



**UNIVERSITY OF GHANA**

**CHILD REFUGEE ISSUES IN AFRICA: AN EXAMINATION OF THE EFFECTS  
OF REFUGEE CRISIS ON AFRICAN CHILDREN, SPECIFICALLY CHILDREN  
FROM SOUTH SUDAN AND COTE D'IVOIRE.**

**BY**

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**THIS DISSERTATION IS SUBMITTED TO THE SCHOOL OF LAW, UNIVERSITY  
OF GHANA, LEGON IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR  
THE AWARD OF A MASTER OF ARTS DEGREE IN HUMAN RIGHTS AND  
ADMINISTRATION**

**JULY 2019**

**DECLARATION**

I hereby declare that except for acknowledged references this work is the result of my own research. It has not been presented anywhere either in part or in its entirety for the award of a degree.

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## **ACKNOWLEDGEMENTS**

I would like to thank God Almighty for His divine wisdom, grace and provision throughout my course of study at the School of Law, University of Ghana and also for giving strength to carry out this project to a success completion.

My profound gratitude to my supervisor Prof. E.O.V. Dankwa for his patience, kindness and dedicated interest in supervising my dissertation. I wish to also appreciate all the lecturers who taught me.

I would like to express my sincerest appreciation to my family, especially my husband for their support, encouragement, and for believing in me. I love you all.

I also want to say thank you to everyone else who helped me in any shape or form during this exercise, God richly bless you.

**DEDICATION**

To my husband, Dr. Makafui Baba Tunde Ibrahim Adebayo and

To Sena, you'll always be a part of me.

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## **CHILD REFUGEE ISSUES IN AFRICA: AN EXAMINATION OF THE EFFECTS OF REFUGEE CRISIS ON AFRICAN CHILDREN, SPECIFICALLY CHILDREN FROM SOUTH SUDAN AND COTE D'IVOIRE.**

### **Part I – Introduction**

#### **Background**

The estimated population of forcibly displaced people worldwide as of 2017 was about 68.5 million. Out of this number, 25.4 million were refugees. By these figures, there was an increase in the number of refugees by 2.9 percent from the figures recorded for the immediately preceding year - 2016 figures. As at the end of 2018, 19.9 million refugees were under the mandate of United Nations High Commissioner for Refugees (UNHCR) while the other 5.4 million were under the mandate of United Nations Relief and Works Agency (UNRWA).<sup>1</sup> Of these 25.4 million refugees, 52% of them were children and this represented more than half of the refugee population.<sup>2</sup> Impliedly, there are more refugee children worldwide than adult refugees.

Refugee children are confronted with multiple stressors which undermine their health (physical and psychological) and general wellbeing. Some of the challenges or stressors also extend to their education and physiological needs such as food, clothing and shelter. What is more, many of these refugee children are under the age of 8. They are, however, accustomed to a life of conflict and violence which is all they know and these conflicts or violent environment in which they grow up undoubtedly take a toll on their lives.<sup>3</sup> Some are detached from the biological parents, having been displaced, and are stuck with strangers. Where they are lucky, some family members accompany them. Otherwise, they move about unaccompanied even in foreign countries.

The usual observation is that natural disasters, famine, outbreak of highly contagious diseases, political violence including electoral disputes, ethnic conflicts, wars and other factors forcibly displace people including children. They had to relocate or better still, they are displaced because their present location, which hitherto was habitable, is no longer conducive for them to live in. These will be demonstrated in the course of this paper.

It is beyond doubt that these children need special attention as they face far greater danger to their safety and wellbeing. They have inherent human rights which are protected, upheld and

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<sup>1</sup> United Nations High Commissioner for Refugees, “Global trends: Forced displacement in 2017” (2018) 25 JUNE 2018 Glob Trends 76, online: [https://www.unhcr.org/5b27be547.pdf%0Ahttps://www.unhcr.org/5b27be547#\\_ga=2.120267853.454341789.1545759826-2065567210.1545048163](https://www.unhcr.org/5b27be547.pdf%0Ahttps://www.unhcr.org/5b27be547#_ga=2.120267853.454341789.1545759826-2065567210.1545048163).

<sup>2</sup> Joanna Prisco, “More Than Half the World’s Refugees Are Children”, (2018),

<sup>3</sup> World Vision, “Syrian refugee crisis: Facts, FAQs, and how to help | World Vision”, (2019), <https://www.worldvision.org/refugees-news-stories/syrian-refugee-crisis-facts>.

promoted by all and sundry including institutions such as Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations International Children's Emergency Fund (UNICEF), European Council on Refugees and Exiles (ECRE), African Union (AU), Non-Governmental Organisations (NGOs), Red Cross and many more whose work reduces the plight of these children. These institutions, however, face one challenge or the other in the course of their work.<sup>4</sup> This suggests that even though various instruments have been put in place to secure and protect the rights of children, and children refugees for that matter, some of these institutions face one challenge or the other. It follows that these children are deprived of the full benefit of these rights.

The purpose of this paper is to examine the effects of the child refugee crises in Africa and on African children. Two African countries – South Sudan and Cote d'Ivoire – will receive attention in this paper. While refugee matters affecting adults fall outside of the scope of this paper, they may be mentioned in passing and where the issues raised are germane to the purpose of this paper.

The paper is based on a desk study, drawing insight from extant literature on the child refugee crises and specific cases from Cote d'Ivoire and South Sudan. This method was considered appropriate for this work due to a number of factors: it is a low cost technique, there is limited time to conduct and complete this study and it provides an opportunity to gain an understanding of the topic through the review of previous work on the selected countries.

### **Justification for these two countries**

Although Africa has several countries facing unrest, the choice of these two countries (South Sudan and Cote d'Ivoire) as the focus of this paper is based on the fact that they provide a unique case which the student author wishes to explore. First, South Sudan is the country most hit with the refugee crisis on the African continent.<sup>5</sup> This is a great cause of concern because South Sudanese account for almost one third of the regions refugee population.<sup>6</sup> Difficult living situations such as armed conflicts, outbreak of communicable diseases, malnutrition took a huge toll on the lives of the population, causing up to 1 million new refugees to flee from the country in 2017. Protection was granted to these refugees on a prima facie bases in neighbouring countries such as Sudan (475,500), Uganda (406,100), Ethiopia (75,400), the Democratic Republic of Congo (22,100) and Kenya (21,000).<sup>7</sup>

Second, Cote d'Ivoire, which shares border with Ghana, has also experienced intense political conflicts in the past that makes it a useful case for this work. During the 2002 and 2010 Ivorian crises, many Ivorian's fled to neighbouring countries such as Liberia, Ghana, Guinea, and

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<sup>4</sup> *Ibid.*

<sup>5</sup> UNHCR, "UNHCR - South Sudan: Africa's Largest Refugee Crisis", (2019), online: <<https://www.unhcr.org/afr/news/videos/2019/2/5c7693f34/south-sudan-africas-largest-refugee-crisis.html>>.

<sup>6</sup> United Nations High Commissioner for Refugees, *supra* note 1.

<sup>7</sup> *Ibid.*

Togo. Meanwhile, over 1 million people were internally displaced in Cote d'Ivoire.<sup>8</sup> Ghana hosted the Ivorian refugees in 3 different camps managed by the National Disaster Management Organization (NADMO) and assisted by the Ghana Refugee Board. Other Christian societies such as the Christian Council of Ghana (CCG), the Assemblies of God Relief and Development Services (AGREDS), as well as the National Catholic Secretariat (NCS) also partnered with the UNHCR in supporting the refugees with their basic needs.<sup>9</sup>

Despite the wider attention dedicated in the academia and elsewhere (like the media) to conflicts on the African continent in general, the focus on issues of refugee children fleeing from violence, especially in the context of South Sudan and Cote d'Ivoire are very limited in extant literature. Meanwhile children appear to be the most vulnerable in refugee matters.

This paper is presented in five parts. Part I clarifies the key terms used in the paper. Part II deals with refugee status in Africa whereas Part III deals specifically with children refugee issues in Africa. It further deals with the case studies of children refugee issues in South Sudan and Cote d'Ivoire. Finally, Part IV deals with the rights and treatment of South Sudanese and Ivorian refugee children. Part V presents the findings, recommendations and conclusion of the work.

## **Definition of Key Terms**

### ***Meaning of Child***

The definition of a child is quite fluid. Generally, the definitions offered for who can be said to be a child is contextualized and restricted to what is at stake. This view is formed from the fact that a child for the purposes of determining a criminal responsibility may be different from a contract case. It may even be different from one country to another. Furthermore, the definition of a child may also differ from one statute or convention to another. This is exemplified below.

