

STATUTORY PROVISIONS AND LEGAL FRAMEWORK FOR SAFEGUARDING REFUGEES IN NIGERIA: AN APPRAISAL

Awodezi, H.

*Department of Arts and Humanities, School of General Studies,
Delta State Polytechnic, Ozoro, Nigeria*

ABSTRACT

The term Refugees has been derived from a French word 'refugie' which means to flee for safety. It derived its meaning from socio-political and economic crisis and natural disasters. Premised on recurrent conflicts in the society and natural disasters in the environment, man's settlement became unstable. This emanates from socio-political and economic crises and disobedience to laid down rules leading to increase in crime rate. The term "Refugees" is usually referred to as a group of displaced persons that have had course to cross established international state boundaries in order to get comfort. The challenges usually befalling Refugees are of great measures ranging from loss of reputation, value, habitation, job, security, life, etc, which consequently, has attracted the intervention of International Bodies in ensuring that Refugees do not, as a result of such rising situations lose their reputations as human persons. This therefore calls for attention of humanitarian services in assisting them and also safeguarding their universally accepted Human Rights due to them. This paper aims at examining the statutory provisions relating to refugees and the application of the legal framework in solving the problems as they emerge. It appraised the effectiveness of the institution that applied the legal framework. It is therefore pertinent that the legal instrument put in place to regulate this situation requires change as time changes so as to safeguard refugees. This lies in the ascendancy of good governance in the recognition and protection of Refugees status, the defense of democratic right and liberties.

Keywords: Refugees, Conflicts, Safeguard, Legal Framework, Convention.

INTRODUCTION

Defining who a refugee is, may be as difficult as the problems faced by the Refugees themselves. Customary International Law does not define who a Refugee is. The internationally agreed definition, on which all polices dealing with the influx of Refugees lie, has been defined through a series of conventions and accords¹.

There is usually the challenge of ascertaining the classes of beneficiaries. States by convention have always indicated certain restrictive criteria for identifying those who are to benefit from Refugee Status². The statutory provisions and legal framework for the safeguarding of Refugees simply

refers to relevant laws, conventions or treaties established for the purpose of protecting or safeguarding persons of this class. This also borders on the application or administration of the law on crisis.

Thus, Refugees, as the name implies, emanate from socio-political and economic crisis and natural disasters. The issues being faced by Refugees are of great measure which consequently, has attracted the attention of International Bodies on the need to protect the Right to dignity of human person³ and ensure that Refugees do not, as a result of such rising situations lose their status as human persons. This therefore calls for attention of humanitarian services in assisting them and also safeguarding their universally accepted Human Rights due to them.

Thus, during and at the end of the 1st and 2nd World Wars, League of Nations were faced with

¹ Benedicta Daudu, 'Legal and Institutional Framework for the Protection of Refugees in Nigeria', (2004) *Journal of Delta State University* 16

² G Madsen., *Status of Refugees in International Law* (Leiden Sijthoff 1996) 91

³ Constitution of the Federal Republic of Nigeria 1999 (as amended)

large number of people displaced as a result of the wars and this gave rise to the coordination of efforts of several agencies that provided assistance. After the Bolshevik Revolution of 1917, there were lots of Russian Refugees and the League of Nations had a daunting task taking care of them. At the end of the 2nd World war, the United Nations established the International Refugees Organization (I.R.O) to deal with the Refugees' issues and on completion of this task in 1952, the United Nations High Commission for Refugees replaced it (UNHCR)⁴.

THE LEGAL REQUIREMENTS FOR REFUGEE STATUS

In considering what constitutes a refugee, it is necessary to look at the conventions dealing with the issues of Refugees.

Thus, the UN convention⁵ defines a Refugee as any person who as a result of events occurring before 1st 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 it⁶.

By the provision of the definition offered under the UN convention, no person can claim refugee status if for instance, he takes a flight for the purpose of his own personal pleasure. The definition is embedded with the following requirements:

- a. The event which compels a person to leave his Country of Nationality or Country of habitual residence must have occurred before 1st January, 1951.
- b. The persecution must be for reasons of race, religion, nationality or membership of a particular social group or political opinion.
- c. There must be a well-founded fear of persecution.
- d. The person seeking asylum must be outside his Country.
- e. The person must be unable or owing to some fear is unwilling to avail himself of the protection of his Country.

