (n 244 above) 4.

²⁷² UNHCR 1991 (n 6 above) 2.

²⁷³ Johnsson (n 7 above) 223.

²⁷⁴ Jastram & Achiron (n 4 above) 41.

²⁷⁵ John Hopkins & IFRCRCS 'Water, sanitation and hygiene in emergencies' *The Johns Hopkins and the International Federation of Red Cross and Red Crescent Societies* available at: [http://www.jhsph.edu/sebin/u/j/Chapter 8 Water Sanitation and Hygiene in Emergencies.pdf](http://www.jhsph.edu/sebin/u/j/Chapter_8_Water_Sanitation_and_Hygiene_in_Emergencies.pdf) (accessed: 12 August 2013) 374.

²⁷⁶ UNHCR 1991 (n 6 above) 3.

²⁷⁷ UNHCR 1991 (n 6 above) 3.

²⁷⁸ Gilbert (n 153 above) 1215.

²⁷⁹ Gilbert (n 153 above) 1214.

such as unwanted pregnancies, HIV/AIDS and other sexually transmitted diseases, human rights standards are scarcely invoked in the refugee context to further women's access to essential social services such as reproductive health care.²⁸⁰ In spite of the huge health challenges face by female refugees, existing health services are often inadequate to deal with those needs that are particularly relevant to women.²⁸¹ Health care services in refugee settings generally focus mainly on maternal and child health rather than on other health problems faced by women and girls, such as infections and cervical cancer, female genital mutilation, sexually transmitted diseases, and sex education for adolescent girls.²⁸² Gynecological and family planning services are generally lacking and in most cases virtually nonexistent.²⁸³

Generally, inaccessible health services can be a great obstacle to good health among refugee women. The need for female health practitioners in refugee health facilities is also necessary in order to address some of the barriers that prevent women from accessing health services. Education is also a big necessity for refugee women since this right is universal and has been reconfirmed both by a large variety of international instruments and by the Executive Committee in its conclusion on refugee children.²⁸⁴ The importance of education may not only be considered on the basis of a fundamental human right but also as an essential tool in helping refugees reach self-reliance.²⁸⁵

Bart de Bruijn has stated that both formal and non-formal education contribute to the attainment of self-reliance.²⁸⁶ Education in refugee settings is important as an effective channel to spread lifesaving messages on issues such as nutrition, reproductive health and HIV/AIDS, landmine security, water and sanitation and the environment.²⁸⁷ Providing education to female refugees has

²⁸⁰ Gilbert (n 153 above) 1215.

²⁸¹ Gilbert (n 153 above) 1215.

²⁸² Gilbert (n 153 above) 1215.

²⁸³ Gilbert (n 153 above) 1215.

²⁸⁴ Executive Committee Conclusion (n 137 above).

²⁸⁵ Bart de Bruijn (2009) 'The living conditions and well-being of refugees' *United Nations Development Programme Human Development Reports Research Paper* 37.

²⁸⁶ Bart de Bruijn (n 282 above) 37.

²⁸⁷ Bart de Bruijn (n 282 above) 37.

a positive long-term impact in the sense that it empowers them and helps in creating the human and social capital needed for individual development and future reconstruction and economic development.²⁸⁸

4.2.2 Multidisciplinary approach to the protection of Rwandan female refugees

International protection goes beyond adherence to legal principles.²⁸⁹ The UNHCR guidelines on the protection of refugee women has pointed out that the protection of refugee women ‘requires planning and a great deal of common sense in establishing programmes and enforcing priorities that support their safety and well-being.’

Despite the fact that law has organised mechanisms to protect the human rights of female refugees and to punish their violation, the human rights of female refugees, especially their socio-economic rights, which are also considered as survival rights continue to be violated. Furthermore, human rights law is just a facilitating factor which helps refugee women to enjoy their rights. However, the full realisation of the socio-economic rights of female refugees cannot depend solely on rights and the law because by its very nature law is limited and therefore inadequate in guaranteeing the full enjoyment of rights. Thus, realisation of the socio-economic rights of female refugees can only be effective through the application of a multidisciplinary approach. This implies that in order to better understand and to be able to address the plight of Rwandan female refugees, there is need to approach the problem from different perspectives. In this regard, it would be necessary to look at the protection of female refugees from a psychological, sociological, economic and environmental point of view.

Looking at the difficulties faced by Rwandan female refugees from a psychological perspective highlights the fact that many of them undergo traumatic experiences, ranging from the circumstances that cause them to flee, the experiences through the plight process and in the actual situation of being refugees.²⁹⁰ Persons fleeing persecution are exposed to all sorts of risks and uncertainty and usually when they arrive in the country of refuge; it is often in an irregular

²⁸⁸ Bart de Bruijn (n 282 above) 37-38.

²⁸⁹ UNHCR 1991 (n 6 above) 2.