The Convention on the Rights of the Child (CRC)<sup>10</sup> defines a child as follows: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."<sup>11</sup> The definition given by CRC is limited in three main respects. First, the definition is only applicable to issues under the CRC as is evident by the phrase "For the purposes of the present Convention". Secondly, to be considered a child, the person must be less than eighteen years old. Finally, the CRC definition admits of situations where a law maintains that a person is not a child even though that person has not attained the age of eighteen years.

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<sup>8</sup> UN HIGH COMMISSIONER FOR REFUGEES, "Solutions in West Africa - Ivorian refugees - Q3 2018 - Côte d'Ivoire | ReliefWeb", (2018), online: <<https://reliefweb.int/report/c-te-divoire/solutions-west-africa-ivorian-refugees-q3-2018>>.

<sup>9</sup> UNHCR, "Brong Ahafo Region – UNHCR", (2017), online: <<http://www.unhcr-ghana.org/about-unhcr/where-we-work/brong-ahafo-region/>>.

<sup>10</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49

<sup>11</sup> Convention on the Rights of the Child, article 1

In the same vein, the African Charter on the Rights and Welfare of the Child (ACRWC) defines a child as every human being who is less than eighteen years old.<sup>12</sup> What the foregoing means is that a provision in a statute such as this: “For the purposes of the criminal law a person under twelve years of age is incapable of committing a criminal offence”<sup>13</sup> falls within the definition of the CRC, and so a person above twelve years is not a child and is therefore responsible for his or her actions under the criminal law.

Clearly, conventions and statutes do not offer absolute definitions of who is a child. What can be noticed is that there is some limitation often expressed as “For the purposes of this Convention, Charter, Act etc.” Again, in terms of the age limit, most instruments peg it at eighteen years, except where a law provides otherwise. While in Ghana the age limit for a child is consistent with other international and regional instruments, it is worth noting that in special circumstances the definition of a child deviates from the norm. For instance, while a person can make a will at age eighteen, such a person cannot be an executor of a will as the minimum age requirement for this position is twenty-one years. Also, an eighteen year old may acquire a driver’s license<sup>14</sup> and cast a valid ballot.<sup>15</sup> However, such a person is not qualified for election as a Member of Parliament or President of the Republic of Ghana as the age requirement are twenty-one and forty years respectively.

Presently, it is estimated that there are at least 2.2 billion children in the world. Out of that number, about 1.9 billion are in the developing world and 340 million reside in sub-Saharan Africa.<sup>16</sup> Being the most vulnerable in every society, children require the utmost care and direction to mould them into a responsible adulthood. In all actions concerning the child undertaken by any person or authority, the best interests of the child ought to be the primary consideration.<sup>17</sup>

### ***The Refugee and Related Concept***

Universally, the status of refugees is governed by two main instruments namely: the Convention Relating to the Status of Refugees (the 1951 Convention) and the Protocol Relating to the Status of Refugees (the 1967 Protocol), which have been adopted and applied within the United Nations framework. The juridical basis of these instruments is the Universal Declaration of Human Rights (UDHR). It states that all persons are entitled to the right not only to seek for but also enjoy asylum from persecution in any other country. The exception created to this right

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<sup>12</sup> African Charter on the Rights and Welfare of the Child, Article 2

<sup>13</sup> Criminal Offences Act of Ghana, 1960 (Act 30), section 26

<sup>14</sup> Road Traffic Regulations, 2012 (L.I 2180)

<sup>15</sup> Constitution, *supra* note 9, Article 42

<sup>16</sup> UNICEF, the State of the World ’ S Children 2005 Under Under (2005).

<sup>17</sup> ACRWC, *supra* note 8, Article 4

is that it does not apply in prosecutorial matters arising genuinely from apolitical crimes or acts done in contravention of the purposes and principles of the United Nations.<sup>18</sup>

The 1951 Convention may be criticized as limiting itself to addressing issues arising from World War II. In other words, the Convention was essentially made to address the World War II problems and not necessarily issues in modern day.

A cardinal thing noticeable about the 1951 Convention, contradistinguished from existing conventions, was its unification effect. It brought, into a single document, the rights as are applicable to refugees within the international community. The significance of the 1951 Convention has been presented succinctly thus:

The Convention is both a status and rights-based instrument and is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and non-refoulement. Convention provisions, for example, are to be applied without discrimination as to race, religion or country of origin. Developments in international human rights law also reinforce the principle that the Convention be applied without discrimination as to sex, age, disability, sexuality, or other prohibited grounds of discrimination.<sup>19</sup>

Another aspect of the Convention is the definition it offers off refugee. Under the 1951 Convention, for a person to be said to be a refugee, that person must meet the criteria set down by the UNHCR Statute. The person must qualify for protection under the United Nations scheme of things. It does not matter that the person is in a country which is not a party to the 1951 Convention or the 1967 Protocol. There are 110 state-parties to both the 1951 Convention and 1967 Protocol. It also does not matter whether the country in which he finds himself regards him a refugee.<sup>20</sup> But questions such as who is a refugee and whether a refugee is different from other displaced persons is important for understanding the concept of refugee.

According to 1951 Convention the term “refugee” shall apply to any person who:

As a result of events occurring before 1 January 1951 and 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.<sup>21</sup>

The definition contains some key elements worthy of attention in order to understand who is a refugee. First, from the above definition, a refugee may be a national of a particular state.

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<sup>18</sup> Universal Declaration of Human Rights (UDHR), 1948, Article 14.

<sup>19</sup> 1951 Convention

<sup>20</sup> *Ibid*

<sup>21</sup> 1951 Convention, Article 1 A (2)

Alternatively, he may not have a nationality. Secondly, one cannot be said to be a refugee unless he fears being persecuted. Some decisions of the courts point to one thing about persecution which is that, it is geared towards physical or mental abuse or torture. In the case of *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*<sup>22</sup>, the Canadian Federal Court of Appeal stated that "... the State of emergency in Sri Lanka cannot justify the arbitrary arrest and detention as well as beating and torture of an innocent civilian at the hands of the very government from whom the claimant is supposed to be seeking safety". In the case of *He v. Canada (Minister of Employment and Immigration)*<sup>23</sup>, it was held that to "permanently deprive a teacher of her profession and forever convert an educated young woman into a farm hand and a garment worker constituted persecution". Under this case, economic deprivation was held to amount to persecution.

Thirdly, the fear must be based on reasonable grounds. The Convention says that it must be "well-founded." Thus, a mere allegation of an attempt to be persecuted will not do. The reasons for the persecution must be either of these: race, religion, nationality, membership of a particular social group or political opinion. Persecution therefore is a term of art, bearing a special meaning. Fourthly, the well-founded fear must be because of events occurring before 1 January 1951. What are these events? The Convention defines events before 1 January 1951 as either one of two things. These are:

- (a) "events occurring in Europe before 1 January 1951 or
- (b) events occurring in Europe or elsewhere before 1 January 1951"<sup>24</sup>

Finally, a refugee must be outside the country of his nationality or his habitual place of residence. It has therefore been submitted that:

The emphasis of this definition is on the protection of persons from political or other forms of persecution. A refugee, according to the Convention, is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.<sup>25</sup>

Simply put, a refugee is a person unable or unwilling to return to their country of origin or habitual place of residence, if he is not a national of any state, owing to a well-founded fear of being persecuted for some reasons, which reasons may be racial, religious, national, or being a member of a particular social group, or political opinion.<sup>26</sup>

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<sup>22</sup> [1994] 1 F.C. 589 (C.A.) § 22

<sup>23</sup> (1994), 25 Imm. L.R. (2d), 128 (F.C.T.D.)

<sup>24</sup> 1951 Convention, Article 1 A (2)

<sup>25</sup> UNHCR, Convention And Protocol Relating To The Status Of Refugees (1951).

<sup>26</sup> *Ibid*

In mid-2015 alone, there were an estimated 20.2 million new refugees in the world. Globally, this was the highest number of refugees migrating across borders in 20 years, with 4.1 million refugees living in Sub-Saharan Africa, 3.8 million in Asia and the Pacific, 3.5 million in Europe, 3 million in the Middle East and North Africa and 753 000 in the Americas.<sup>27</sup>

Refugees tend to immediately seek asylum in their neighbouring countries, waiting for calm in their home countries so that they can return to their homes.<sup>28</sup> In the case of Africa, these refugees who might arrive in huge numbers, find themselves in a state of hopelessness as their host countries mostly also battle with issues of a struggling economy, and political instability, to mention a few. To take on refugees only comes to add on to their plight. Such countries, will require additional security and social amenities to cater for the refugees.<sup>29</sup> Generally, the economic and environmental burdens of host countries are heightened.

