

Chapter 6: The International and Regional Legal Framework

Overview

Introduction

Traditionally, international law focused on regulating relations between States, but the international legal system has been expanding its scope to cover a wider range of actors. These include international organizations, corporations, armed groups, other non-State entities and individuals.

This chapter reflects the evolution of both international and regional law, outlining both States' obligations and those of non-State actors, including UNHCR, regarding the protection of displaced, returnee, (re)integrating and stateless women and girls.

Purpose

The purpose of this Chapter is to highlight some of the most important international and regional legal instruments and provisions that promote and protect the rights of women and girls and work to eliminate violence against women.

More information

This chapter does not purport to be more than a very brief summary of the international and regional legal framework. For more information, see the CD-Rom accompanying the Handbook as well as

- UNHCR, "An Introduction to International Protection", Self Study Module 1, 1 August 2005,
- UNHCR, "Human Rights and Refugee Protection", Self-study Module 5, 15 December 2006, and
- UNHCR Collection of International Instruments and Other Legal Texts concerning Refugees and Others of Concern to UNHCR, November 2006.¹

For information on international legal principles that address specific rights of women and girls, such as their rights to birth registration, health, land, housing, property or education, see chapters 4 and 5.

Distinction between hard and soft law

In considering the international legal framework and the resulting responsibilities of the various actors, it is important to understand the distinction between what is referred to as "hard law", which is legally binding on States, and "soft law", which reflects the political, rather than the legal, commitment of States as shown in the table below.

Type of law	Consists of
Hard	<ul style="list-style-type: none">• treaties/conventions which a State has ratified or acceded to, and• customary international law²
Soft	<ul style="list-style-type: none">• declarations, conclusions, and recommendations, such as Conclusions of UNHCR's Executive Committee (ExCom) or ECOSOC Resolutions

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¹ See <http://www.unhcr.org/publ/PUBL/455c460b2.html>.

² For more on customary international law, see section 1 of this chapter which follows.

Overview, continued

Soft law

Despite its non-binding nature, soft law forms an important part of the international framework for the protection of women and girls.

While soft law is not legally binding on States, UN agencies such as UNHCR are bound by the provisions in soft law that relate to their mandates and activities.

Regional legal systems

Regional legal systems play an important role and complement international legal standards. Certain regions, especially Africa, the Americas and Europe, have well-developed regional legal frameworks, which can provide vital protection to women, girls, boys and men in addition to international mechanisms.

National legal systems

National legal systems can play an important role, too, especially in those countries in the Middle East, South Asia, and Southeast Asia that have not ratified many international instruments nor developed frameworks for the protection of refugees, internally displaced persons, and returnees.

Relevant national laws should always be analysed from a gender perspective to identify protection gaps for persons of concern, including women and girls, and to lobby governments and parliaments for change. This work should be undertaken in coordination with other UN agencies and women's NGOs and associations.

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6.1 International refugee, human rights, humanitarian and criminal law

Overview

Introduction

International law provides the overarching framework for the protection of women, girls, boys and men of concern. International law is made up of treaties, customary international law, general principles of law and judicial decisions.³

Treaty law and customary international law

When a State signs, ratifies or accedes and thereby becomes a party to an international instrument, such as a treaty or convention, it undertakes to guarantee to each individual in its territory or under its jurisdiction the rights set out in that instrument without discrimination and to provide effective remedies in case of violations of those rights.

States are also bound by customary international law. This term refers to international legal norms that, despite not being written, are legally binding on all States (with the exception of States which are “persistent objectors”). It is, for instance, generally accepted that the prohibition of *refoulement* is part of customary international law⁴ and must therefore be respected, even by States not party to the 1951 Refugee Convention.

Reservations

When a State becomes a party to an international instrument, it sometimes makes a reservation to certain of its provisions indicating that it will not be bound by those provisions. Some treaties expressly indicate, however, that reservations cannot be made to certain provisions.

International law also affirms that no reservation is permitted if it defeats the object and purpose of the treaty.⁵

Derogations

Under international human rights law, States party to a convention may derogate from (i.e. temporarily suspend their observance of) certain human rights, but only in exceptional circumstances and under certain strict conditions.

No derogations are permitted from certain core rights, such as the right to life or freedom from torture and from slavery. The Human Rights Committee has affirmed that a number of other rights cannot be subject to lawful derogation.

Among those particularly relevant to displaced women and girls are the right of all persons deprived of their liberty to be treated with humanity; the prohibition against taking of hostages, abduction or unauthorized

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³ For more information, see UNHCR, “An Introduction to International Protection”, Self Study Module 1, 1 August 2005.

⁴ See Declaration of States Parties to the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, Ministerial Meeting of States Parties, Geneva, 12–13 December 2001, and Sir Elihu Lauterpacht and Daniel Bethlehem, “The Scope and Content of the Principle of *Non-refoulement*: Opinion” in *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection*, (eds Feller, Türk and Nicholson), Cambridge University Press, 2003, pp. 87–179.

⁵ See 1969 Vienna Convention on the Law of Treaties, Articles 19–23.

Overview, continued

Derogations (continued)

detention; and the prohibition of deportation or forcible transfer of population without grounds permitted under international law in the form of forced displacement by expulsion or other coercive means.⁶

Under international humanitarian law, no derogations are permitted.⁷

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⁶ See ICCPR, Article 4; ICESCR, Article 5; Human Rights Committee, General Comments no. 29, 2001.

⁷ See the four 1949 Geneva Conventions, Common Article 1 "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances"; Additional Protocol I, Article 1(1); ICRC, *Customary International Humanitarian Law, Volume 1: Rules*, J.M. Henckaerts and L. Doswald-Beck, Cambridge University Press, 2005, p. 495. Rule 139 "Each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control."

6.1.1 International refugee law

Introduction

The 1951 Convention relating to the Status of Refugees and its 1967 Protocol form the foundation of international refugee law and set out the principles upon which the regime of international protection for refugees is built. They provide a general definition of a refugee⁸ and establish the main rights and obligations of refugees and the treatment, by the country of asylum, to which they are entitled. These provisions apply to women, girls, boys, and men.

The refugee definition and gender

The Convention and its Protocol do not refer specifically to gender in relation to the refugee definition. As a result, “historically the refugee definition was interpreted through a framework of male experiences, which meant that many of the claims of women went unrecognized.”⁹

Over the past 15 years, however, “the analysis and understanding of sex and gender in the refugee context have advanced substantially in case law, State practice, and academic writing. These developments have run parallel to, and have been assisted by, developments in international human rights law and standards, as well as in related areas of international law... Even though gender is not specifically referenced in the refugee definition, it is widely accepted that it can influence, or dictate, the type of harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims.”¹⁰

Gender-related claims

The recognition of gender-related claims by States and by UNHCR under its mandate has greatly enhanced the protection of refugee women and girls. Although gender-related claims may be brought by women and men, they are more commonly brought by women. Those claims “have encompassed, but are by no means limited to, acts of sexual violence, family/domestic violence, coerced family planning, and female genital mutilation”.¹¹

Age-related claims

In recent years, there has also been growing recognition that age, like gender, is an important factor to be considered when deciding refugee status.

Children may, for instance, be subjected to persecution in ways or for reasons that are influenced by their age, lack of maturity or specific needs. They may also experience the same forms of persecution as those perpetrated against adults, but in addition may experience these forms differently, or they may be imposed on children for different reasons.

Note: For more on gender, age and refugee status, see chapter 4, section 2.6 on refugee status determination.

⁸ The 1951 Convention defines a refugee as a person who is outside his or her country of origin or habitual residence and is unable or unwilling to return there owing to a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion.

⁹ UNHCR, “Guidelines on International Protection: Gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees”, HCR/GIP/02/01, May 2002, p. 3.

¹⁰ Ibid.

¹¹ Ibid., p. 2.

6.1.2 International human rights law

Introduction

International human rights law addresses the rights and dignity of all human beings – women, men, boys, and girls – at all times¹² and without discrimination.

Under international human rights law, States are obliged to respect, protect, and fulfil the human rights of all those within their jurisdiction regardless of age or sex, not just those who are its nationals. Consequently, international human rights principles are important not only for the protection of internally displaced, returnee and stateless women and girls, but also for female asylum-seekers and refugees.

International Bill of Human Rights

The rights of women and girls of concern are protected under general human rights instruments, particularly the

- 1948 Universal Declaration of Human Rights (UDHR);
- 1966 International Covenant on Political and Civil Rights (ICCPR); and
- 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).

