



Significance of the Application of Resilience-based Approach in Human Trafficking at the Area of Sub-Saharan Africa¹

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Abstract:

It is beyond dispute that the effects of climate change can be experienced more frequently at all parts of the ecosystem. The current change of our environment contributes to unpredictable natural disasters, which results increased number of children victims by human trafficking in the devastated areas, that mostly affected the regions of Sub-Saharan Africa. As the overwhelming natural disasters destroy the education system and other social services, human traffickers may take their victims easily for mainly sexual exploitation. The resilience-based methods can produce solutions to this global challenge and reduce vulnerability and risk concerning the orphaned by natural disasters who can easily become exploited persons by human traffickers. The aim of the study is introducing and analysing the Geneva Convention that should be the essential frame of the resilience-based approach of human trafficking.

Keywords:

Climate change; human trafficking; human rights; resilience; exploitation.

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Introduction

According to an analysis by the Institute for Economics and Peace (IEP), population will grow to almost ten billion by 2050, which leads to intensified competition for resources and fuels inter-ethnic conflicts, too. As a result, the study says, 1.2 billion people will be forced to leave their homes. Researchers highlighted that in 2019 alone, some 30 million people left their homes in hopes of a better life. Mass emigration will lead to a larger wave of refugees, who can become a prey of human traffickers, which will have huge social and political implications, according to the founder of the IEP. The analysis highlights that even by 2050, even stable countries could become vulnerable, as climate change or perishable water supplies could affect all countries in the world in some form (IEP, 2020).

As the climate warms, droughts and floods will become more frequent and crops will be destroyed more and more often. Cattle get less food, less meat and milk. Furthermore, the moisture in the air and soil decreases, leaving less water for the plants. As a result, tens of millions of acres of arable land at some parts of Africa are becoming significantly drier. The pests that destroy the crop have already infected a larger area because they are facing more favorable conditions. The growing season will be shorter, with a warming of 4 degrees Celsius in most parts of Africa, or even more. As a result, tens of millions of acres of arable land at the affected areas that becoming significantly drier. The pests that destroy the crop have already infected a larger area because they are facing more favorable conditions. The growing season will be shorter, with a warming of 4 degrees Celsius in most parts of Africa, or even more (Chapman et al., 2020). For those who can already live, any such change will be a disaster. In the absence of a set-aside reserve, the crop is destroyed and the farmers concerned are unable to take more seed. And this factor implies the clear consequence that food prices will skyrocket for hundreds of millions due to climate change and soil erosion.

The increasing frequency of natural disasters in the coming years will definitely generate an increase in environmental migration, as there will be less and less access to arable land and food. Even more and more actors of environmental migration can become victims of human traffickers, of whom women and children are primarily sexually exploited, who needs urgent and essential protection by supporting their basic human rights (Wiederkehr et al., 2018).

Geneva Convention

Although the Geneva Convention does not specifically contain provisions for victims of human traffickers or even refugee children, as the primary refugee convention on the rights and protection of refugees, which has been enforced to this day, the content of the convention on refugees must be applied bindingly in the case of each victims of human traffickers and refugee child. The 1951 Geneva Convention and the 1967 Protocol are the first international agreements aimed at solving the non-new problems arising from the refugee issue took place after the Second World War, when a unified position was finally reached with the Universal



Declaration of Human Rights (A/RES/3/217A/1948) regarding the handling of the refugee issue. Previously, in the absence of the Convention, the situation was handled only on the basis of ad hoc international conventions, which, due to the lack of uniform specificity, only applied to a typical group of refugees. The situation was ripe for the period after the Second World War, when, due to the significant increase in the number of refugees, the uniform international convention clearly defined the concept of refugee status and the rights associated with it (Kamruzzaman & Shashi, 2016).

According to one of the most significant points of the Universal Declaration of Human Rights (1948), everyone has the right to seek asylum from persecution in another country and to enjoy the asylum granted by that other country; (UN/A/RES/3/217A/1948). The Geneva Convention created in 1951 strengthens and expands this position, and the Additional Protocol of 1967 formulates additional, detailed rights and their protection (UN/A/RES/2198(XXI)/1968).

The Convention (1951) does not reject the previous ad hoc legislation and the regulations related to them, it incorporates them and applies them with some modifications. During the Convention (1951), a unified concept of refugee status was finally defined, according to which anyone who, as a result of events that occurred before January 1, 1951, is free from persecution due to race, religion, nationality, belonging to a specific social group, or political beliefs is outside the country of his/her nationality due to well-founded fear and is unable or unwilling to use the protection of that country due to fear of persecution; or who, having no citizenship and staying outside their former habitual residence, cannot, or does not want to return there due to fear of persecution, as a result of such events (Article 1). It is important to note that the Protocol created later (1968) modifies the concept, i.e. the temporal definition is removed from the text.