Persons who are forcibly evicted from their home countries due to natural disasters, political violence, famine, wild break out of infectious diseases, become displaced and have their entire livelihood undermined.<sup>30</sup> Scholars have come to a consensus on five common causes of displacement of people: natural disasters, long term environmental degradation, industrial accidents, armed conflicts and developmental issues.<sup>31</sup> But these people cannot be said to be refugees.

It is worthy of note that some occurrences may be similar to the situation refugees find themselves in. In other words, there are other concepts which are closely related to that of refugee except that there are vast differences. One such concept is a stateless person. Such a person is considered as not being a national of any state by the operation of the laws of the state. It also includes persons whose nationality is not established.<sup>32</sup>

There are also asylum-seekers. These are people who claim refugee status, in that they claim to be refugees. However, their claims are yet to be definitively assessed. The point is that they

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<sup>27</sup> Williams, Bhanu et al, "Medical and social issues of child refugees in Europe" (2016) 101:9 Arch Dis Child 839 <<http://adc.bmj.com/lookup/doi/10.1136/archdischild-2016-310657>>

<sup>28</sup> Mina Fazel et al, "Mental Health of Displaced and Refugee Children Resettled in High-income Countries: Risk and Protective Factors" (2012) 379:9812 Lancet 266

<[http://dx.doi.org/10.1016/S0140-6736\(11\)60050-0](http://dx.doi.org/10.1016/S0140-6736(11)60050-0)>.

<sup>29</sup> *Ibid*

<sup>30</sup> David Keane, "The Environmental Causes and Consequences of Migration: A Search for the Meaning of Environmental Refugees" (2004) 16 Georg Int Environ Law Rev 209,

<[https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/gintenlr16&id=221&men\\_tab=srchresults](https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/gintenlr16&id=221&men_tab=srchresults)>.

<sup>31</sup> *Ibid*

<sup>32</sup> Convention relating to the Status of Stateless Persons (Adopted on 28 September 1954 by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 526 A (XVII) of 26 April 1954. Entered into force on 6 June 1960, in accordance with article 39), Article 1(1)

find themselves in other countries by reason of fleeing persecution in their home country, they are yet to be given legal status. It is for the national asylum systems of the country into which the asylum seeker has fled or UNHCR to exercise its mandate to determine whether the said person or people qualify for international protection. In the United States of America (USA), asylum seekers are, generally, detained pending a determination of their case. Should some persons be judged as not qualified to be refugees, or that they are not in need of international protection or that they are not being persecuted in their home country or place of residence for which reason they cannot be granted refugee status, they are sent back to their home countries.<sup>33</sup>

Usually, internally displaced people (IDPs) are mistakenly identified as refugees. But IDPs are in their own country. They have not crossed the borders of their own countries into different countries. It is the case that they may have fled from such things as war, violence or persecution, or some natural disasters but then they remain in the same country. They live under the government of their own nation. To some extent, they have just been displaced or that they had to relocate from their usual place of residence to some other place due to internal disturbances.

### ***Child Refugees***

The refugee population is estimated by the United National Commissioner for Refugees (UNHCR) to be over 43 million individuals worldwide out of which approximately 46% are children.<sup>34</sup> About half of the world's refugee population are children and adolescents.<sup>35</sup> This group of people, however, tend to be very key and essential part of society. They are the world's future leaders who under normal circumstances should be brought up with all the needed basic amenities and be well-educated and trained. In this paper, the child refugee is a refugee who is below the age of 18 years old. This operational definition is adopted for the purposes of this paper.

In the literature on children refugees, the numbers are undoubtedly quite huge. At the moment, they are said to represent a quarter of all asylum-seekers who enter Europe. The caution is for them to be treated, no matter the situation, as children. Treating them as children should not be conditioned on their migration status or that of their parents. In all international matters, children's rights should be given the needed prominence. It must be the primary consideration in all matters affecting children including their migration within the international community. That being the case, "the principle of non-discrimination should be respected, and the best interests of the child shall be a primary consideration in all actions or decisions concerning children."<sup>36</sup>

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<sup>33</sup> Ali, Muzafar, Briskman, Linda, Fiske, Lucy. (2016). Asylum seekers and refugees in Indonesia: Problems and potentials. *Cosmopolitan Civil Societies: An Interdisciplinary Journal*. 8. 22. 10.5130/ccs.v8i2.4883.

<sup>34</sup> John S Murray, "Displaced and forgotten child refugees: A humanitarian crisis" (2016) 21:1 *J Spec Pediatr Nurs* 29, online: <<http://doi.wiley.com/10.1111/jspn.12133>>.

<sup>35</sup> Williams et al, *supra* note 22.

<sup>36</sup> Let Children be Children

## Part II - Refugee Status in Africa

The state of refugees is deplorable and appears to be a worldwide phenomenon. It is the same in African countries. In the 1990s, Africa had about 6,000,000 refugees. These included children, women and men. Some of the refugees were in Burundi (270,000) who were from Rwanda; Ivory Coast (280,000) from Liberia; Djibouti (100,000) who were from Somalia and Ethiopia. Aside these numbers, there were 1,200,000 Somalians and Sudanese in Ethiopia; 450,000 Liberians and Sierra Leoneans in Guinea; 145,000 Rwandans and Sudanese in Uganda and 140,000 Angolans in Democratic Republic of Congo (formerly known as Zaire).<sup>37</sup>

The numbers keep increasing with passage of time. As at the end of 2016, sub-Saharan Africa had the largest number of refugees and IDPs. There were about 9.6 million refugees. As of the end of 2017, there were 24.2 million refugees. These are mostly from the Central African Republic, the Democratic Republic of the Congo, Nigeria, Somalia and South Sudan.<sup>38</sup>

Approximately 15 million refugees are known to have fled their home countries. Another 28 million people remain displaced because of ongoing conflict in their land of origin. These “refugees” are recognized as being internally displaced. Over 80% of all refugees are situated in developing countries that can least afford the additional burden. However, too often more emphasis is placed on where refugees are running to and not what they are running from.<sup>39</sup>

The issue of people having to flee from their homes and countries has long existed. It spans the era when protestants had to flee for fear of religious persecution in France in the 17th century to the 20th century where the world was faced with the greatest refugee crisis ever as a result of the ‘Second World War’ where about 50 million people were displaced all over the world, right into the present 21<sup>st</sup> century with Syrians fleeing extremely harsh war condition in their country.<sup>40</sup>

More importantly, such persecutions have also been experienced in recent past. Those persecutions include those that happened in Afghanistan, Eretria and Sudan. Be it for political, religious, social, racial or national factors, such persecutions were enough reasons for people to flee their homes, for fear of their lives.

The above distribution of refugees across the globe has been doubted. The doubt surrounds the accuracy of the figures mentioned. This is because it is thought that:

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<[https://www.sos-childrensvillages.org/getmedia/32eeb951-d731-48ae-86fb-96b9aff63f3e/Let-Children-be-Children\\_Case-studies-refugee-programmes.pdf](https://www.sos-childrensvillages.org/getmedia/32eeb951-d731-48ae-86fb-96b9aff63f3e/Let-Children-be-Children_Case-studies-refugee-programmes.pdf)>

<sup>37</sup> UNHCR, UN Doc. A/AC.96/774 (Part 1) of 29 August 1991

<sup>38</sup> Let Children be Children, *supra* note 31.

<sup>39</sup> *Ibid*

<sup>40</sup> <https://www.globalcitizen.org/en/content/reasons-why-people-become-refugees/>

There is no sure knowledge and very little agreement on the correct numbers of refugees in Africa or their distribution among countries of origin and countries of asylum. This statistical confusion is deeply disturbing. It is not a petty matter whether there are one or two million people estimated in need of protection and assistance. Relief programs have been blocked or stalemated because of ignorance or arguments over the number of the needy.<sup>41</sup>

What is undoubted is that there are myriads of causes of refugees in Africa. Some of the prominent causes are political instability and poor economic conditions. For instance, tribal disputes and civil wars on the continent are a commonplace. It is no secret that most, if not all, boundaries of African countries were drawn by the colonial masters. This was done arbitrarily without due regard, most especially, to then existing ethnic units, communal ties or economic relations. The result has been irredentist or secessionist movements or activities. This is often carried out by minority groups aimed at obtaining greater autonomy within a state, achieving economic emancipation or for self-determination purposes. Such movements and their internal hostilities eventually result in civil war. The target then would be to go after the ring leaders who normally flee from their country of origin to another country. This exemplifies the political causes of refugee.