²⁹⁰ UNHCR 2011 (n 121 above) 3-4.

manner, which makes the determination of their status problematic.²⁹¹ These circumstances affect Rwandan refugee women adversely and usually have a tremendous psychological effect on their wellbeing, which causes trauma and in some instances mental disorder. Situations like this cannot be addressed only from a human rights point of view but most effectively through a psychological approach.

Rwandan female refugees also face sociological problems when they arrive in a foreign environment because they are constrained by the situation to start a new lifestyle different from what they have lived previously. In some instances, the refugee context is socially unstable and poses challenges of acceptability in the host country or community due to the xenophobic attitude of the citizens who may see refugees as benefiting from privileges and resources that are normally not available to the citizens.²⁹² The refugee context may also provoke or increase other social problems such as gender-based dominance and/or violence.²⁹³ Sociological problems of this nature are difficult to be redressed through a human rights approach but can only effectively be addressed through a sociological approach.

The influx of refugees into a country may also have huge economic consequences to the extent that nationals who lack access to resources and opportunities may be further marginalised.²⁹⁴ This phenomenon may also trigger increases in the demand for food and other commodities and therefore cause increase in prices, which may adversely affect not only local citizens but also female refugees.²⁹⁵ The consequences of an adverse economic situation are often felt more by women because generally, they are the ones who are in charge of home management. The situation may get even worse in the refugee context where women are deprived of livelihood improvement opportunities.

²⁹¹ UNHCR 2011 (n 121 above) 3.

²⁹² Madanat H 'Impact of refugees on societies' available at: <http://blog.hopesforwomen.org/2013/01/29/impacts-of-refugees-on-societies-by-haya-madanat/> (accessed: 13 August 2013).

²⁹³ Madanat (n 289 above).

²⁹⁴ Madanat (n 289 above).

²⁹⁵ Madanat (n 289 above).

Besides the pressures that the influx of refugees may exert on the host country there are also environmental concerns that need to be taken into consideration.²⁹⁶ Where land, water and other resources are not readily available or accessible female refugees whose livelihood depend more on these basic necessities may tend to suffer the effect even more.²⁹⁷ For example large numbers of Rwandan refugees may have to be squeezed together on small portions of land and as they compete for scarce resources such as water to meet their immediate needs they cause severe impact on the environment.²⁹⁸ This may in turn affect the long-term livelihood opportunities of both refugees and the host population.²⁹⁹ This may have quite negative consequences on refugee women because of the particularly needs that they have which are different from those of male refugees.

4.3 Conclusion

In this chapter, I have established that in spite of the promises of protection guaranteed to refugees in general and to Rwandan female refugees in particular, the reality on the ground is different. Rwandan female refugees continue to face challenges to the protection of their socio-economic rights. Even under the international regime, the protection of Rwandan female refugees remains a major cause for concern not only because the vulnerability of women but also because within the refugee context, they face even greater discrimination and persistent rights violation. In looking at the international protection of Rwandan refugee women, I examined the mandate of the UNHCR and its role in ensuring that the rights of female refugees are sufficiently protected under international law. I illustrated that UNHCR is also constrained by huge difficulties in providing effective protection to Rwandan female refugees.

I went on to look at how the socio-economic rights of Rwandan female refugees are protected by the international community. In this regard, I first of all identified the specific needs of Rwandan female refugees in terms of human rights requirements to have those rights respected, promoted

²⁹⁶ Madanat (n 289 above).

²⁹⁷ Madanat (n 289 above).

²⁹⁸ Madanat (n 289 above).

²⁹⁹ Madanat (n 289 above).

and fulfilled. I argued that in order to provide effective protection to Rwandan female refugees their plight cannot be seen only from a human rights point of view. I submitted that because of the complexity of the challenges that refugee women go through, it is necessary to also deal with the problem through a multidisciplinary approach. Thus, I suggested looking at their protection from the standpoints of psychology, sociology, economics and the environment.

Chapter Five

Conclusion and General Recommendations

5.1 Concluding Remarks

As the analysis in the previous chapters has illustrated, the problem of refugees is one of the most complicated and complex issues that the world has experienced and is certain to continue to grapple with for as long as wars and conflicts, natural disasters and human rights violations continue to occur and threaten the lives of individuals and peoples around the world. In this concluding chapter I highlight the fact that the refugee situation apart from just being a huge global challenge to deal with puts female refugees in particularly dire circumstances, especially because of their vulnerability.

However, instruments that purport to provide protection to refugees in general do not provide adequate guarantees of protection to female refugees in respect of their vulnerable nature. It is ascertained that women and girls are among the most vulnerable groups of persons in every society around the world. This vulnerability is often made worse when they find themselves in refugee situations. Thus, providing protection to female refugees, which has constituted focus of this study, has to do not only about their rights but also about their human security. Human rights are about human dignity and worth; and it is the concern of every individual including female refugees.