Together with the two protocols to the ICCPR, these instruments form what is known as the International Bill of Rights. The Universal Declaration and the Covenants each state that the rights they set out apply without distinction of any kind and prohibit discrimination, including discrimination on grounds of sex or other status. The Covenants also explicitly recognize the equal right of women and men to enjoy all the rights that they contain.¹³

General Comments

Both the Human Rights Committee and the Committee on Economic, Cultural and Social Rights, the supervisory bodies for the ICCPR and ICESCR respectively, have issued General Comments on the equal rights of women and men, providing further clarification of the scope and content of the principle of gender equality in relation to the rights guaranteed under those Covenants.

It has, however, long been recognized that the rights of women have not been adequately addressed by the general international human rights framework. As a result specific instruments have been adopted to provide further protection to women and girls.

Human rights mechanisms

While this section focuses on international human rights standards, it is important to recognize that the international human rights system consists not only of standards, outlined in treaties and other instruments, but also of mechanisms to promote their implementation.

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¹² Some human rights instruments allow States to suspend their obligations in certain circumstances, such as war. However derogations are exceptional and temporary in nature and subject to strict requirements. Some rights are non-derogable, which means that they may not in any circumstances be derogated from. In addition, States may make reservations from particular treaties, through which they exclude or alter the legal effect of certain provisions of a treaty as it applies to that State. Such reservations may not, however, be incompatible with the object and purpose of the treaty. A number of States have made reservations to treaties concerning the extent to which certain rights apply to non-nationals, such as asylum-seekers and refugees. There are also a number of reservations both to CEDAW and to the CRC, for example, that reflect widespread resistance to the concept of full equality of women and men and boys and girls and that are arguably incompatible with the object and purpose of these treaties.

¹³ See UDHR, Article 2; ICCPR, Articles 2 and 3; and ICESCR, Articles 2 and 3.

6.1.2 International human rights law, continued

Human rights mechanisms (continued)

Human rights mechanisms are bodies that have been established to oversee the implementation of, and investigate alleged violations of, human rights obligations. While a discussion of these mechanisms is beyond the scope of this Handbook, they include mechanisms established under the conventions (the treaty bodies),¹⁴ and mechanisms established outside the conventions (United Nations special rapporteurs, representatives, experts, and working groups).¹⁵ UNHCR works with these mechanisms to enhance the protection of persons of concern.

UNHCR staff should be familiar with some of these mechanisms, as they can provide an additional avenue to enhance the protection of displaced and returnee women and girls.

Key conventions relevant to women and girls

Under international human rights law there are two key conventions that specifically address discrimination against women, the rights of the child and violence against women. These are the:

- 1979 Convention on the Elimination of All Forms Of Discrimination Against Women (CEDAW) and
- The 1989 Convention on the Rights of the Child and its 2000 Optional Protocols (CRC)

A brief summary of these, their purpose and key principles is given in sections 1.2.1 and 1.2.2 which follow.

Other conventions: Indigenous peoples

Other conventions may also be helpful. For instance, with regard to indigenous peoples, the 1989 ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries affirms in Article 3 that they shall enjoy “the full measure of human rights and fundamental freedoms without hindrance or discrimination” and that the “provisions of the Convention shall be applied without discrimination to male and female members of these peoples”. These standards are reaffirmed in the 2007 UN Declaration on the Rights of Indigenous Peoples.¹⁶

Further material

For more detailed information on international human rights law and its relevance to our work, see UNHCR’s updated “Human Rights Policy” (forthcoming) and UNHCR’s *Human Rights and Refugee Protection, Self-study Module 5*, (Volumes I and II, 15 December 2006).¹⁷

¹⁴ The treaty-monitoring bodies, which are composed of independent experts elected by States Parties, monitor compliance with UN human rights instruments. Of particular importance in our work to protect women and girls are the Committees on the Elimination of Discrimination against Women and on the Rights of the Child.

¹⁵ A number of procedures have been established under the extra-conventional mechanisms to monitor compliance with human rights norms. Thematic procedures include: the Representative of the Secretary-General on the human rights of internally displaced persons and the Special Representative of the Secretary-General for children and armed conflict, and Special Rapporteurs who address the sale of children, child prostitution and child pornography; violence against women; harmful traditional practices; trafficking in persons, especially women and children; and since November 2007, violence against children.

¹⁶ UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly, A/61/L.67, 7 September 2007.

¹⁷ Available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=466942032> and <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=4669434c2> respectively.

6.1.2.1 Convention on the Elimination of All Forms of Discrimination Against Women

Introduction

The Convention on the Elimination of All Forms of Discrimination Against Women¹⁸ (CEDAW) and its Optional Protocol¹⁹ are referred to as the international bill of rights for women. Structured around the concepts of equality and non-discrimination, the Convention affirms:

“... the equality of women and men and the right of women to be treated equally in every sphere of life. Focusing on civil and political as well as economic and social rights, the Convention urge[s] States to take positive measures in the field of public administration, education, health, employment and the family to ensure that women enjoy full equality with men.”²⁰

Purpose

Under CEDAW States condemn discrimination against women in all its forms and agree to end discrimination against women.²¹ Although violence against women is not mentioned in CEDAW, in its General Recommendation No. 19, the Committee on the Elimination of Violence against Women recognizes that gender-based violence amounts to discrimination under CEDAW.

Principle of non-discrimination

The principle of non-discrimination covers actions by non-State actors. In particular, States are required to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”.²² States must take action to end discrimination against women, including through customary or traditional practices, in the private and public spheres.²³

The principle of non-discrimination requires States to take affirmative action or protective measures to prevent or compensate for structural disadvantages faced by women and girls.²⁴ These measures, which entail special preferences, are not considered discriminatory because they are designed to remove obstacles to the advancement of women and girls and to encourage their equal participation.

Themes: Participation and equal rights

The themes of participation and equal rights in decision-making run throughout CEDAW, which refers to the right of women to participate in the political and public sphere, to participate in recreation, sports, and all aspects of cultural life, to participate in all community activities, and to participate on an equal basis with men in decision-making related to marriage and family life.

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¹⁸ CEDAW was adopted by the General Assembly in 1979 and entered into force in 1981.

¹⁹ The Optional Protocol to CEDAW was adopted by the General Assembly in 1999 and entered into force in 2000. It provides for the submission of individual complaints concerning violations of rights under CEDAW to the Committee on the Elimination of Discrimination Against Women and also allows the Committee to initiate confidential investigations of grave or systematic violations of the Convention.

²⁰ Commission on Human Rights, “Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, Report of the Special Rapporteur on Violence Against Women”, E/CN.4/2003/75, 6 January 2003, para. 9.

²¹ CEDAW, Article 2. Discrimination against women is defined as “any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”²¹

²² CEDAW, Article 2(e).

²³ In particular, Article 5 obligates States to take measures “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

²⁴ See Article 4(1) of CEDAW.

6.1.2.1 Convention on the Elimination of All Forms of Discrimination Against Women, continued

**Themes:
Participation and
equal rights
(continued)**

In this respect, the CEDAW Committee has stressed the importance of the right to a nationality, which it defines critical to full participation in society.²⁵ The Convention contains an important safeguard against statelessness of women as it provides that States parties “shall grant women equal rights with men to acquire, change or retain their nationality” and “shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.” Similarly, there is protection against a major cause of statelessness of children as the Convention also establishes that “States Parties shall grant women equal rights with men with respect to the nationality of their children.”

**Reservations to
certain CEDAW
provisions**

A significant number of States parties to CEDAW have entered reservations to certain of its provisions indicating that they will interpret a particular provision in a certain way or that they will not be bound by a particular provision. Article 28 expressly provides, however, that a reservation which is incompatible with the object and purpose of the Convention shall not be permitted. This rule is also generally accepted in international law.²⁶

²⁵ CEDAW Committee, General Recommendation No. 21, 1994, para. 6.

²⁶ See 1969 Vienna Convention on the Law of Treaties, Article 19.

6.1.2.2 Convention on the Rights of the Child and its Optional Protocols

Introduction

The Convention on the Rights of the Child (CRC) and its Optional Protocols establish a comprehensive set of standards for children i.e. individuals below the age of 18 “unless, under the law applicable to the child, majority is attained earlier” (Article 1). As the most widely ratified treaty in the world,²⁷ the CRC is an important protection tool for displaced and returnee girls.