Furthermore, it is worth noting the fact that joining and approving the Geneva Convention does not automatically mean acceptance of the Protocol, i.e. as a legal document independent of the Geneva Convention, it only applies to those member states that have ratified the content of the Protocol. Both international documents were signed by 142 countries, of which three countries (Madagascar, Saint Kitts and Nevis) only approved the Convention, and three additional countries (Cabo Verde, the United States of America and Venezuela) only approved the Protocol (UNHCR, 2015). There are states that have not ratified either the Geneva Convention or the Protocol. (India, Pakistan, Iraq, Saudi Arabia, Syria, Oman, United Arab Emirates or Libya).

Criteria for refugee status

The Convention defines the concepts of refugee status and refugee person, and includes the distinguishing reasons and circumstances that determine the cases in which the given person cannot have refugee rights. If the requirements defined by the Convention are met, the given person is entitled to refugee status, regardless of whether his/her refugee status was confirmed by any formal decision. In a legal sense, this means that the definition of refugee status does not arise as a result of the official approval as a refugee, but that his/her status is recognized precisely because he/she is a refugee. Accordingly, the Convention defining refugee status can only be considered declarative (Iriye et al., 2012).

Regarding the definition of refugee status, the international treaty defines three conditions:

- well-founded fear of persecution
- the person with the given nationality resides outside his/her country, i.e. a stateless person resides outside his/her permanent place of residence
- the person cannot or does not even want to apply for the protection provided by his/her own country due to the fact of persecution (UNHCR, 1992).

The concept of persecution

One of the conditions for determining refugee status is the fact of a well-founded fear of persecution. Since fear is a subjective emotion that varies from individual to individual, the fear affecting the refugee becomes a well-founded fear in the sense of the law if the refugee can justify it with objective facts. A person is considered to have left his/her own country if there is a compelling reason for leaving, i.e. there is a well-founded fear of persecution. Of course, the well-founded reason for the refugee's fear of persecution must be examined on a case-by-case basis. Part of the investigation is an evidentiary phase, during which the given person must prove the fact and the reason for the fear of persecution, according to which it has become impossible for him/her to stay in his/her country of origin. Of course, it is not a criterion for refugee status that the given person is actually persecuted in his/her own country, the fact that he/she wants to save herself from the risk of persecution is sufficient (Irial, 2012, pp. 134-148). A significant shortcoming of the Convention is that it does not clearly define the concept of persecution. According to Article 31 of the Convention (1951), Member States shall not impose any criminal sanctions against refugees who have unlawfully entered or are present in the country's territory, if they come from a country where their life or liberty is in danger as defined in Article 1 of the Convention.

And according to Article 33, no member state may expel or send back the given person to the territory of a state where his/her life or freedom is at risk. Regardless of the facts, the refugee is entitled to mandatory protection, in the event that he/she comes from the territory of a country, or that they want to send him/her back or expel him/her, where his/her life or freedom is at risk. Under this, if a person's life or freedom is threatened due to race, religion,



nationality, belonging to a specific social group or political beliefs, it is considered persecution. In addition, serious violations of human rights resulting from these reasons can also provide a basis for establishing persecution (Article 33).

Furthermore, in connection with the definition of the concept of persecution, it is worth mentioning Article 3 of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The article is worded similarly to the provisions of the Convention (1951), i.e. no member state may expel, deport or extradite a person to a state where there is a reasonable fear that the person may be subject to torture, inhuman or degrading treatment. Pursuant to this, any case in which a person would be exposed to the risk of torture, inhuman or degrading treatment in the third country to which they are expelled or returned must be considered as persecution (Article 3).

Torture, inhumane or degrading treatment is only one of the reasons for determining refugee status, and according to the Convention (1951), discrimination can also be a reason for persecution. According to the correct interpretation of the article, discrimination can be considered a reason for persecution if the discrimination reaches such a level that life becomes unbearable for the individual (Article 3). If the discrimination has reasons related to gender identity, as a result of which life becomes unbearable for the person in his/her own country, or even in the most extreme case same-sex relationships are sanctioned at the level of criminal law in that country, we are clearly talking about a situation of persecution. When investigating and proving this kind of persecution, the social, cultural and religious aspects of discrimination must also be examined. Similar to the Convention (1951), the European Union defines persecution as a situation which, due to its repeated characteristics, clearly creates such a serious situation that it violates basic human rights, or consists of a combination of different measures which so seriously violate human rights, that they affect the situation of the person concerned in a similar way as those mentioned above (2011/95/EU).