Another example of political course of refugee in Africa is the struggle for political power. A common phenomenon on the continent is dictatorial political leadership and heads of states clinging on to power even after their legal term of office expires. This typically leads to violent resistance from opposition parties which in most cases escalate into full-fledged conflicts as in the case of Cote d'Ivoire.

Other causes include institutionalised violation of fundamental human rights of citizens. Mostly people in opposition or those members of the government who tend to criticise the government become the target. Some persecutions are purely the result of a person's "race, religion, nationality, membership of a particular social group or their political opinion; civil wars or events seriously disturbing public order in either part or the whole of the country of origin; external aggression, occupation or foreign domination in either part or the whole of the country of origin"<sup>42</sup>

Apart from the political factors, there are those called "famine refugees." These are refugees who suffer from "economic distress". It is mostly identified with the sub-Saharan African area. This was particularly experienced in 1980s when many African countries experienced drought and famine. This forced quite several African herdsmen to move from their countries or places of habitual residence to find different grazing lands for their animals. There were also Africans leaving their country to another place in search for better means of survival. These people were largely assisted by people and organisations from the different parts of the world with enormous

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<sup>41</sup> Peter Nobel, *Refugees, Law, and Development in Africa*, 3 *Mich. J. Int'l L.* 255 (1982).

<sup>42</sup> Rainer Hofmann, *Refugee Law in the African Context* (1992)

[https://www.zaoerv.de/52\\_1992/52\\_1992\\_2\\_a\\_318\\_333.pdf](https://www.zaoerv.de/52_1992/52_1992_2_a_318_333.pdf)

reliefs.<sup>43</sup> This notwithstanding, they do not meet the threshold to be regarded as refugees in the true sense of the word, that is in the legal sense<sup>44</sup> as provided by the 1951 Convention.

In Africa, two streams of legal regimes govern refugee matters. One can be described as a generalized instrument and the other as particular. However, the two sets of instrument co-exist and both apply to Africa at the same time. One set is the 1951 Geneva Convention Relating to the Status of Refugees (GCR) and the 1967 Protocol to the 1951 Convention. The other instrument on the other hand is more particular and restricted to Africa. It is the 1969 OAU Convention Governing the Specific Aspects of Refugee Law in Africa.<sup>45</sup> Under this instrument, an extended definition of refugee is provided as follows:

The term "refugee" shall mean every 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.<sup>46</sup>

Another definition provided in the 1969 OAU Convention is that:

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.<sup>47</sup>

The main purpose of the 1969 Convention is provided in 1990 Khartoum Declaration. It provides that:

At the continental level, the African Heads of State and Government have resolved to enter into continuous dialogue on the question of root causes of refugees, within the framework of the relevant resolution adopted by the Summit in this regard. They have resolved to translate into action their collective and individual commitment to the defence and promotion of human and people's rights and to the peaceful settlement of internal and inter-State conflicts; and to continue respecting the principle of non-interference in the

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<sup>43</sup> *Ibid*

<sup>44</sup> A. Grahl-Madsen, *The Status of Refugees in International Law*, Vol. 1 (1966), 173

<sup>45</sup> M. RweIamira, *the 1969 OAU Convention on the Specific Aspects of Refugee Problems in Africa*, *international journal of Refugee Law* 1 (1989), 557; P. Weis, *The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*, *Human Rights Law journal* 3 (1970), 449

<sup>46</sup> *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 1969, Article 1(1)

<sup>47</sup> *Ibid*, Article 1(2)

internal affairs of other States in accordance with the provisions of the Charter of the Organization of African Unity and that of the United Nations, without necessarily remaining indifferent to internal situations that may lead to influxes of refugees on the Continent.<sup>48</sup>

### **Part III - Africa and Refugee Children**

Refugee issues are not peculiar to adults. Children are also affected. According to a UNICEF press release in February 2019, the number of uprooted children on the continent consisting of those living as refugees, migrants or internally displaced is about 13.5 million. Also, children account for more than half the refugee population in Africa and a quarter of migrants on continent<sup>49</sup> which is twice the global average.

Children who become refugees, and live in refugee camps, have poor access to potable water and food, meagre security measures and little to no opportunities for health care and education, all of which are basic necessities of life, needed more especially by a growing child.<sup>50</sup> They are sometimes forced into child labour and in the case of girls, child prostitution in order to raise some money to support themselves and their families. Although these refugee camps are supposed to be safe havens for these children, the truth of the matter is that this is not always the case. In fact, most of these refugee children in camps in Africa, live in very difficult conditions. Some of these children are brutalised, raped, and others are trafficked, forced to join bad gangs and many into other negative social vices such as abuse of alcohol and hard drugs.<sup>51</sup> These children will need extra care and counselling to recover psychologically and physically from their traumas. Anxiety may also arise when the children must learn new languages and culture in order to adjust well to their new environment.<sup>52</sup>

Children are the most vulnerable people in the refugee crisis in Africa. Their health, nutrition, education and personal development are all affected. It is therefore very important to help in the best possible way to ensure that their future is protected. It is also important to protect them from falling prey to crime and other social vices due to lack of opportunities and due to frustration. Table 1 shows the distribution of refugee children across the African continent.

#### **Issues of Child Refugees**

This section deals with refugee issues affecting children in South Sudan and Cote d' Ivoire. Though children refugees in these countries form the subject matter or the crux of the issues,

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<sup>48</sup> International journal of Refugee Law 3 (1991), 156.

<sup>49</sup> UNICEF Press release (February 9, 2019)

<sup>50</sup> *Ibid*

<sup>51</sup> *Ibid*

<sup>52</sup> *Ibid*

the discussions will be placed in the context of broader refugee issues in these countries. What follows immediately is the South Sudanese situation followed by the Ivoirian case.

Table 1: Estimated Child Refugees by Region.

Region	Proportion of refugees who are children (%)
East and Horn of Africa	60
Central Africa	56
West Africa	55
Southern Africa	50
Asia – Pacific	40
Middle East and North Africa	47
Americas	26
Europe	21

### *Case Study of South Sudan*

Gatwech, a 16-year-old, clung to his mother as they both sobbed quietly into each other's shoulder. They had been separated for close to a year and half since the day war broke out between the rebels and the government troops in their village in South Sudan. Gatwech was in school that afternoon when gunshots started raining all over the village. He and his entire class run to the bush nearby for hiding. After many sleepless nights of hiding, he finally made his way to the Ugandan border. All this time, he had no idea what had happened to his family and if he would ever lay eyes on them again. It was too dangerous to go back in search of his family. He settled in the Bidi Bidi Camp, where he reunited with his mother after several months.<sup>53</sup>

Since gaining independence in 1956, Sudan has witnessed turbulent conflict situations. These often occur in the southern part Sudan. One key conflict that had devastating effect on the country was the South Sudanese Civil War. It took 16years for the conflict or war to come to an end. Apart from people losing their lives, relatives, properties, and sustaining various degrees of injuries, thousands of Sudanese in the southern part of the country had to flee for

<sup>53</sup> UNHCR, *supra* note 5.

their lives, abandoning their properties among other things. They thus became refugees in other countries.<sup>54</sup>

Disturbances in Sudan were further fuelled by the actions of the Anya Nya. The Anya Nya was a secessionist movement. The aim of the group was to seize power and to govern the South. Essentially, it was “a struggle for dominance in the south between the Arab-influenced Muslims of northern Sudan and the Christian or animistic African peoples in the south.” Furthermore, a large number of refugees had moved from Eritrea into Sudan in 1960.