There are three fundamental principles underlying the CRC, which combine to reach the objective of the survival and development of the child (Article 6):

- the right to non-discrimination;
 - the child’s best interests; and
 - the right to participation.
-

Principle: Non-discrimination

The CRC prohibits discrimination not only on grounds of sex, but also on other grounds, including birth or other status.²⁸ Consequently the Convention applies to asylum-seeking, refugee, internally displaced, and returnee girls and boys. This general principle of non-discrimination is complemented by a specific obligation on States Parties to take measures to ensure that asylum-seeking and refugee children receive appropriate protection and assistance in the enjoyment of their rights. States are also required to cooperate with UN agencies that provide protection and assistance, including UNHCR.²⁹

Principle: Best interests

Article 3 provides that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” This principle must be applied both to decisions affecting individual children and to broader policy matters and decisions and activities that affect groups of children. (See Chapter 4, section 2.5 for more details on the principle of the child’s best interests.)

Principle: Participation

Participation is a theme that runs throughout the CRC. Article 12 stipulates that States Parties must respect the right of children who are capable of forming their own views to express those views freely in all matters affecting their lives, and that a child’s views are given due weight in accordance with the child’s age and level of maturity. Article 12 is complemented by rights concerning access to information and freedom of expression, thought, conscience, religion, and association.³⁰ Children with disabilities and other special needs also have the right to participate in making decisions that affect their lives.³¹ (See Chapter 2, section 5 for more on child participation, particularly the participation of girls.)

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²⁷The CRC was adopted by the General Assembly in 1989, entered into force in 1990, and has been ratified by 192 countries (i.e. all except for the United States of America and Somalia). The Optional Protocols are the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution, and child pornography. Both were adopted by the General Assembly in 2000 and entered into force in 2002. See also African Charter on the Rights and Welfare of the Child, Article 4.

²⁸CRC, Article 2.

²⁹CRC, Article 22.

³⁰See CRC, Articles 13, 14, 15, and 17.

³¹CRC, Article 23.

6.1.2.2 Convention on the Rights of the Child and its Optional Protocols, continued

Other provisions

A number of the provisions of the CRC and its Optional Protocols address rights violations which can be especially relevant to girls of concern. These include the requirement that States Parties:

- “take all feasible measures to ensure protection and care of children who are affected by an armed conflict” in accordance with their “obligations under international humanitarian law to protect the civilian population in armed conflicts”;³²
 - protect children from violence, exploitation, abuse, abduction, and trafficking;³³
 - “take all effective measures with a view to abolishing traditional practices prejudicial to the health of children”;³⁴
 - take all appropriate measures to promote the physical, psychological, and social reintegration of children who have been victims of any form of neglect, exploitation, or abuse, torture or armed conflicts;³⁵ and
 - “ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development”.³⁶
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CRC and refugees

Article 22 of the CRC specifically requires States Parties to “take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee ... shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance” in the enjoyment of her or his rights under international human rights and humanitarian law.³⁷

Guidance on implementation

The General Comments issued by the Committee of the CRC constitute useful lobbying tools for the protection of girls of concern, including notably No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

UNICEF’s *Implementation Handbook for the Convention on the Rights of the Child* of 1998 provides a detailed reference on how to implement law, policy and practice to promote the protection the rights of girls and boys. A new edition of the Handbook is to be published in 2008.

³² See CRC, Article 38.

³³ See CRC, Articles 19, 32, 33, 34, 35, and 36, as well as the Optional Protocol on the sale of children, child prostitution, and child pornography.

³⁴ See CRC, Article 24(3).

³⁵ See CRC, Article 39.

³⁶ See CRC, Article 23.

³⁷ See CRC, Article 22.

6.1.3 International law regarding stateless persons

Introduction

The right to a nationality is firmly anchored in international human rights law,³⁸ but it does not prescribe the specific nationality to which a person is entitled. The two main treaties designed to regulate this are the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.³⁹

Neither Convention specifically addresses the protection of stateless women and girls or the prevention and reduction of statelessness among them, but both instruments should be interpreted in light of other human rights standards.

They form part of a larger body of international standards that include many rights relating to nationality. For example, the ICCPR and CEDAW may be invoked when statelessness occurs due to inequality between men and women in relation to the acquisition, change or retention of nationality and passing on of nationality to children, while the ICCPR and CRC both guarantee the right of children to acquire nationality.

Definition: statelessness

The 1954 Convention includes a strictly legal definition of a stateless person: “a person who is not considered as a national by any State under the operation of its law”. The decision as to whether someone is entitled to the benefits of the Convention is made by each State Party in accordance with its own established procedures. As with refugee status determination, these procedures should be age- and gender-sensitive and adjudicators should be aware of causes of statelessness which particularly impact women and girls.

As outlined in greater detail elsewhere in this Handbook, these causes include:

- discrimination in the issuance of registration or identity documentation (see chapters 4, section 2.1 and 5, section 2.1);
 - lack of birth registration and/or documentation (see chapters 4, section 2.2 and 5 section 2.1); and
 - lack of registration of certification of marriage or divorce (see chapters 4, section 2.3 and 5, sections 2.1 and 2.2).
-

Provisions: 1954 Convention

The 1954 Convention relating is the primary international instrument that aims to regulate the status of stateless persons and to ensure that they are accorded their fundamental rights and freedoms without discrimination. The provisions of the Convention are, in many respects, very similar to those of the 1951 Refugee Convention.

Acceding to the Convention is not a substitute for granting nationality to those born and habitually resident in a State's territory. No matter how extensive the rights granted to a stateless person may be, they are not the equivalent of acquiring citizenship.

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³⁸ See UDHR, Article 15; ICCPR, Article 24; CEDAW Article 9; CRC, Article 7.

³⁹ As for the 1951 Refugee Convention, this also provides protection to refugees who are stateless.

6.1.3 International law regarding stateless persons, continued

**Provisions:
1961 Convention**

The 1961 Convention on the Reduction of Statelessness aims to avoid statelessness at birth, but does not prohibit the possibility of revoking nationality under certain circumstances, nor of retroactively granting citizenship to all currently stateless persons. In seeking to reduce the incidence of statelessness, the 1961 Convention requires that States Parties adopt legislation that reflects prescribed standards relating to the acquisition or loss of nationality. The Final Act of the Convention includes a recommendation much like the one contained in the Final Act of the 1954 Convention that encourages States Parties to extend the provisions of the Convention to de facto stateless persons whenever possible.

The Convention provides for the creation of a body to which someone who may benefit from the provisions of the Convention may apply to have her or his claim examined and to seek assistance in presenting the claim to the appropriate authority. The General Assembly has subsequently asked UNHCR to fulfil this role.

UNHCR's role

UNHCR has been involved in statelessness issues since its inception, including not least in the context of assisting and protecting refugees who are stateless. In addition, it has increasingly been recognized that possession of an effective nationality and the ability to exercise the rights inherent in nationality help to prevent involuntary and coerced displacement.

UNHCR's role in helping to reduce the incidence of statelessness is mandated by the 1961 Convention, UN General Assembly resolutions and ExCom. Through its representations/offices or its services at Headquarters, UNHCR is available to provide advice on how to create and implement these procedures, if requested.

Note: For more information see UNHCR, Inter-Parliamentary Union, *Nationality and Statelessness: A Handbook for Parliamentarians*, 2005,⁴⁰ including in particular in relation to women and girls, pp. 31–34.

⁴⁰ Available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=436608b24>.

6.1.4 International humanitarian law

Introduction

International humanitarian law predates both refugee law and international human rights law. It applies during international and non-international armed conflict, aims to protect persons who do not or no longer take part in hostilities, and to regulate the means and methods of warfare.

As more and more refugees and internally displaced persons are caught up or targeted in the midst of conflict, this body of law is becoming increasingly important for our protection work. International human rights law and international refugee law continue to apply during armed conflict, although some human rights can be limited or subject to derogation.⁴¹

Core instruments

International humanitarian law consists of both convention and customary rules. The core instruments concerning the victims of armed conflict are the four Geneva Conventions of 1949,⁴² which are universally accepted, and their two additional Protocols of 1977.

The Geneva Conventions all address international armed conflict, but Article 3, which is common to all four Conventions, also relates to non-international armed conflict, a term which includes civil wars. This Article sets out the minimum rights of everyone “taking no active part in the hostilities”. These include the right to life, to humane treatment, dignity and protection from torture, humiliating and degrading treatment. It is to be applied “without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria”.