Pursuant to the facts formulated by the European Union, we can define the following actions as the concept of persecution:

- use of physical or psychological violence;
- legal, regulatory, administrative, police or judicial measures that have discriminatory characteristics or are applied in a discriminatory manner;
- disproportionalities or discrimination applied during criminal proceedings, disproportionate or discriminatory punishment;
- refusal of legal protection in court, if all this entails a disproportionate or discriminatory punishment;
- criminal proceedings or punishment for refusing military service in a conflict situation, if the performance of military service would involve the commission of a crime or certain extremely serious crimes;
- harmful acts committed on the basis of gender or against children (2011/95/EU).

So, the reasons for persecution can be defined as race, religion, nationality, political belief or belonging to a specific social group.

In many cases, it is difficult to establish the original cause of the persecution, as these causes and facts are difficult to separate from each other, as they are overlapping and extremely similar reasons. A good example of this is the case where political conviction and belonging to a specific social group overlap each other, and in many cases national and religious affiliation cannot be clearly separated. According to the directive of the European Union formulated in 2011, there must be a causal correlation between the causes of persecution, the acts of persecution, and the lack of protection against acts of persecution. Based on the European Union rules, when determining the well-founded fear of persecution, it is not important whether the reasons underlying the persecution actually exist in relation to the refugee, it is only sufficient if the persecutor sees it as such. According to this, the fugitive's fear of persecution can be considered well-founded (Chetail, 2014, p. 543).

The Convention (1951) mentions as the last criterion the circumstances created by civil war or other situations of unrest, during which the refugee cannot, or for fear of persecution, does not wish to avail himself of the protection of the country of his own nationality or habitual residence (Article 98). In these circumstances, thanks to the crisis situation, the refugees are unable to use the protection of their country. Most of the cases are typical when the refugees, due to a lack of trust in the state and a well-founded fear of persecution, do not want to use the protection of the country in question.

Terminating reasons

The contract's article discussing the conditions for establishing a person who can be recognized as a refugee also covers the reasons for possible termination of refugee status. Based on this, the refugee status can be terminated only and exclusively with regard to the future, in the presence of all existing reasons (UNHCR, 1992, point 113). In order to ensure the status of an individual who meets all the conditions of refugee status and is accordingly recognized as a refugee, the termination reasons must be interpreted strictly.

Based on Article 1, Part C, Paragraphs (1)-(6), the conditions that terminate refugee status can be grouped as follows:

- based on the voluntary act of the refugee;
- in the refugee's own country, the circumstances that caused the persecuted person to be recognized as a refugee no longer exist.

The definition of grounds for termination based on voluntariness also requires a separate interpretation, which is covered in detail in the Convention (Article 1, C. (2)).

- requested the protection provided by his/her country on a voluntary basis;
- he/she regained her lost citizenship on a voluntary basis;

- acquired a new citizenship, according to which he/she already enjoys the protection of the country of her new citizenship;
- voluntarily returned permanently to his/her country, which he/she had previously left due to fear of persecution.

In the case of the first point, according to which the refugee claims the protection of his country again, it must be examined whether his decision is voluntary. After all, it may happen that the competent authority of the country providing asylum forced him to make this decision, so in this case there is no doubt that this situation cannot be interpreted as a voluntary act of the refugee. Furthermore, the reason for contacting any competent body of the refugee's home country must be investigated. In the majority of cases, the reason for joining the link is the acquisition of official certificates for those who have spent a significant part of their lives administered in the country of their citizenship, they are forced to, such as birth certificates, marriage certificates or documents proving their studies, since these can only be obtained and verified by the administration of the office of the country of their own citizenship possible. In this sense, this type of contact cannot be considered without any doubt as requiring the refugee to renounce the refugee status granted by the country providing protection. The refugee's status in the country providing asylum does not cease, even if the reason for making contact is this kind of motivation, i.e. his/her primary intention is to regain his/her citizenship in his/her own country. Circumstances of this type require an extremely thorough investigation, since it is possible that he/she made this intention due to some compelling reason (Rotem & Ratner, 2015).