Several factors have made the Sudanese conflict recurrent. Political and economic factors have accounted for the continuous strife. Another factor is armed opposition to the government.<sup>55</sup> It has been noted that the Sudanese conflict has resulted in a steady rise in military expenditure. The effect is that budget for social amenities and infrastructure that will boost economic development has reduced. As a result, most people are unemployed, and their standard of living is generally low. The government is perceived as only spending to fight armed people and not spending on the livelihood needs of the people. This has created resentments and grievances, making it resourceful to join armed forces.<sup>56</sup> The point, in emphasis, is that “the guerrilla organization presents opportunities for survival, rewards, recognition and advancement not available to most civilians in South Sudan.”<sup>57</sup>

The effect is that South Sudan has been struggling. There is complete absence of law and order. Over the years, South Sudanese have gone through misery, with the option of staying in the war prone area or leaving the country. Due to the continuous “anarchy, violence and poverty” a lot of South Sudanese fled or became displaced. But these problems have not only affected South Sudan but also, they have affected the horn of Africa region and the African continent as a whole.<sup>58</sup> Consequently, “the problem of refugees, the smuggling of small arms and the light weapons and the spreading terrorism are all threats emerging from South Sudan, mainly affecting the horn of Africa and international community in general”<sup>59</sup>

Violence again ensued in South Sudan in July 2016. In this renewed violence, an estimated number of 2.5 million South Sudanese people fled to neighbouring countries. In all, it was estimated that about 1.8 million were IDPs. This made the South Sudan situation the largest displacement crisis in the region. This in effect, intensified the state of lawlessness and severe

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<sup>54</sup> An Analysing Account of the Conference on the African Refugee Problem, Arusha, May 1979 in (L. Eriksson, G. Melander, & P. Nobel eds. 1981)

<sup>55</sup> David, F. Peace and Conflict in Africa. Zed Books London (2008).

<sup>56</sup> Carlos, K and Gutschke, T. South Sudan’s Newest War: When two old men divide a nation. (2014). GIGA German Institute of Global and Area Studies.

<sup>57</sup> Aziza, *supra* note 44.

<sup>58</sup> Ibrahim, A. O. South Sudan Secession: Modeling the Fiscal Shock and Its Spillover Effects. (2013). University of Khartoum. UNISCI Discussion Papers, No 33.

<sup>59</sup> Aziza Geleta Dessalegn

food shortages, and set a large number of South Sudanese population including children out to other countries in search of refuge.<sup>60</sup>

South Sudan has the most serious refugee crisis in Africa, and the third largest in the world, after Syria and Afghanistan. Violence such as that of the South Sudanese violence, have dire consequences on the aged, women and children. Regrettably, in the case of the South Sudan, 65 percent of South Sudanese refugees are children, meaning in the context of this study they are below age of 18.<sup>61</sup> Most of these children fleeing from violence and sexual assault travel by themselves and often arrive weak and malnourished.<sup>62</sup> As studies show, in Africa, nearly half of the children are female. The results of some studies show that in three out of every four countries in Africa that have experienced conflicts, and for which reason their citizens must seek refugee elsewhere, the proportion of female children refugees varies between 45 and 55 per cent. South Sudan is not an exception. This indicate the conflict issues have gender implications.<sup>63</sup>

In addition to the gender issues, refugee children often arrive in host nations with low education levels. Some are complete illiterates. In other words, refugees arriving in host nations hardly have th formal education. This stretches host countries' limited resources. On this, two illustrations will suffice. The first illustration applies to Chad. Refugees from the Central African Republic, Nigeria and Sudan enter that country (Chad). These refugees include children (between the ages of 6 – 14 years). It is estimated that 30% of these numbers are illiterate. Again, South Sudanese refugee children entering Uganda settle in the poor West Nile sub region, where the secondary school attendance rate was 9% as of 2016. This attendance rate is less than half the national rate.<sup>64</sup>

In sum, the world's newest nation, known for its rich oil resources has been engulfed with extreme poverty as a result of decades of civil war.<sup>65</sup> A situation that started off as a political disagreement escalated to an epic ethnic violence which has caused several loss of lives and chronic hardship to its citizens.<sup>66</sup>

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<sup>60</sup> Aziza, *supra* note 44.

<sup>61</sup> UNHCR, "South Sudan Refugee Crisis: Aid, Statistics and News | USA for UNHCR", (2018), online:

<<https://www.unrefugees.org/emergencies/south-sudan/>>.

<sup>62</sup> *Ibid*

<sup>63</sup> UNHCR, 2000 Global Refugee Trends

<sup>64</sup> Calderone, Margherita, Francois Maystadt, and Liangzhi. Local Warming and Violent Conflict in North and South Sudan. (2013). SSRN Electronic Journal. 10.2139/ssrn.2287558.

<sup>65</sup> BBC, *supra* note 52

<sup>66</sup> *Ibid*

### *Case Study of Côte d'Ivoire*

The Republic of Côte d'Ivoire is in West Africa. Its political capital is Yamoussoukro while Abidjan is the commercial capital. Its immediate neighbouring countries are Mali and Burkina Faso in the north, Ghana in the east and Liberia and Guinea in the west. The country prospered due to cocoa production and the foreign investment it derived from it.<sup>67</sup>

Cote d'Ivoire became the centre of attention following its polls in 2010. The Ivorian Presidential Elections resulted in a protracted political conflict since 2010. Alassane Dramane Ouattara won the elections. However, the incumbent President, Laurent Gbagbo refused to give up power. With the backing of UN and French military forces, Ouattara supporters forced Gbagbo out of office. This led to a serious humanitarian crisis. Thousands of Ivorians sought refuge in neighbouring African countries and beyond. This is how one Madam Kabra<sup>68</sup> who run a popular restaurant recounted her challenges at the time of the conflict:

“It was a very difficult decision to leave my country. My restaurant business proceeds of which paid the fees of my children was growing and my plan to expand the business was on course” said Madam Kabra.

“The safety of my family was very important to me and we just had to leave everything behind and flee for our lives. I had to leave my home, business, everything, not knowing what conditions await us as we left our country” Kabra lamented

Some Ivorians fled their country for Ghana or Morocco or to some other African country. Three years after the crisis began, the estimated population of Ivorian refugees in Ghana alone was around 9,000. Out of this number, about 8,500 of them lived in three refugee camps in three regions in Ghana.<sup>69</sup>

The first of the three camps for the Ivorian refugees was the Ampain Camp. It was established in the Ellembelle District, which is in the Western Region of Ghana. It was built in 2011 (a year after the crisis) to provide shelter for the Ivorian refugees.<sup>70</sup> In all, the camp was ‘home’ for about 5,177 persons of concern (PoC). This number included children. Again, this number was made up primarily of presumed Ivoirian nationals with a small number of other nationals who were in Côte d'Ivoire at the time of the crisis. In other words, the camp was not exclusively made for Ivorians. It consisted of other nationals except that at the time it was made, the Ivorians dominated the camp and other nationals residing in Cote d'Ivoire when the violence broke out. They joined the Ivorians to Ghana.<sup>71</sup>

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<sup>67</sup> Maastricht Graduate School of Governance (MGSoG). Côte D'Ivoire Migration Profile (2017)

<sup>68</sup> Picking up the pieces: the story of Kabra, an Ivorian Refugee in Ghana

<sup>69</sup> UNHCR, “Ampain Refugee Camp Briefing Notes” (2016).

<sup>70</sup> UNHCR, “Ampain Refugee Camp Briefing Notes” (2016).

<sup>71</sup> UNHCR, “Ampain Refugee Camp Briefing Notes” (2016).

A 2017 study conducted by the *Maastricht Graduate School of Governance (MGSoG)* show that as of 2016, an estimated 46,741 Ivorian refugees, and 18,575 asylum seekers from Cote d'Ivoire were living outside of the country.<sup>72</sup> Most of the refugees and asylum seekers left for Europe. Others left to neighbour African countries.<sup>73</sup> In the attempt to seek refuge in Europe, most Ivorian refugees ended up in France as a result of its colonial relationship with Cote d'Ivoire. It has also been observed that refugees and asylum seekers have different countries they prefer to go. "For the refugees, the most common countries of destination included Liberia, Ghana, Italy, Guinea, France, Togo, the United States, and Mali. For asylum seekers, the top destination countries were Angola, Italy, Germany, France, the United States, Ghana, Togo, and Senegal."<sup>74</sup>

Following the crisis, some people took advantage of the situation. Côte d'Ivoire became a major "source, transit, and destination country of victims of human trafficking, specifically forced labour, sex trafficking, and some instances of drug trafficking."<sup>75</sup> The victims were largely women and children. Of these people, children were in the majority. The Ivorian boys were compelled to engage in begging or child labour. Most of them were forced into agriculture, mining, carpentry, and construction industries. It is estimated that 200,000 children were forced to work in these industries. Some of them worked in central and northern Cote d'Ivoire while others worked in host nations like Burkina Faso, and Togo where they also worked on cocoa farms.<sup>76</sup>

Aid was extended to the refugees from different sources. For instance, the Government of Ghana aided in the provision of camp management through the National Disaster Management Organization (NADMO) and the general oversight of operations through the Ghana Refugee Board. UNHCR received favourable collaborations from Ghana Refugee Board, Ghana Immigration Service, the Police, the District and the Municipal Assemblies, as well as the Ghana Health Service in dealing with issues affecting the refugees in Ghana.