Additional Protocol I is concerned solely with international armed conflict; Additional Protocol II focuses on non-international armed conflict.

Customary international humanitarian law

There is also a large body of customary international humanitarian law, including a significant number of rules governing the treatment of persons not or no longer taking a direct part in hostilities. These rules are binding upon all States regardless of whether or not they have ratified relevant instruments and can be important in securing the protection of refugees and internally displaced persons. This is especially so in non-international armed conflicts, as the written rules governing such conflicts are far fewer.

Provisions

As under international refugee and international human rights law, women are entitled to the same protection as men under international humanitarian law, whether they are civilians, combatants, or *hors de combat*. Some provisions, such as those relating to the maintenance and restoration of family ties, are particularly relevant to the protection of women and girls.

International humanitarian law also contains a number of provisions granting women and children special protection. Some 40 out of 560 Articles of the Conventions and the Protocols are of specific concern to women.⁴³ The goal of these specific provisions has been described as “to either reduce the

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⁴¹ See section 1 of this chapter above for more on derogations from international human rights law.

⁴² These are: First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Third Geneva Convention Relative to the Treatment of Prisoners of War; and Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

⁴³ Françoise Krill, “The Protection of Women in International Humanitarian Law”, *International Review of the Red Cross*, no. 249, 1989, p. 363.

6.1.4 International humanitarian law, continued

Provisions (continued)

vulnerability of women to sexual violence, to directly prohibit certain types of sexual violence, or to protect them when pregnant or as mothers of young children”.⁴⁴

A similar number of provisions aim at providing special protection to children in relation to the following: evacuation and special zones; assistance and care; identification, family reunification and unaccompanied children; education and cultural environment; arrested detained and interned children and exemption from the death penalty.⁴⁵ In addition, Additional Protocols I and II contain measures to prevent children under the age of 15 from participating in hostilities.⁴⁶

Requirement and responsibilities

International humanitarian law is binding on States, their armed forces, armed groups (whether guerrilla groups opposing the government or groups such as paramilitary groups supported by the State), and troops participating in multilateral peacekeeping and peace-enforcement operations if they take part in hostilities.⁴⁷

It also binds each individual and holds individuals responsible for “grave breaches” of international humanitarian law, even if they are ordered to do so. States have a responsibility to prosecute and punish those responsible for such violations.⁴⁸

While there is no explicit reference to sexual and gender-based violence in the list of “grave breaches” of international humanitarian law,⁴⁹ These breaches nevertheless include “torture or inhuman treatment, including ... wilfully causing great suffering or serious injury to body or health” against civilians, which clearly include rape and other forms of sexual abuse.⁵⁰

Other sources of guidance

A more detailed discussion of these provisions is beyond the scope of this Handbook. With regard to children, the International Committee of the Red Cross (ICRC) has issued both a “Summary Table of IHL Provisions Specifically Applicable to Children”,⁵¹ as well as a fact sheet on the “Legal Protection of Children in Armed Conflict”.⁵²

A detailed list of international humanitarian law provisions on the protection of women is given in the annex to the ICRC Guidance Document *Addressing the Needs of Women Affected by Armed Conflict* (2004).⁵³ The ICRC’s *Women Facing War* (2001) also provides an excellent overview of international humanitarian law as it applies to women in armed conflict.⁵⁴

⁴⁴ Judith Gardham and Michelle Jarvis, *Women, Armed Conflict and International Law*, Kluwer Law International, 2001, p. 63.

⁴⁵ ICRC, Legal Protection of Children in Armed Conflict, Advisory Service on International Humanitarian Law. Some of these provisions may overlap with those for women as a number of those provisions provide special protection to nursing mothers or mothers with small children.

⁴⁶ These provisions are further strengthened in the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed forces and by the Rome Statute of the International Criminal Court which defines conscription, enlistment or use in hostilities of children under the age of 15 years as a war crime. See also, chapter 5, section 3.4 “Military Recruitment and DDR” under “international legal standards”.

⁴⁷ While international humanitarian law binds all parties to a conflict, responsibility for its implementation rests primarily with States. See also generally, Charlotte Lindsay, *Women Facing War*, ICRC, 2001, p. 18, at <http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/p0798?OpenDocument>.

⁴⁸ See Articles 49, 50, 129 and 140 respectively of the Four Geneva Conventions and Article 85 of Additional Protocol I.

⁴⁹ See Fourth Geneva Convention, Article 147.

⁵⁰ Charlotte Lindsay, *Women Facing War*, ICRC, 2001, p. 58. See also section 1.5 of this chapter which follows for more on the Statute of the International Criminal Court which explicitly defines rape and other forms of sexual abuse as war crimes and crimes against humanity.

⁵¹ Issued in March 2003, available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/5FFLJ5>.

⁵² Issued in February 2003, available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JQUS>.

⁵³ See pp. 167–207, available at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/66uh37?opendocument>.

⁵⁴ Charlotte Lindsay, *Women Facing War*, ICRC, 2001, at <http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/p0798?OpenDocument>.

6.1.5 International criminal law

Introduction

Developments in international criminal law increasingly have an impact on the protection women, girls, boys and men. Judgments of the International Criminal Tribunals for the former Yugoslavia and Rwanda have, for instance, clearly identified rape and other forms of sexual and gender-based violence (SGBV) as war crimes and crimes against humanity.⁵⁵

The fact that the first person to be committed for trial before the International Criminal Court (ICC) is a militia leader accused of enlisting and conscripting children as war crimes also raises the prominence of this issue, to which displaced children, including girls, are particularly at risk.⁵⁶

War crimes and crimes against humanity

As a result of these developments, rape and other forms of SGBV, sexual slavery, including trafficking of women,⁵⁷ enforced prostitution, forced pregnancy, and enforced sterilization are now considered to be war crimes and crimes against humanity.

The 1998 Rome Statute of the ICC includes rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization as war crimes and crimes against humanity.⁵⁸ Conscripting, enlisting or using children under the age of 15 years in hostilities is also defined as a war crime.⁵⁹

The ICC Statute further contains age- and gender-sensitive measures to protect victims and witnesses involved in the criminal proceedings before the Court. The ICC may also order individual or collective reparations to be made through restitution, indemnification, and rehabilitation.

Genocide

According to the ICC Statute, “causing serious bodily harm to members of a group or imposing measures to prevent births within the group”⁶⁰ is considered to be genocide if committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group.

Forcibly transferring the children of the group to another group with such intent is also considered to be genocide.⁶¹

Victims Trust Fund

The ICC Statute also established a Victims Trust Fund, which began operations in early 2007. It is devoted to advocating for, and assisting, the most vulnerable victims of genocide, crimes against humanity, and war crimes.

⁵⁵ Jurisprudence from the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) has recognized rape and other forms of sexual violence as serious offences. Within the context of non-international armed conflicts, the *Akayesu* judgment of the ICTR was the first international case to define rape as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive”. The Tribunal considered “sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact... Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances.” See *Prosecutor v. Akayesu*, ICTR-96-4-T, September 1998, at <http://69.94.11.53/ENGLISH/cases/Akayesu/index.htm>. See also, the ICTY decision in *Prosecutor v. Furundzija*, IT-95-17/1, December 1998. Such decisions have contributed substantially to the acceptance of rape as a grave breach of international humanitarian law.

⁵⁶ International Criminal Court, “Pre-Trial Chamber I commits Thomas Lubanga Dyilo for trial”, press release, 29 January 2007.

⁵⁷ See the 2000 United Nations Protocol to Prevent, Suppress and Punish the Trafficking of Persons (the Palermo Protocol).

⁵⁸ See Rome Statute of the International Criminal Court, adopted in 1998 and entered into force in 2002, in particular Articles 7 and 8.

⁵⁹ Rome Statute of the International Criminal Court, Article 7.

⁶⁰ *Ibid.*, Article 6.

⁶¹ *Ibid.*, Article 6.

6.2 Other Relevant Principles, Conclusions, Resolutions and Declarations

Overview

Introduction

This section outlines the other principles, conclusions, resolutions and declarations that are part of the international legal framework and contain specific provisions for the protection of women and girls.

In this section

This section covers the following topics.