Pursuant to the second termination reason formulated in the Convention (1951), the refugee individual claims his/her lost citizenship on a voluntary basis. On the other hand, a person with stateless status cannot be subject to a termination reason if the country of his/her former citizenship creates a principled possibility to reclaim citizenship with effective legal instruments in his/her own country, but in this sense also the voluntary act of the refugee is necessary, i.e. the claim for citizenship is still required. The relevant national regulations may implement regulations according to which a stateless person will not be granted citizenship if he/she expressly refuses it. Pursuant to this, if the stateless individual is aware of this fact and does not use the right of refusal, then the recovery of his/her citizenship can be considered voluntary (Article 1. C./6).

According to the Convention (1951), the third reason for termination is if the refugee has acquired a new citizenship, thus receiving the protection of the country of his/her new citizenship. Both of the mentioned conditions must be met in order to terminate the refugee status. That is, the refugee individual must have a new citizenship with well-founded proof.

Possession of a passport that is different from your previous citizenship cannot be interpreted as sufficient evidence, only if it is absolutely clear that the owner of the passport is actually a citizen of the country in question. The second clause imposed by the Convention (1951) contains additional conditions. There must be a genuine relationship between the

holder of the new citizenship and the given country, and the individual requires protection from the state of his/her new citizenship. If this is the case, the refugee individual has properly integrated into the society of a country different from his/her country of origin, or as a result of the successful integration, the given country has deemed the necessary conditions for obtaining citizenship suitable, i.e. it is established that a relationship has developed between the refugee and the given country (C.(3) of Article 1).

Closing Phases

In addition to acts based on voluntariness, among the terminating conditions we find additional situations where the circumstances that provided the basis for the granting of refugee status have ceased, so the continued maintenance of refugee status is not justified. The biggest problem is that it is extremely difficult to prove that the fear of persecution has disappeared. Pursuant to the relevant article of the Convention, termination of refugee status is only possible if the changes in the country of origin are significant. Furthermore, if during these circumstances the reason for the persecution ceases to be valid. As a result, the refugee individual no longer has to fear any form of discrimination based on political or racial affiliation. The reason for this type of termination is that the change in the country of origin is of a permanent nature (UNHCR, 1992, points 135-139).

It is important to point out that a short-term change or a temporary ceasefire in the event of a civil war does not justify the termination of refugee status. Furthermore, if the change affects only a part of the country of origin, it does not in any way provide sufficient grounds for the termination of the refugee status on the part of the host country. However, if the refugee is able to present compelling reasons against her country of origin or former place of residence that the refusal of the protection provided there is beyond any doubt founded and indisputable. However, if the refugee is able to present compelling reasons against his/her country of origin or former place of residence that the refusal of the protection provided there is beyond any doubt founded and indisputable. The drafters of the Convention (1951) included this clause for those fleeing the Nazi regime, as they considered that those persecuted by the regime had undergone such a level of physical and mental suffering that the possibility of returning to their country was excluded.

Abolishment of refugee status

The Convention (1951) deals with a very important conceptual and procedural distinction, defining the difference between cancellation and termination of refugee status. Pursuant to the article, the definition of cancellation means the process in which a person who has been granted refugee status can never apply for international protection again in the absence of the conditions set out in the Convention (1951). However, the Convention (1951) can be considered extremely incomplete in this respect, as it does not contain the reasons and rules

for cancelling refugee status. Of course, there is a valid reason for this, since in the case of cancellation of refugee status, it means cancelling an inappropriate administrative or judicial decree, in order to maintain the humanitarian nature of the Convention.

In order to enforce legal certainty, erroneous administrative and judicial decisions must be reviewed to a significant extent, which can take place in cases defined by law. During the review, a certain time limit is imposed, within which the review of the decision granting refugee status takes place. In the event that there is a case of criminal behaviour, due to the specific nature of the reason for cancelling the refugee status, the review period is not defined. During the examination of the cancellation of the refugee status, the question of the basis for the reason, on the basis of which an already legally binding decision can be reviewed, must be clarified. Additional reasons include situations in which the refugee individual or his/her family makes contradictory statements during subsequent administrative procedures (Kapferer, 2003, pp. 23-28). According to the interpretation of the relevant article, the situation of the emergence of reasons excluding the granting of refugee status may result in extradition or criminal proceedings. Regarding the cancellation of the decision approving refugee status, the following cases are distinguished.