The study has focused on looking at the responsibility of the international community in respect of international law in providing protection to the socio-economic rights of female refugees in general and specifically on the role of the UNHCR and the government of the DRC in protecting the socio-economic rights of the Rwandan female refugees living in the eastern provinces of the DRC. In examining the international and regional instruments that make provision for the protection of the rights of female refugees I illustrated that the provisions of these instruments

are fundamentally gender biased and therefore do not provide adequate guarantees for effective protection of the socio-economic rights of female refugees.

Looking at the domestic law of the DRC as a refugee hosting country, I noted that the government has adopted very little legislation in terms of refugee protection. The law No 021/2002 of 16 October 2002 relative to the status of refugees is the only domestic legal instrument that ensures protection of refugees in the country. The Constitution of the DRC also contains some general provisions which could be interpreted to guarantee protection to the Rwandan refugees living in the country.

However, the realities on the ground with regard to refugee protection, especially the protection of the socio-economic rights of female refugees has proven to be inadequate. The international community has failed to provide effective protection to the plight of female refugees in respect of their socio economic rights. The particular case of Rwandan female refugees in the eastern DRC is evident of this shortcoming in fulfilling the obligation to protect, as the Rwandan female refugees continue to face challenges in fully enjoying their socio-economic rights relating to education, health care, housing and social security. The situation has been made even more complex by the continuous armed conflict in the country, which constitutes a big obstacle in providing effective protection and assistance to the Rwandan female refugees living in the eastern provinces.

In spite of this, international protection against human rights violation of refugee women remains an important mechanism for ensuring effective protection to the extent as a vulnerable group, refugee women can be able to enjoy their socio-economic rights. In this regard, the following recommendations are necessary to ameliorate the situation of female refugees.

5.2 General Recommendations

In order to be effective, the protection of female refugees requires an active engagement of both the international Community and the host country. Considering the specific case of the DRC with its high levels of poverty and the on-going armed conflict, it is practically impossible that it

can single-handedly ensure realisation of the socio-economic rights of the Rwandan female refugees living in the country. In addition, the fact that the DRC does not have enough policies in terms of refugee protection makes may imply that it is unwilling to protect the Rwandan female refugees living in its soil. In this regard, I make the following recommendations on how the female refugee protection system could possibly be improved on:

- Addressing effective protection of refugee women through assistance-related measures; by planning and implementing assistances programmes based on their special needs. This would have a positive impact on refugee women.
- Advocating and promoting policies and efforts that would ensure effective protection for refugee women. This is achievable through promoting and improving gender programming at all stages in the refugee protection system.
- Supporting emergency measures especially in situations of armed conflicts where the lives and well-being of refugee women are threatened by continuous violence. Such emergency measures may include programmes for resettlement or relocation of refugee women's in a third country in reinforcing protection.
- Increasing training on gender awareness to government officials, police and border guards in protecting refugee women. It is important to ensure that refugee women actively participate in such trainings.
- The participation of female refugees in planning protection and assistance measures, programmes and activities in their country of refuge is most essential. Through such participation, refugee women would be able to highlight their particular problems from a practical and realistic point of view and effectively contribute in seeking appropriate solutions to those problems. In this way, the female refugee protection system would be more value-based and create a sense of community which may help to alleviate problems that may arise in providing protection to them.

- To be able to ensure effective protection of female refugees, it is imperative that they participate actively in decision-making, in policy formulation or on issues of programming relating to their special protection as well as on other issues that directly affect their livelihood and well-being as refugees.
- The need to strengthening refugee organizations and women participation by promoting leadership and human rights training in association with UN agencies that have experience on the field is also important.
- Concerning the specific instance of Rwandan female refugees in the DRC, the government must consider to take seriously its obligations under international law in effectively implement the international and regional instruments relating to refugee protection that it has signed or ratified. The government of the DRC must also honour its commitments to the protection of the refugees within its national territory as established by its domestic law. The government of the DRC needs to further adopt more policies and texts of application to ensure that the protection provided to refugees living within its territory in general and the Rwandan female refugees in particular.
- The UNHCR should in collaboration with the government of the DRC take effective measures and find lasting solutions in providing refugee status and adequate camp management to the Rwandan female refugees who are still living in the country.
- The government of the DRC must also in collaboration with the Rwandan government and the UNHCR, negotiate concerning the cessation clause for Rwandan refugees, a clause which is somehow considered as a human rights violation. This is because the cessation clause appears like the Rwandan refugees are being forced to go back to their country where they think that they will continue to face discrimination and persecution, which is contrary to the principle of *non-refoulement*.
- The Rwandan government must show its commitment in ensuring protection to Rwandan refugees who have to return in their country. Rwandan government must also consider

taking into account a peace agreement which will help reconciliation between Hutu and Tutsi for them to live peacefully together.

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