In 2004, of 493 separated children, almost a quarter were settled with foster families and 42 were reunited with their families in Cote d'Ivoire. Child health programmes concentrated on immunization and combating malnutrition. UNHCR provided firewood to refugee women who risked sexual assault when walking long distances to fetch wood for cooking<sup>77</sup>

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<sup>72</sup> *MGSoG (2017)*. Côte D'Ivoire Migration Profile: Study on Migration Routes in West and Central Africa

<sup>73</sup> United Nations High Commissioner for Refugees (UNHCR). (2016b). Population Statistics. Retrieved from [http://popstats.unhcr.org/en/persons\\_of\\_concern](http://popstats.unhcr.org/en/persons_of_concern)

<sup>74</sup> Maastricht Graduate School of Governance (MGSoG). Côte D'Ivoire Migration Profile (2017)

<sup>75</sup> Maastricht

<sup>76</sup> Lassailly-Jacob, V. & M. Peyraut "Social and Spatial Inequality Linked to Flood-Induced Displacements in Burkina Faso in 2009 and 2010." (2016). In *Environmental Migration and Social Inequality*, edited by R. McLeman, J. Schade, & T. Faist. Heidelberg, New York, Dordrecht, & London: Springer.

<sup>77</sup> *Ibid*

An October 2013 joint assessment mission (JAM) by United Nations agencies, Government and donor partners indicated that almost all refugees were unwilling to return to Cote d'Ivoire in the near future due to the political situation and continuing security concerns<sup>78</sup>.

#### **Part IV - Right and Treatment of South Sudanese and Ivoirian Refugee Children**

This section looks at the standards of treatments of refugee children, in particular, South Sudanese and Ivoirian children. It further looks at the rights of these children. It discusses international instruments and principles relevant for the purposes of the subject matter.

#### **Rights and Treatments of Refugee Children under Treaties and Principles**

##### ***United Nations High Commissioner for Refugees (UNHCR).***

The office was created by the United Nations General Assembly. The UNHCR has been charged with the duties of providing international protection to refugees and seeking durable solutions for the problems refugees face directly or indirectly through the rule of law.<sup>79</sup> All countries who are state party to the UNHCR statute are legally required and bound by all the provisions of the statute.<sup>80</sup> These states have an obligation to cooperate with UNHCR by:

- a) Becoming parties to international conventions providing for the protection of refugees, and taking the necessary steps of implementation under such conventions;
- b) Entering into special agreements with the High Commissioner for the execution of measures calculated to improve the situation of refugees and to reduce the number requiring protection;
- c) Admitting refugees to their territories, not excluding those in the most destitute categories;
- d) Assisting the High Commissioner in his efforts to promote the voluntary repatriation of refugees;
- e) Promoting the assimilation of refugees, especially by facilitating their naturalization;
- f) Providing refugees with travel and other documents such as would normally be provided to other aliens by their national authorities, especially documents which would facilitate their resettlement;
- g) Permitting refugees to transfer their assets and especially those necessary for their resettlement; and
- h) Providing the High Commissioner with information concerning the number and condition of refugees, and laws and regulations concerning them.<sup>81</sup>

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<sup>78</sup> World Food Programme (WFP), Protracted Relief and Recovery Operation (PRRO) in Ghana: Report Assistance to Ivorian Refugees in Ghana

<sup>79</sup> Ahimbisibwe Frank, The Legal Status of Refugee Protection and State Obligations in Uganda, 13 US-China L.Rev. 730 (2016)

<sup>80</sup> UN General Assembly Resolution 428 (V) of 14<sup>th</sup> December 1950

<sup>81</sup> *Ibid*

### ***1969 OAU Convention***

As observed previously, the 1969 OAU Convention not only broadens but also reformulates the definition of a refugee in Article 1(2). It states that ‘member States of the OAU shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality’<sup>82</sup>. The implication is that states have the obligation to grant asylum to those that qualify for refugee status under the Convention. This is consistent with the 1948 Universal Declaration of Human Rights which guarantees the right to seek and enjoy in other countries asylum from persecution.<sup>83</sup> This, of course, does not exclude children. Such provision applies to both adults and the youth as well as children refugees.

### ***Universal Declaration of Human Rights (UDHR)***

The Universal Declaration of Human Rights (UDHR) is of immense relevance in these matters. The UDHR was adopted by the UN General Assembly in December 1948. It emphasizes, among other things, the inherent value of human dignity and the universal nature of human rights including the rights of refugees.<sup>84</sup> The provisions of the Declaration are non-discriminatory. They are not the preserve of any particular person, people, organisation or nation. They apply to all humans. Human rights and human dignity are treated as inseparable and they are necessary parts of the human condition. That they are “the same for all [human beings], cannot be gained or lost .... Even the worst criminal cannot be stripped of his or her inherent dignity and has therefore the right not be subjected to inhuman or degrading treatments or punishments.”<sup>85</sup> The point sought to be made is that though a person may seek refuge in another country, they are not to be treated as less human or that they are inferior to the nationals of the states where they seek refuge. Children refugees, thus, have the inviolable human rights and human dignity which must at all times be preserved.

The UDHR emphasizes the fact that everyone has the right to life, liberty and security of person.<sup>86</sup> The provisions do not admit of any exemption. Everyone must be understood to include children, prisoners, aged, refugees, migrants, to mention a few, are all entitled to live, enjoy freedoms granted them and to be protected.

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<sup>82</sup> *Ibid*, Article 2(1)

<sup>83</sup> UDHR, *supra* note 14, Article 14(1)

<sup>84</sup> UN, Vienna Declaration.

<sup>85</sup> Andorno, Roberto. Human Dignity and Human Rights. (2014). 10.1007/978-94-007-2512-6\_66.

<sup>86</sup> UDHR, *supra* note 14, Article 3

Again, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>87</sup> Here too, the Declaration does not allow that a person, whether or not he or she is a refugee or a child or an adult to be subjected to tortuous, unreasonable, inhuman and degrading treatments. This provision is further extended by some national laws. A case in point is the Ghana Fourth Republican Constitution. The Constitution added: “any other condition that detracts or is likely to detract from his dignity and worth as a human being.”<sup>88</sup> In Ghana, for instance, such right is guaranteed to all persons in Ghana without any distinction. This is a fundamental human right:

*Every person in Ghana*, whatever his race, *place of origin*, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter but subject to respect for the rights and freedoms of others and for the public interest.<sup>89</sup> [Emphasis added].

The point being emphasised is that in Ghana, the fundamental human rights such as the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment or any other condition that detracts or is likely to detract from his dignity and worth as a human being are available to even the refugee children in the country. It is not the preserve of only the citizenry.

The UHDR states that all people are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.<sup>90</sup> That a person is a refugee does not warrant that unequal treatment to be meted out to such person. For instance, a refugee cannot be deprived of the right of fair trial because that person hails from a different country. Similarly, the criminal laws of a country such as Ghana provides that a person is *doli incapax* so long as that person is less than twelve (12) years old. In other words, the age of the majority for criminal liability in Ghana is 12 years. Supposing a refugee child who is less than 12 years acts in conflict with the law, the law is that persons who are equally placed must be treated equally.<sup>91</sup> Thus, irrespective of the status of the child as a refugee, children must be treated equally before the law. So, Ivorian refugee children in Ghana will be entitled to the rights under both the UDHR and the provisions of the constitutions of Ghana.

Everyone has the right to freedom of movement and residence within the borders of each State and has the right to leave any country, including his own, and to return to his country.<sup>92</sup> The

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<sup>87</sup> *Ibid*, Article 5

<sup>88</sup> Constitution 1992, *supra* note 9, Article 12(2)

<sup>89</sup> *Ibid*, Article 12(2)

<sup>90</sup> UDHR, *supra* note 14, Article 7

<sup>91</sup> *Henry Korboe v. Francis Amosa*, Review Motion, No. J7/8/2016, Dated 20<sup>th</sup> July 2016

<sup>92</sup> UDHR, *supra* note 14, Article 13

right to seek and to enjoy in other countries asylum from persecution which is relevant to refugees since they are forced to flee their own country and seek asylum in other countries.<sup>93</sup>

The UDHR emphasizes free and compulsory elementary education and this is something refugee children should equally benefit from.<sup>94</sup> It is reported that as of 2013, more than 2.9 million refugees resided in Africa. This meant that Africa was housing about one-fourth of the world's total population of refugees. Out of the said number, about 168,500 refugees returned to their country of origin or place of habitual residence when the issues that led them out of their countries were resolved. This implies that quite a number of them either stayed behind or must have died in the course of their stay. Certainly, some of these people who stayed behind may include children who may find it difficult to trace their homes of origin and they are more likely to stay on. It is important that these children who stay on are educated. At least at the elementary level, the UDHR, arguably, enjoins states to educate them.