Topic	See Page
6.2.1 Declaration on the Elimination of Violence Against Women (DEVAW)	350
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6.2.1 Declaration on the Elimination of Violence Against Women (DEVAW)

“Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and ... violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”
1993 Declaration on the Elimination of Violence Against Women, GA resolution 48/104

Introduction

Because violence against women is a taboo subject in many societies, the issue only recently found its place on the international agenda. The General Assembly’s adoption of DEVAW in 1993 and the appointment by the Human Rights Commission of a Special Rapporteur on violence against women, its causes and consequences in 1994 signalled the acknowledgement that violence against women, once considered a private matter, is a public human rights issue.

Purpose

DEVAW and numerous subsequent instruments recognize that violence against women and girls is not only a grievous human rights abuse in itself, but is a serious impediment to the realization of many other rights for women and girls.

Although DEVAW is not legally binding on States,⁶² it sets out international norms that States have recognized as fundamental to our efforts to eliminate all forms of violence against women.⁶³

Definition: Violence against women

DEVAW defines “violence against women” as “any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”⁶⁴ DEVAW further defines the term as encompassing, but not limited to, various types of violence occurring in the family, within the general community, and perpetuated and condoned by the State.⁶⁵

In its preamble and as quoted above, DEVAW recognizes violence against women is a result of historically unequal power relations between women and men. It also recognizes that “some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence”.

Continued on next page

⁶² As noted above, however, the Special Rapporteur on violence against women, its causes and consequences has determined that the obligation of States to prevent and respond to acts of violence against women with due diligence is a principle of customary international law, and therefore binding on all States.

⁶³ Preliminary Report submitted by the Special Rapporteur on violence against women, its causes and consequences, Commission on Human Rights, E/CN/1995/42, para. 95.

⁶⁴ DEVAW, Article 1.

⁶⁵ Article 2 of DEVAW provides that violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual, and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation, and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) Physical, sexual, and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment, and intimidation at work, in educational institutions, and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual, and psychological violence perpetrated or condoned by the State, wherever it occurs.

6.2.1 Declaration on the Elimination of Violence Against Women (DEVAW), continued

Continuing violence against women and girls

In 2006, more than a decade later, the Secretary-General issued two reports on violence against women and on the elimination of discrimination and violence against the girl child.⁶⁶ These highlight that violence against women and girls “persists in every country in the world as a pervasive violation of human rights and a major impediment to achieving gender equality”.⁶⁷ The UN Study on Violence against Children also concludes that much remains to be done and recommends that States “should address all forms of gender discrimination as part of a comprehensive violence-prevention strategy”.⁶⁸

Responsibility: States

Article 4 of DEVAW requires States to take various measures to eliminate violence against women. These include exercising “due diligence to prevent, investigate, and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”.

It also proclaims that “States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations” to eliminate such violence. States should also “adopt all appropriate measures ... to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices, and all other practices based on the inferiority or superiority of either of the sexes and on stereotyped roles for men and women”.

“The United Nations system is obligated to respect and uphold the principles of the Organization. While international organizations clearly have direct obligations not to commit or contribute to violence against women in their programming or funding decisions, they also have additional duties to cooperate and to establish coherent inter-agency strategies to work towards the elimination of violence against women in close collaboration with local communities and relevant civil society groups. The responsibilities of these organizations are in addition to the individual responsibilities of the States that are members of such organizations.”
Special Rapporteur on Violence against Women, its causes and consequences⁶⁹

Responsibility: UN agencies

Article 5 of DEVAW outlines the responsibilities of UN entities. These include cooperating to develop regional strategies to eliminate violence against women, raising awareness, analysing trends, incorporating the issue of violence against women into our programmes, formulating guidelines and manuals, and cooperating with NGOs to address the issue.

UN agencies are also required to “consider the elimination of violence against women, as appropriate, in fulfilling their mandates with respect to the implementation of human rights instruments”. UNHCR has a responsibility to ensure that human rights are respected and promoted in its operations. Consequently, promoting the elimination of violence against women and girls is an integral part of UNHCR’s protection activities.

⁶⁶ See respectively, “In-depth Study on All Forms of Violence against Women: Report of the Secretary-General”, A/61/122/Add.1, 6 July 2006, at <http://www.un.org/womenwatch/daw/vaw/SGstudvaw.htm#more>, and “The Elimination of All Forms of Discrimination and Violence against the Girl Child: Report of the Secretary-General”, E/CN.6/2007/2, 12 December 2006, at <http://www.un.org/womenwatch/daw/csw/csw51/OfficialDocuments.html>.

⁶⁷ “In-depth Study on All Forms of Violence against Women”, *ibid.*, para. 1.

⁶⁸ “Report of the Independent Expert for the United Nations Study on Violence against Children”, A/61/299, 29 August 2006, at <http://www.violencestudy.org/a555>, paras. 90 and 106.

⁶⁹ Commission on Human Rights, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, “The Due Diligence Standard as a Tool for the Elimination of Violence Against Women”, Report of the Special Rapporteur on violence against women, its causes and consequences, 20 January 2006, E/CN.4/2006/61, para. 98.

6.2.2 ECOSOC conclusions and resolutions

Introduction In 1997, ECOSOC adopted the landmark Agreed Conclusions on Gender Mainstreaming as Resolution 1997/2.

**Definition:
Gender
mainstreaming** The Agreed Conclusions define gender mainstreaming as follows:
“Mainstreaming a gender perspective is the process of assessing the implication for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring, and evaluation of policies and programmes in all political, economic, and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.”⁷⁰

Purpose These Conclusions identify principles for mainstreaming a gender perspective throughout the UN system and contain specific actions that should be implemented by UN agencies to institutionalize gender mainstreaming. UNHCR’s Executive Committee is also explicitly encouraged to monitor the way in which UNHCR implements gender mainstreaming in its medium-term plans and programme budgets, including at the field level.⁷¹

The Agreed Conclusions highlight that gender mainstreaming does not replace the need for targeted, women-specific policies and programmes or positive actions. Consequently, gender mainstreaming and targeted actions complement each other, and share the single objective that women and girls, and men and boys have access to and can enjoy their rights.

**Responsibility:
UN agencies** In its Resolution 2005/31, ECOSOC called on all UN bodies to develop action plans for gender mainstreaming with clear guidelines on and timelines for the practical implementation of gender perspectives in policies and programmes.

⁷⁰ Available at <http://www.un.org/womenwatch/asp/user/list.asp-ParentID=10537.htm>.

⁷¹ ECOSOC, Agreed Conclusions 1997/2, Part II, para. A.

6.2.3 Security Council resolution 1325 on women, peace, and security

Introduction

The adoption of Security Council resolution 1325 on women and peace and security in October 2000 marked the first time that the Security Council⁷² addressed the disproportionate impact of armed conflict on women and stressed the importance of their equal and active participation as agents for peace and security.⁷³

Purpose

Security Council Resolution 1325 draws on and complements recent developments in international law aimed at promoting the rights of women and girls. It calls for action from a wide range of entities, including governments, parties to armed conflict, the UN Secretary-General, and other bodies to:

- increase the participation of women at all levels of decision-making in conflict prevention, management, and resolution;
 - focus on the specific rights and needs of women and girls in conflict, including refugee women and girls;
 - end impunity for war crimes against women, including sexual and gender-based violence; and
 - mainstream a gender perspective in UN peacekeeping operations, post-conflict processes, and UN reporting and Security Council missions.
-

Responsibility: UN agencies

Subsequent Security Council Presidential Statements reaffirm the Council's commitment to the full implementation of this Resolution.⁷⁴

In October 2005, the Secretary-General presented an Action Plan for the implementation of Security Council Resolution 1325 throughout the UN system. This Action Plan,⁷⁵ to which UNHCR's contributed, sets out a series of specific activities which UNHCR is required to take to implement the Resolution.⁷⁶ UNHCR, like other UN agencies, also reports annually to the Secretary-General on progress on women and peace and security, who then presents his report to the Security Council.

⁷² The Security Council, entrusted by the United Nations Charter to maintain peace and security, is made up of representatives from 15 UN Member States, five of which are permanent members (China, France, the Russian Federation, the United Kingdom, and the United States of America). The other two members of the Security Council are elected to the Security Council for two-year terms.

⁷³ For information on the UN Peacebuilding Commission, see chapter 4, section 3.1.

⁷⁴ See Statements of the President of 31 October 2001 (S/PRST/2001/31), 31 October 2002 (S/PRST/2002/32), 28 October 2004 (S/PRST/2004/40), 27 October 2005 (S/PRST/2005/52), 8 November 2006 (S/PRST/2006/42), and 24 October 2007 (S/PRST/2007/40).