Deception

In order to determine the situation of deception, three conditions must be met: a false statement, a causal relationship between the false statement and the approval of the refugee status, and the intention to misinform the authorities. In other words, the asylum seeker makes a false statement about a situation, as a result of which he/she can expect a positive evaluation of the refugee application. Deception also includes situations in which there are unrelated or contradictory statements. Of course, traumas experienced during the journey or as a result of wartime conditions can also cause confusion to such an extent that, as time goes by, it becomes difficult for him/her to recall the events, or he/she talks about them in a confused and incoherent manner. In the course of deception, it often happens that the asylum seeker tries to apply for refugee status by using false documents, in which case it must be taken into account that the person is resorting to this practice due to a forced situation. Accordingly, it cannot be clearly determined whether the original motivation of this fact is direct intention or deception (Kapferer, 2003, p.37).

There are also countless cases in which the asylum seeker bribes or threatens the authorities and receives refugee status as a result, without meeting the necessary conditions set out in the Convention. The third case concerns the authority approving the refugee application, if it incorrectly determines the existence of the conditions necessary to establish refugee status. This should be understood as situations in which the authority misinterprets the reported facts and, as a result, determines a well-founded fear of persecution. If any of the listed situations is verified, the decision establishing refugee status is automatically invalidated, and neither a review nor an appeal can be requested regarding the cancellation.

Clauses excluding applications for refugee status

The Convention (1951) distinguishes three groups of exclusion clauses:

- persons who have international protection or support provided by another UN organization;
- the situation of national refugees;
- persona non-grata, i.e. those who are not entitled to international protection (UNHCR, 1992).

As a result of establishing the existence of the clauses, the given individual cannot claim refugee status. In the event that the asylum seeker was granted refugee status despite the existence of exclusionary grounds, his/her refugee status must be terminated with immediate effect. According to the exclusion clause regarding national refugees, we can define as national refugees those individuals who possess all the conditions necessary to claim refugee status, and at the same time their legal status in the host country is equal to that of the citizens of the host states. By these cases we mean situations in which the ethnicity of the receiving state is the same as the ethnicity of the refugees.

The last exclusion clause summarizes the facts according to which the individual is not entitled to international protection. According to the Convention, the following persons are not entitled to protection: has committed a crime against peace, war, or crime against humanity, or as defined in international documents containing such crimes committed a serious crime of a non-political nature outside the country of asylum, prior to being admitted to the country as a refugee guilty of acts contrary to the purposes and principles of the United Nations. This provision seeks to preserve the integrity of the refugee institution by not providing the rights arising from international protection to the perpetrators of such serious and serious crimes. (points D., E. and F. of Article 1)

The definition of crimes against peace, war crimes, or crimes against humanity and the behaviours related to them are summarized in several additional international conventions. The initiation of war aggression or the commission of other similar activities also belong to these concepts. The Convention (1951) does not address the possibility of such activities and their details. In this case, the act committed took place before the reception of the refugee, i.e. outside the borders of the host country from the point of view of the territorial scope. For serious non-political crimes, it depends on international regulations, not local regulations (UNHCR, 1992, point 148-149).

Conclusion

The Geneva Convention contains important parts regarding refugees and victims of violence, and consequently, because of the exploitation and coercion characteristics of human trafficking, it formulates guidelines and rights that apply to victims of human trafficking as



well. As a result, the Geneva Convention is a mandatory tool for the resilience-based treatment of victims, to which the convention can provide a kind of framework. Victims of human trafficking must be considered victims of migration, as the fact of the currently experienced intensity of environmental migration and human trafficking is indisputable, which will become more and more powerful and clear in the future due to climate change. Thus, the rights of refugees and victims of migration stipulated by the Geneva Convention are the same as the rights of victims of human trafficking, thus the two phenomena and the persons affected by them will be closely intertwined in the future. In this sense, we can clearly state that the basis of the solution to the globally challenging phenomenon, in addition to the tool of resilience, is the basic guarantee of human rights, which is the right of all victims regardless of age and gender.

Conflict of Interest

The author hereby declares that no competing financial interest exists for this manuscript.

Notes on Contributor

Krisztina Kállai is a PhD student at Óbuda University Doctoral School on Safety and Security Sciences. During her first PhD research, at the Department of Faculty of Military Science and Officer Training at National University of Public Service her topic was examining the refugee victims of human trafficking and the possible solutions of migration based on the directives of Catholic Church. From the beginning of her MsC studies she represented her research at many international conferences and has been publishing many articles related to human trafficking. In the course of her current research, she examines the resilience-based solutions of human trafficking at the devastated areas caused by natural disasters. She also focuses on the mental difficulties of minor victims due to the sexual exploitation committed by traffickers.

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