All these rights apply to every human being regardless of them being nationals, non-nationals, refugees, women, children, disabled or any other category they may fall under. As all these rights are legally binding and deal with the protection and security of all, most especially the most vulnerable being refugee children.

### ***Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment***

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the UN General Assembly in 1984 and came into force in 1987. Primarily, the Convention seeks to prevent all forms of torture or any other inhuman treatment of citizens and refugees in every State. Under no circumstances is torture justified. Neither war, threat of war, political instability, emergency, orders of a superior nor exercising public authority can be a justification for subjecting people to torture. The Convention states categorically as follows:

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. An order from a superior officer or a public authority may not be invoked as a justification of torture<sup>95</sup>

State Parties to this Convention are not in any situation to expel or extradite any person or refugee to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. Competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights to make any such

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<sup>93</sup> *Ibid*, Article 14 UDHR

<sup>94</sup> *Ibid*, Article 26 UDHR

<sup>95</sup> Article 2 (2-3) Convention against Torture

decisions.<sup>96</sup> On this basis, a state would be guilty of abetting torture if having the knowledge that a refugee's life is in danger, that state refuses to protect but rather sends that refugee including children seeking refuge to the other state and they become victims of torture. It is important that information on human rights violations in the other state is taken into consideration when acting.

In the case of *R (on the application of) ABC (a minor) (Afghanistan) v. Sec'y of State for the Home Dep't and M.S.S v. Belgium and Greece*<sup>97</sup>, the Court interpreted freedom from torture to include a prohibition against refoulement.<sup>98</sup> The principle of non-refoulement prohibits any forcible sending of a refugee to a country or territory where he or she has a well-founded fear of persecution. In the words of Riyanto, the principle of refoulement says that states are "not [to] expel or return ("refouler") a refugee or asylum seeker in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." In his view, the principle has developed over the years to become a jus cogen – a principle of international law from which no derogation is allowed.

The 1951 Convention prohibits in no uncertain terms the removal, expatriation or transfer of persons, irrespective of their status as refugees, to places where there are substantial reasons for believing that there is the possibility of irreparable damage or harm to be caused to the returnee-refugee. In terms of the prohibition, the Convention's directive is that: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."<sup>99</sup> Understandably, the law prohibits expelling a refugee to an area or country where the life of that person is in grave danger. More so, the law prohibits expelling a refugee simply because of his or her race, nationality, religion and such related matters. Torture may form the basis of the belief that the life of the returnee-refugee is in danger. What this means is that States are bound to take on the responsibility of protecting refugee children such as those from South Sudan and Cote d'Ivoire and providing for their health, security and educational needs. They are also expected to ensure that these children are not sent back to their countries of origin while the reasons for their refuge status is still existent.

This prohibition is undoubtedly made in no uncertain terms. However, the prohibition is not absolute. It admits of one exception. The exception is that "the benefit of the present convention [in relation to the principle of refoulement] may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convinced by a final judgement of a particularly serious

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<sup>96</sup> *Ibid*, Article 3.

<sup>97</sup> [2011] EWHC 2937 (Admin.) (U.K.)

<sup>98</sup> International Justice Resource Center, Asylum and Rights of Refugees, <http://www.ijrcenter.org/refugee-law>

<sup>99</sup> 1951 Convention, Article 33(1)

crime, constitute a danger to the community of that country.”<sup>100</sup> The exception lies in a determination based on reasonable grounds that the continued presence of the refugee in the host country constitutes a security threat to it or that judgment of a competent court of jurisdiction has found that the refugee guilty of committing one serious crime or the other, which crime is dangerous to a community of the host country. Genocide may be cited as an example.

### ***Convention on the Rights of the Child***

The Convention on the Rights of the Child entered into force in 1990 as the first international treaty to specifically target the rights of children. It seeks to protect children from practices which particularly endanger their welfare, including economic exploitation, traffic in children, illicit use of drugs, and all forms of sexual exploitation and abuse. These rights are also extended to refugee children from South Sudan and Cote d’Ivoire.

The Convention also provides that all State Parties shall take all appropriate measures to protect the child from all forms of physical violence, injury or abuse, neglect or negligent treatment or exploitation, including sexual abuse.<sup>101</sup> Due to the fact that every State Party recognizes the fact that all children have the inherent right to life and they shall ensure to their maximum extent possible the survival and development of the child.<sup>102</sup>

Article 22(1) of the Conventions provides as follows:

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures 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 applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

The above provision gives an indication as to how children refugees are to be treated. States are mandated to appropriately protect children refugees whether or not they are alone or accompanied by their parents or some third person. They are also required to give them humanitarian assistance so as to enable them enjoy rights under the CRC and other international instruments.

It continues in Article 22(2) to state that for the above purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for

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<sup>100</sup> *Ibid*, Article 33(2)

<sup>101</sup> Convention on the Rights of the Child, Article 19(1)

<sup>102</sup> *Ibid* Article 6 (1-2)

reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.<sup>103</sup>

States Parties to the CRC are to take all appropriate measures to ensure and promote the physical and psychological recovery of refugee children. Furthermore, states are to implement all measures necessary to ensure the social reintegration of a child victim or refugee of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration are to take place in an environment which promotes or is likely to promote the health, self-respect and dignity of the refugee children as those from South Sudan and Cote d'Ivoire.<sup>104</sup>

In *ZH (Tanzania) v. Secretary of State for Home Department*<sup>105</sup>, the mother's appeal succeeded. The facts of the case are that a Tanzanian national illegally entered the United Kingdom (UK) in 1995. Her three claims for asylum were unsuccessful. Later on, she had two children for a British citizen. At the time of the appeal, the oldest of the two children was twelve (12). The other child was nine (9) years old. Both were British citizens and had lived in the Britain all their lives. Sometime in 2005, the parents separated. Their father continued to perform his fatherly responsibilities regularly to the children. In 2007, their father was diagnosed with HIV. Their mother made a fresh claim for asylum. This was again rejected. An appeal to the Asylum and Immigration Tribunal was unsuccessful. Further appeal to the Court of Appeal was dismissed. Upholding the decision of the Tribunal, the Court of Appeal stated that the children could follow their mother to Tanzania. Upon an appeal to the Supreme Court, the decision of the Tribunal and the Court of Appeal was reversed by the unanimous decision of the Supreme Court justices.

The court held that it had to consider the best interests of the children involved who were not merely British by any accident. The children's right to live in the United Kingdom was unqualified as they had lived all their lives there in Britain and had no social links with any other community. Although nationality is not a 'trump card' it is of particular importance in assessing the best interests of any child. The UNCRC recognizes the right of every child to be registered and acquire a nationality (Article 7) and to preserve his or her identity, including her nationality. This ruling has had a great influence on immigration, asylum and refugee cases that involve children. *ST (Child asylum seekers) Sri Lanka v. Secretary of State* is another case in which the rights of a child is upheld over all other issues. The Judge stated that where a child or a young person and has a well-founded fear of being trafficked or exposed to sexual abuse, it is considered a form of serious harm sufficient to engage international protection and can be evidence of a fear of persecution for a Convention reason: usually membership of a particular social group, vulnerable to such form of harm.<sup>106</sup> The judges overturned the previous

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<sup>103</sup> *Ibid*

<sup>104</sup> *Ibid*, Article 39

<sup>105</sup> *ZH (Tanzania) v. Secretary of State for Home Department* SC 1 Feb 2011

<sup>106</sup> *ST (Child asylum seekers) Sri Lanka v. Secretary of State for the Home Department*, UKUT 00292

court decision that had denied the 10 ½ years old child refugee status and noted that persecuted children constitute a "social group" as provided for under the 1951 UN Refugee Convention.

The *ST* Case adds to the meaning of persecution. From this case, child trafficking and sexual abuse of children count as part of persecution. They are reasonable fears for which reason a child may seek refuge in another country.