⁷⁵ The Action Plan is contained in the Report of the Secretary-General on Women, Peace, and Security, UN Doc. S/2005/636, 10 October 2005, at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/534/82/PDF/N0553482.pdf?OpenElement>.

⁷⁶ These include actions to mainstream a gender perspective and promote the rights of women and girls in relation to the following areas: conflict-prevention and early warning; peace-making and peace-building; peacekeeping operations; humanitarian response; post-conflict reconstruction and rehabilitation; disarmament, demobilization and reintegration; preventing and responding to gender-based violence in armed conflict; preventing and responding to sexual exploitation and abuse by UN staff, related personnel, and partners; gender balance; coordination and partnership; monitoring and reporting; and financial resources.

6.2.4 Security Council resolutions on children and armed conflict

Introduction

Beginning with the adoption of Security Council Resolution 1261 in 1999, which identified the issue of children in armed conflict as a global priority, the Security Council has adopted a series of six resolutions on children and armed conflict, including most recently Resolutions 1539 (2004) and 1612 (2005).⁷⁷

As with Security Council Resolution 1325, these Resolutions call for governments, parties to a conflict, and other organizations, including UN bodies, to take wide-ranging action to protect children during and after armed conflict and to prohibit the recruitment and use of child soldiers in hostilities.

Security Council Resolution 1539 calls for all parties to armed conflict who recruit and use children to immediately devise action plans, with the UN country teams, for the separation of children associated with their armed forces and to end new recruitments. Resolution 1612 is important because it created a standing Working Group of the whole to assess and make recommendations on situations of concern submitted by the Secretary-General. If State government forces or non-state armed groups fail to comply this measures can be taken against them.

Purpose

The resolutions emphasize the need to take action to protect and respect the rights of girls, particularly refugee and internally displaced girls. These include actions to:

- protect and respect the rights of girls during armed conflict, particularly to protect girls from all forms of violence and abuse, including sexual exploitation and abuse;
 - ensure that the human rights, protection, and welfare of girls is incorporated into peace agreements, peace processes, and policies and programmes, including those for conflict-prevention, disarmament, demobilization, and reintegration;
 - mainstream the protection of children, particularly girls, and to ensure that a gender perspective is integrated into all policies, programmes, and projects; and
 - include child protection advisers in peacekeeping missions where appropriate.
-

Responsibility: UN agencies

Security Council Resolution 1612 establishes a comprehensive mechanism for monitoring, reporting on, and punishing those responsible for grave violations against children in conflict initially in priority countries where this is an issue, focusing in particular on the six most grave violations against children in armed conflict.⁷⁸ Information on violations gathered under these mechanisms in priority countries is to be presented to a working group which

Continued on next page

⁷⁷ These are Security Council resolutions 1261 of 25 August 1999, 1314 of 11 August 2000, 1379 of 20 November 2001, 1460 of 30 January 2003, 1539 of 20 April 2004, and 1612 of 26 July 2005. Also relevant are the three Security Council resolutions on the protection of civilians in armed conflict: 1674 of 28 April 2006, 1296 of 19 April 2000, and 1265 of 17 September 1999.

⁷⁸ These are defined as the killing or maiming of children; recruiting or using child soldiers; attacks against schools or hospitals; rape and other grave sexual violence against children; the abduction of children; and the denial of humanitarian access for children. See "Report of the Secretary-General on children and armed conflict, A/59/695-S/2005/72, 9 February 2005, para. 68.

6.2.4 Security Council resolutions on children and armed conflict, Continued

**Responsibility:
UN agencies**
(continued)

can recommend measures to be taken against a party involved in using children in a situation of armed conflict with the endorsement of the Security Council or other UN bodies.⁷⁹

This Resolution formally assigns responsibility for follow-up to UN peacekeeping missions and UN country teams. These responsibilities are further outlined in an action plan, developed by the Secretary-General, for the establishment of a monitoring, reporting and compliance mechanism.⁸⁰

Under the action plan UNHCR has child-protection monitoring responsibilities at the field level as part of a task force on monitoring and reporting, to be chaired by UNICEF or the Special Representative of the Secretary-General on Children in Armed Conflict.⁸¹ Together with the Special Representative of the Secretary-General, UNICEF, OCHA, and OHCHR, UNHCR is also part of the task force on children and armed conflict at the headquarters level and has specific responsibilities, including reporting responsibilities, at this level as well.⁸²

⁷⁹ Such mechanisms have now been established in Burundi, the Democratic Republic of the Congo, Côte d'Ivoire, Nepal, Somalia, Sri Lanka, and Sudan. See "Report of the Secretary-General on children and armed conflict, A/61/529-S/2006/826, 26 October 2006, para. 117.

⁸⁰ See "Report of the Secretary-General on Children and Armed Conflict", A/59/695-S/2005/72, 9 February 2005.

⁸¹ *Ibid.*, paras. 82–89.

⁸² *Ibid.*, paras. 92–106.

6.2.5 Executive Committee Conclusions

Introduction

Each year, the Executive Committee (ExCom) of the High Commissioner's Programme adopts a number of Conclusions by consensus. These articulate a number of principles to be followed and measures to be taken by ExCom Member States as well as by UNHCR to enhance the protection of women and girls of concern.

Conclusions on women and children

The principles and guidance they contain are set out in General Conclusions, in Conclusions that focus exclusively on women or children, and in Conclusions on specific themes, such as preventing and responding to sexual and gender-based violence.⁸³

ExCom Conclusion No. 105 (LVII) on women and girls at risk of 2006 establishes a framework to identify and respond to the situation of women and girls at risk. This is developed further in ExCom Conclusion No. 107 (LVIII) on children at risk of 2007.

Both are discussed in greater detail in chapter 3, sections 1 and 2 and are reproduced in Annexes 1 and 2 of this Handbook.

Binding nature

While ExCom Conclusions are not legally binding on States, they are unanimously approved by all ExCom members, and are an important advocacy tool, particularly with those States that have not ratified the 1951 Refugee Convention or any regional refugee instrument, but are members of ExCom.

ExCom Conclusions are binding on UNHCR and are an important source of guidance for us in our work.⁸⁴

⁸³ For further details, see UNHCR, *Thematic Compilation of Executive Committee Conclusions on International Protection*, 2nd edition, 2005.

⁸⁴ For an overview of the ways UNHCR offices implement ExCom Conclusions, see Informal Consultative Meeting, Second note on Review of the Process for Drafting ExCom Conclusions on International Protection, 10 February 2006.

6.2.6 Guiding Principles on Internal Displacement

“The Principles identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement, and reintegration. Although they do not constitute a binding instrument, these Principles reflect and are consistent with international human rights law, international humanitarian law, and by analogy international refugee law.”⁸⁵

Introduction

Recognizing the need for a more comprehensive international response to the problem of internal displacement, the UN Secretary-General appointed a Special Representative on Internally Displaced Persons in 1992.⁸⁶ Six years later, the Special Representative presented the Guiding Principles on Internally Displaced Persons to the Commission on Human Rights.

The Guiding Principles

The Guiding Principles apply to all internally displaced persons; they also include a number of provisions that specifically relate to women’s and girls’ rights.⁸⁷ These are discussed at relevant points of Chapters 4 and 5.

Certain countries, such as Angola, Colombia and Peru, have incorporated the Guiding Principles into their national laws. In the case of Colombia, the Constitutional Chamber of the Supreme Court has ruled that the Guiding Principles form an integral part of the constitutional legal framework of the country and are therefore binding on the State and its institutions.

Purpose

The Guiding Principles are an important source of guidance to governments, other competent authorities, UN bodies, and NGOs in their work with internally displaced persons.

UNHCR has recognized that the Guiding Principles “provide a useful set of standards against which to measure protection objectives and promote dialogue with State and non-State actors of violence.”⁸⁸

In the 2005 World Summit Outcome document, world leaders recognized the Guiding Principles as an important international legal framework and resolved to take effective measures to increase the protection of internally displaced persons.⁸⁹

Responsibility

Principle 3 of the Guiding Principles affirms national authorities have “the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction”.

In addition, Principle 25, states: “International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced” and such an offer “shall not be regarded as an unfriendly act or an interference in a State’s internal affairs”.

⁸⁵ Introductory Note to the Guiding Principles by the Representative of the Secretary-General on Internally Displaced Persons, Francis Deng, 1998.

⁸⁶ In 2004, the mandate of the Representative of the Secretary-General on Internally Displaced Persons expired. Pursuant to Resolution 2004/55, the Commission on Human Rights asked the Secretary-General to establish a new mechanism that would build on the work of the Representative of the Secretary-General on Internally Displaced Persons and address the complex problem of internal displacement, particularly by mainstreaming the human rights of internally displaced persons into all relevant parts of the UN system. The Secretary-General appointed a Representative on the human rights of internally displaced persons in September 2005.

⁸⁷ Women and children are specifically referred to in Principles 4, 11, 13, 17, 18, 19, 20, and 23.

⁸⁸ UNHCR, “Internally Displaced Persons: The Role of UNHCR”, EC/50/SC/INF.2, 20 June 2000.

⁸⁹ World Summit Outcome, A/Res/60/1, 24 October 2005, para. 132.

6.2.7 Beijing Declaration and Platform for Action

Introduction

The Fourth World Conference on Women, held in Beijing, China, in September 1995, represented a milestone in international efforts to improve the status of women and achieve gender equality worldwide.

The Beijing Declaration and Platform of Action, adopted unanimously by 189 countries, sets as its goal the empowerment of women, recognizing that the full realization of all human rights and fundamental freedoms of all women is essential for achieving this objective. They provide a detailed framework for action and have set the agenda for subsequent years.

Purpose

The Beijing Declaration and Platform of Action provide valuable guidance for our work to protect women and girls.

The Platform of Action identifies 12 priority areas⁹⁰ and emphasizes the importance of women working together, and also with men, to address gender inequality. The principles it sets out are reflected in UNHCR's age, gender, and diversity-mainstreaming strategy.

Responsibilities: States

In adopting the Beijing Declaration and Platform of Action, governments committed themselves to implementing the Platform of Action and ensuring that a gender perspective is reflected in all their policies and programmes.

Requirements and responsibilities for UN agencies

The Platform of Action delineates clear responsibilities for UN bodies. It stipulates that all UN bodies and organizations must implement the Platform of Action and integrate a gender-equality perspective in all their policies and programmes.⁹¹

It also asks UN bodies and organizations to take specific actions in relation to the 12 critical areas of concern.⁹² Five- and ten-year reviews of the Beijing Platform for Action resulted in reaffirmations and further commitments to implement it.⁹³

The Commission on the Status of Women⁹⁴ recently “called upon the United Nations system, international and regional organizations, all sectors of civil society, including non-governmental organizations, as well as women and men, to fully commit themselves and to intensify their contributions to the implementation of the Declaration and the Platform for Action and the outcome of the 23rd special session of the General Assembly”.⁹⁵

⁹⁰ These areas are: women and poverty; education and training of women; women and health; violence against women; women and armed conflict; women and the economy; women in power and decision-making; human rights of women; women and the media; women and the environment; and the girl child.

⁹¹ See particularly paras. 305–311.

⁹² See particularly para. 337.

⁹³ See particularly General Assembly Resolution S-23/3 of 16 November 2000 on actions and initiatives to implement the Beijing Declaration and Platform for Action, adopted at the special session of the General Assembly entitled “Women 2000: Gender equality, development, and peace for the 21st Century”, and the Declaration adopted by the Commission on the Status of Women at its 49th session, 3 March 2005.

⁹⁴ The Commission on the Status of Women is a functional commission of ECOSOC dedicated exclusively to gender equality and advancement of women. It is the principal global policy-making body. After the Beijing conference it was mandated to follow-up on the conference and review critical areas of concern regularly.

⁹⁵ Declaration adopted by the Commission on the Status of Women at its 49th session, 3 March 2005.

6.2.8 Millennium Declaration and Millennium Development Goals

Introduction

When UN member States adopted the Millennium Declaration in 2000,⁹⁶ they committed themselves, amongst other things, to promoting gender equality and the empowerment of women, since they recognized that they are essential to efforts to combat poverty, hunger, and disease, and to achieve sustainable development.⁹⁷

Purpose

The UN Millennium Development Goals (MDGs), issued by the Secretary-General in 2001, are a road map for implementing the Millennium Declaration.

The MDGs consist of eight goals accompanied by 18 time-bound targets and 48 indicators. Goal three calls for the promotion of gender equality and women's empowerment. Goal five calls for improving maternal health.⁹⁸

Responsibility: UN agencies

Recognizing that the MDGs apply to everyone and promoting the MDGs in humanitarian emergencies and post-conflict situations help to create a sound foundation for development over the long term.⁹⁹ UNHCR is now fully engaged in international efforts to promote the MDGs.¹⁰⁰

UNHCR encourages States to ensure that national MDG strategies include displaced persons and returnees and that, given that many of the poorest people live in countries steeped in or just emerging from conflict, they consider the relationship between conflict and the MDGs.¹⁰¹

⁹⁶ The Millennium Summit was attended by 147 heads of government. The Millennium Declaration has been adopted by 191 governments.

⁹⁷ United Nations General Assembly Resolution A7RES/55/2.

⁹⁸ The other Goals are eradicating extreme poverty and hunger; achieving universal primary education; combating HIV/AIDS, malaria, and other diseases; ensuring environmental sustainability; and building a global partnership for development.

⁹⁹ Relevance of UNHCR's Activities to the Millennium Development Goals, EC/55/SC/INF.1. 13 September 2005, para. 9.

¹⁰⁰ The UN Development Group (UNDG), of which UNHCR is a member, is tasked with coordinating UN efforts to support the implementation of the MDGs through practical assistance, country-level and global monitoring, research, and advocacy.

¹⁰¹ Relevance of UNHCR's Activities to the Millennium Development Goals, EC/55/SC/INF.1. 13 September 2005, para. 10.

6.2.9 World Summit and World Summit Outcome document

Introduction

At the World Summit in 2005, governments reaffirmed the commitments made in the Millennium Declaration and agreed to take action on a broader range of global challenges, based on a set of proposals outlined by the UN Secretary-General in his March 2005 report, "In Larger Freedom".

Purpose

The World Summit Outcome document, adopted by the General Assembly on 24 October 2005, contains a number of provisions of relevance to our work to protect women and girls. These include the reaffirmation or strengthening of a number of commitments, including those

- to promote gender equality, the empowerment of women, and the elimination of all forms of discrimination and violence against women and girls;¹⁰²
- that include women in work to prevent and resolve conflicts and to build peace;¹⁰³
- that aim to protect children in situations of armed conflict;¹⁰⁴
- aimed at mainstreaming human rights throughout the UN system;¹⁰⁵ and
- that focus on advancing the rights of women and children.

States also resolved to take effective measures to improve the protection of internally displaced persons¹⁰⁶ and committed themselves to safeguarding the principle of refugee protection and to help to resolve the plight of refugees.¹⁰⁷

Responsibility: UN agencies

As noted in a report by the UN Secretary-General,¹⁰⁸ the Summit Outcome document provides comprehensive guidance for the work of the UN Secretariat and UN agencies, funds, and programmes, including UNHCR. All UN agencies are required to review their programmes in light of this guidance.

Of particular relevance to UNHCR in its work to protect displaced and returnee women and girls is the Secretary-General's emphasis on the requirement for all UN entities to review and strengthen gender-mainstreaming programmes,¹⁰⁹ to enforce the zero-tolerance policy on sexual exploitation and abuse,¹¹⁰ and to implement the proposals developed by the Inter-Agency Standing Committee (IASC) to strengthen the humanitarian response capacity.¹¹¹

¹⁰² 2005 World Summit Outcome, A/Res/60/1, 24 October 2005, paras. 58–59.

¹⁰³ *Ibid.*, para. 116.

¹⁰⁴ 2005 World Summit Outcome A/Res/60/1, 24 October 2005, paras. 117–118.

¹⁰⁵ *Ibid.*, para. 126.

¹⁰⁶ *Ibid.*, para. 132.

¹⁰⁷ *Ibid.*, para. 133.

¹⁰⁸ United Nations, "Implementation of Decisions from the 2005 World Summit Outcome for Action by the United Nations", Report of the Secretary-General, A/60/430, 25 October 2005.

¹⁰⁹ *Ibid.*, para. 39.

¹¹⁰ *Ibid.*, para. 38.

¹¹¹ *Ibid.*, para. 43.

6.3 Regional Legal Framework

Introduction

Regional refugee law and human rights law are also part of the international legal framework for protection. The regional legal framework is outlined very briefly below. A detailed analysis of all the regional standards applicable to the different issues and rights relevant to the protection of women and girls of concern is beyond the scope of this Handbook.