### ***The Best Interest Principle***

Beyond the rights that are granted children in various international instruments, there are other principles on securing the interest of children or better still, principles which best protects the interests of children. The yardstick for dealing children is "best interest principle." It does not admit of any derogation. It requires that in all dealings with the child, the interest of the child is paramount. It has gained worldwide recognition and it features in a number of international instrument such as the African Charter on the Rights and Welfare of the Child (ACRWC) and the United Nations Convention on the Right of the Child.<sup>107</sup>

As a principle of international law and also recognized in domestic laws, it posits that in all matters in which a child is involved, the interest of that child is paramount. Nothing is to be done that works against the interest of such a child. The reason for this may be that children are regarded as the most vulnerable human beings. In *ZH (Tanzania) v. Secretary of State for Home Department* (*supra*), the court pronounced in the best interest of the children. In fact, the best interest principle was a key reason for the decision of the Supreme Court in overturning the decisions of the Tribunal and the Court of Appeal. For instance, on the best interest principle, Lord Kerr had this to say:

It is a universal theme of the various international and domestic instruments to which Lady Hale has referred that, in reaching decisions that will affect a child, a primacy of importance must be accorded to his or her best interests. This is not, it is agreed, a factor of limitless importance in the sense that it will prevail over all considerations. It is a factor, however, that must rank higher than any other. It is not merely one consideration that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should be followed, unless countervailing reasons of considerable force displace them. It is not necessary to express this in terms of a presumption but the primacy of this consideration needs to be made clear in emphatic terms. What is determined to be in a child's best interests should customarily dictate the outcome of cases such as the present, therefore, and it will require considerations of substantial moment to permit a different result.<sup>108</sup>

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(IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber) (May 31, 2013).

<sup>107</sup> Christine Dowuona-Hammond, Upholding the "Best Interest of the Ghanaian Child in Custody Cases: The Customary Law and the Courts." [2014] UGLJ Vol XXVII.

<sup>108</sup> *ZH (Tanzania) v. Secretary of State for Home Department*

According to Dowuona-Hammond “[t]he international, regional and national legal regime on the rights of children emphasize that all actions and decisions taken towards the fulfilment of the responsibilities for the care and development of children must be guided by this standard. The doctrine governs all child protective services including the placement and disposition of children in divorce, custody, visitation, adoption, death of a parent and proceedings involving abuse or neglect of the child.”<sup>109</sup> Accordingly, private or public actions towards children be it in court, social welfare institutions, parliament or other legislative institutions, administrative agencies etc. must take into consideration the primacy of the best interest of the child.<sup>110</sup>

The best interest principle is not only a matter of international law but it is also provided for in domestic laws. In Ghana, for instance, the welfare principle has been given statutory recognition. It is provided in the Children’s Act<sup>111</sup> that:

***Welfare principle***

- (1) The best interest of the child shall be paramount in a matter concerning a child.
- (2) The best interest of the child shall be the primary consideration by a Court, person, an institution or any other body in a matter concerned with a child.

Again in Ghana, there are some traces of the welfare principle in the Fourth Republican Constitution. The Constitution provides that:

- (1) Parliament shall enact such laws as are necessary to ensure that -
  - (a) every child has the right to the same measure of special care, assistance and maintenance as is necessary for its development from its natural parents, except where those parents have effectively surrendered their rights and responsibilities in respect of the child in accordance with law;
  - (b) every child, whether or not born in wedlock, shall be entitled to reasonable provision out of the estate of its parents;
  - (c) parents undertake their natural right and obligation of care, maintenance and upbringing of their children in co-operation with such institutions as Parliament may, by law, prescribe in such manner that in all cases the interest of the children are paramount;
  - (d) children and young persons receive special protection against exposure to physical and moral hazards; and

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<sup>109</sup> Christine Dowuona-Hammond, Upholding the “Best Interest of the Ghanaian Child in Custody Cases: The Customary Law and the Courts.” [2014] UGLJ Vol XXVII.

<sup>110</sup> UNCRC, Article 3

<sup>111</sup> Children’s Act, 1998 Act 560, section 2

(e) the protection and advancement of the family as the unit of society are safeguarded in *promotion of the interest of children*. [My emphasis].

Following this, the Children's Act was promulgated which recognizes the ultimate standard in dealing with children which is on the basis of the "best interest principle."

The constitution is juridical basis for the children's Act. In other words, the promulgation of the children's Act was made in pursuance of article 28. The said art 28 is part of the fundamental human right provisions guaranteed every person in Ghana. It must be noted that as far as human rights are concerned, they are guaranteed everyone in Ghana. That means children refugees are also guaranteed such rights and in dealing with them the best interest principle applies.

As regards the foregoing, two questions remain unanswered. One is 'how is the best interest determined? Is the test an objective or subjective one?' The other question is this: 'of what relevance is the best interest principle to children refugee matters?' In response to the former question, the answer is that the test is a subjective one. It is said to be inherently and necessarily subjective test. As a result, the judge or whoever is dealing with the child has the onerous responsibility, taking into account all factors or looking at the circumstance as a whole, to determine what is in the best interest of a child.<sup>112</sup> And as regards the second question, the response may be that whoever (be it a person or an institution) that comes into contact with a refugee child must act in the best interest of the child.

## **PART V – Key Findings**

There are more children in developing countries than there are in the developed world. Out of the 2.2 billion children in the world, 1.9 billion of them are in developing countries. This coupled with the finding that conflicts abound in developing countries means that more children in the developing countries are likely to be affected than those in the developed worlds. These children are either refugees or more likely to become refugees.

The provisions of 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa may be described, in a sense, as an instrument of general application. It applies to all and sundry in Africa: men, women, children, the aged etc. It is thought given the importance of the children or that they are most vulnerable in matters of refugees, specific provisions should have been made for them. Alternatively, there could have been a specific instrument made solely for the purposes of the children.

There are conventions and national laws that have implications for dealing with refugee children. More often than not, these conventions and national laws as well as principles deal with two main things: the rights of refugees (children refugees inclusive) and the treatment to be meted out to refugees. Among other rights, children refugees have the right to life, liberty

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<sup>112</sup> L.M, Kohen, "Tracing the Foundations of the Best Interest of the Child Standard in American Jurisprudence" (2008) Vol. 10 (No. 2) Journal of Law and Family Studies 337.

and security. They are guaranteed the right against torture and other inhuman treatments that degrade or is likely to degrade from their "human beingness."

Children in South Sudan and Cote d'Ivoire have become refugees in different parts of the African continent following violence that was experienced in the two countries. Some of these children have had to forfeit their education. Others have lost their parents and have to fend for themselves and sometimes, their siblings. Others were victims of all manner of assaults including sexual assault and physical abuse.

## **Recommendations, Solving the Child Refugee Problems in Africa**

### ***Specific Legislation***

The preceding desk review shows that children refugee is a major problem in Africa, especially in sub-Saharan Africa. There are more refugee children in Africa than any part world. However, there is no specific treaty tackling the menace except that they are treated generally under international laws. It is recommended that in view of issues affecting children refugees, specific treaties be made at the continental level to deal with the issues of child refugee in Africa.

### ***Rehabilitation Centres***

Children who become refugees, unfortunately, are faced with a number of challenges, which in the long run have negative effects on their lives. The trauma of fleeing one's country under fear of persecution cannot be reiterated enough.<sup>113</sup> The effects of this can only be addressed if special care is taken to nurture these children especially on their mental health in order for them not to deal with the mental and physical trauma by themselves. This can be done through rehabilitation centres. The centres may be set up in different regions on the continent, on every major refugee camp such as those that host South Sudanese and Ivorian refugees. They must be mandated to compulsorily take the children through rehabilitation to give them a chance for a brighter future.

### ***Education and Training***

Education is very key to the development of these children as it widens their horizons to see all the possibilities they are opened to and also equip them to make strategic decisions that will benefit them and the society at large in the future. However, these refugee children may not have adequate means of education or training.<sup>114</sup> It is proposed that the African Union (AU) as well as other regional bodies dedicate funds to set up some specific institutions for the purposes of training and educating refugee children in order for them to be equipped for the labour market.

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<sup>113</sup> Journal for Specialists in Pediatric Nursing 21(2016) 29–36

<sup>114</sup> Journal for Specialists in Pediatric Nursing 21(2016) 29–36

***Early Resolution of Disputes***

One of the main reasons accounting for refugee children is due to late resolution of conflicts especially on the African continent. Under the principles of non-interference and sovereignty of nations, conflicts, more often than not, escalate before the member states endeavour to address them.

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