Purpose

Regional legal frameworks can provide useful tools to strengthen the protection of women and girls, especially where:

- States are not party to international instruments but are to regional ones;
- regional legal standards provide more detailed and/or higher standards; and
- regional courts are able to provide wider protection than the 1951 Refugee Convention, for instance, for women and girls who are in need of international protection but whose claims for asylum do not fall within the refugee definition.

It is nevertheless important to remember, as already indicated in chapter 1, section 2, that UNHCR's protection work is guided by the standards set out in international law and that it is these international standards which set out the basic normative framework for our work.

Regional instruments to protect refugees

Key regional instruments to protect refugees include the:

- Organization of African States (now African Union) Convention Governing the Specific Aspects of Refugee Problems in Africa (1969);
 - Cartagena Declaration on Refugees (1984);
 - Arab Convention on Regulating Status of Refugees in the Arab Countries (1994);
 - Bangkok Principles on the Status and Treatment of Refugees (1966, revised 2001); and
 - the various European Union directives and regulations that together form the Common European Asylum System.¹¹²
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Regional human rights instruments

Key regional human rights instruments that can be used to enhance the protection of women, girls, boys and men of concern include the:

- African Charter on Human and Peoples' Rights (Banjul Charter) (1981);¹¹³
 - American Convention on Human Rights (1969);
 - European Convention for the Protection of Human Rights and Fundamental Freedoms and its various protocols (1950);¹¹⁴
 - Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (1995); and
 - Arab Charter on Human Rights (1994).
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¹¹² These include directive and regulations on temporary protection, minimum standards for the reception of asylum-seekers, the "Qualification Directive" on common minimum standards regarding the concept of refugee and subsidiary or complementary protection, and the "Procedures Directive" on common minimum standards for status determination procedures. For further details, see UNHCR, "an Introduction to International Protection", Self-study module 1, 1 August 2005, p. 28.

¹¹³ The text and status of ratifications of the various regional African instruments mentioned can be found at <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>.

¹¹⁴ See <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?MA=3&CM=7&CL=ENG>.

6.3 Regional Legal Framework, continued

Enforcement mechanisms

The first three of these regional human rights instruments has a Court and/or Commission entrusted with protecting the rights set out in the instrument concerned.¹¹⁵ Individuals may appeal to these bodies once national remedies have been exhausted. These bodies can issue binding judgments and can award compensation.

Of particular relevance to women and girls of concern are rulings concerning, for instance, the obligation not to return anyone to torture; the situation of women in society,¹¹⁶ the guarantees that must be respected when determining children's refugee status;¹¹⁷ detention; family unity; and housing, land and property.

Regional instruments to protect women and girls

Regional instruments especially relevant to the protection of women and girls include the:

- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003);
 - African Charter on the Rights and Welfare of the Child (1990);¹¹⁸
 - African Youth Charter (2 July 2006);
 - Inter-American Convention on the Prevention Punishment and Eradication of Violence against Women (Convention of Belem do Para) (1994);¹¹⁹
 - Inter-American Convention on International Traffic in Minors 1994);
 - Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities (1999);
 - Organization of the Islamic Conference (OIC) Covenant on the Rights of the Child in Islam and
 - Council of Europe Council Convention on Action against Trafficking in Human Beings (2005).
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Protection afforded by these instruments

These various regional instruments establish important standards including, for instance, in relation to

- the principle of non-discrimination and equality between women and men;¹²⁰
 - women's and young people's participation,¹²¹
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¹¹⁵ African Commission and Court on Human and Peoples' Rights; Inter-American Commission and Court of Human Rights; European Court of Human Rights.

¹¹⁶ See Inter-American Commission of Human Rights, *Maria Eugenia Morales de Sierra v. Guatemala*, case 11.625, IACHR Report 4/01, 19 January 2001, at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Merits/Guatemala11.625.htm>.

¹¹⁷ Inter-American Court, Advisory Opinion OC-17/02 on the juridical condition and human rights of the child, 28 August 2002.

¹¹⁸ The Charter obliges States Parties to take specific protective measures for refugee and internally displaced children (Article 23). States Parties must also ensure these children's enjoyment of all the rights set forth in the Charter and in any other international human rights and humanitarian instrument to which the State is party. As with Article 22 of the CRC, States also agree to cooperate with international organizations that protect and assist refugees in protecting and assisting child refugees and asylum-seekers, and to help to trace the parents or other close relatives of an unaccompanied refugee child in an effort to achieve family reunification.

¹¹⁹ The Convention recognizes the right of every woman to be free from any physical, sexual, or psychological violence in both the public and private spheres. States Parties assume the obligation to pursue, by all appropriate means and without delay, policies to prevent, punish, and eradicate such violence. Significantly, the Convention specifically mentions refugee and internally displaced women. States Parties are obliged "to take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom" (Article 9).

¹²⁰ African Charter on Human and People's Rights, Articles 2, 3 and 18(3); American Convention on Human Rights, Article 1; European Convention on Human Rights, Article 14; and, in relation to children, the OIC Covenant on the Rights of the Child in Islam, Article 5.

¹²¹ 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 9; African Youth Charter, Articles 11 and 23; Andean Charter for the Promotion and Protection of Human Rights, Article 43.

6.3 Regional Legal Framework, continued

Protection afforded by these instruments (continued)

- strengthen women's and young people's participation in and capacity for peace building, conflict prevention and conflict resolution;¹²²
 - the minimum age for all recruitment and participation in hostilities;¹²³
 - the protection of women in armed conflict,¹²⁴
 - child labour;¹²⁵
 - juvenile justice and children of imprisoned mothers;¹²⁶
 - sexual exploitation and abuse,¹²⁷
 - harmful traditional practices,¹²⁸
 - refugee and internally displaced children,¹²⁹
 - female heads of household;¹³⁰
 - the protection of victims of trafficking;¹³¹ and
 - the right to own and inherit property.¹³²
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Regional standards on girls' education

As one more detailed example relating to education for girls of concern in Africa, various regional standards build upon those at the international level.

Under the 1990 African Charter on the Rights and Welfare of the Child, States Parties are obliged to take all appropriate measures "to encourage the development of secondary education in its different forms and to progressively make it free and accessible to all" (Article 11(3)) and "to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability" (Article 11(6)).

The 2006 African Youth Charter echoes this provision in Article 13(4), while its Article 23(1) concerns girls and young women and affirms that States Parties will guarantee "universal and equal access to and completion of a minimum of nine years of formal education". Both Charters require States to take all appropriate measures to "encourage regular school attendance and reduce drop-out rates" (Article 11(3) of the former and 13(4) of the latter).

Responsibility: UNHCR staff

It is therefore essential for UNHCR staff, including especially protection staff, to be familiar with regional instruments applicable in their area of operations so that they can use them to advocate for the rights of women and girls of concern, secure their protection and support solutions for them.¹³³

¹²² 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 10; African Youth Charter, Article 17.

¹²³ African Charter on the Rights and Welfare of the Child, Article 22; Andean Charter for the Promotion and Protection of Human Rights, Article 45.

¹²⁴ 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 11.

¹²⁵ African Charter on the Rights and Welfare of the Child, Article 15; OIC Covenant on the Rights of the Child in Islam, Article 18.

¹²⁶ African Charter on the Rights and Welfare of the Child, Articles 17 and 30.

¹²⁷ African Charter on the Rights and Welfare of the Child, Article 27; Optional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 3(4); African Youth Charter, Article 23(1).

¹²⁸ Optional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Articles 2 and 5; African Charter on the Rights and Welfare of the Child, Article 21; African Youth Charter, Articles 20 and 25.

¹²⁹ African Charter on the Rights and Welfare of the Child, Article 23, including regarding States Parties' cooperation with international organizations to protect and assist displaced children and regarding family tracing and reunification.

¹³⁰ Protocol to the African Charter on the Rights of Women in Africa, Article 24.

¹³¹ African Charter on the Rights and Welfare of the Child, Article 29 Council of Europe Convention on Action against Trafficking in Human Beings,

¹³² Protocol to the African Charter on the Rights of Women in Africa, Article 22; African Youth Charter, Article 9.

¹³³ As a starting point, the most relevant instruments can be found in volumes 3 and 4 of UNHCR, *Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR*, June 2007, at <http://www.unhcr.org/publ/PUBL/455c460b2.html>.