A careful examination of the definition also reveals that the definition does not include persons that migrate for economic reasons. From the above requirements of the definition, the definition is restrictive in scope, discriminatory and mainly geared or aimed at protecting European Refugees to the exclusion of Non-European Refugees.⁷

The UN Protocol⁸ corrected this anomaly with regards to the status of Refugees. The Protocol provides that for the purposes of the present protocol, the term 'Refugee' means any person within the definition of Article 1 of the Convention as if the words, "as a result of event occurring before 1st January, 1951 and as a result of such events were omitted".⁹

It is crystal clear from the above definition that both the General Convention and the UN Protocol have not addressed the problems of Refugees from the African perspective. However, the definition of the UN Convention was adopted with some modifications by the Organization of African Unity (OAU) to look into Refugee problems as a result of war of liberation from

⁴ M U Gasiokwu, *The Legal and Administrative Mechanism for the Protection of Refugees in Nigeria* (2004) (3) (11) *Lawyers' Bi-Annual Journal* 175-190.

⁵ United Nations Convention on the Status of a Refugee 1954

⁶ Osita Eze, *Human Right in Africa; Some Selected Problem* (Lagos Macmillian Publishers, 1984) 77

⁷ United Nations High Commissioner for Refugees (UNHCR) 1952

⁸ The UN Protocol of 1967

⁹ Article 1 (2) The United Nations Protocol on Status of a Refugee 1967

colonialism. This expressly exclude any person who has committed a crime against peace, a war crime or crime against humanity as defined in the international instruments or has committed a serious non-political crime outside the Country as a Refugee and if he has been found guilty of acts contrary to the purpose and principles of the conventions.

STATUTORY PROVISIONS

It is a trite matter that there is no Country without Refugees. A Country may either be a Refugee producer or a receiver and in some cases both producer and receiver. Section 20 of the National Commission for Refugees Act¹⁰ provides that any person who is a Refugee under the UN Convention¹¹ or its Protocol¹² relating to the status of Refugees or the OAU Convention is a Refugee under the Nigerian law.

Nigeria, by virtue of reception has not only acceded to these refugee instruments but also enacted the National Commission for Refugees Act with a view to safeguarding the interests of Refugees in Nigeria. A person seeking asylum who satisfies the refugee criteria as laid down in section 20 of the Act¹³ may be granted refugee status by the Federal Commissioner for Refugee on the favorable recommendation of the Eligibility Committee.

Once a person's status has been recognized as a refugee, he is protected by the principle of non-refoulement and is entitled to certain social and economic rights in the Country. By the provision of section 2 of the Act, matters relating to Refugees in Nigeria are the responsibility of the office of the Secretary to the Government of the Federation.

The Act¹⁴ establishes the National Commission for Refugees, a major organ directly responsible for matters relating to Refugee in Nigeria. The Commission is constituted to the effect

that it has a Chairman appointed by the President of the Federation, a Representative of the Secretary to the Government from the Ministry of External Affairs, the Director General of Internal Affairs and a Representative of the United Nations High Commissioner for Refugees (UNHCR) in Nigeria as Observer.¹⁵ Article 34 of the Convention¹⁶ provides for naturalization, stating that the contracting state shall undertake to facilitate the naturalization of refugees as far is possible through measures which expedite the process. In this connection, the contracting State does not declare the explicit Right of a Refugee to be naturalized but instead declare their desire to facilitate the process of naturalization.

The remedy to the refugee problem is for the refugees to return to their home Country, but if this is unfeasible for some reasons, they may wish to settle permanently in the Country of refuge. In this regard, a Refugee may acquire citizenship which would give former Refugees the same legal rights as citizens of the Country.

Conditionally, whether citizenship can be acquired by Refugee or not depends on meeting, satisfactorily the requirements for the acquisition of citizenship as stated in the Nigerian constitution¹⁷ that a Refugee may acquire Nigerian citizenship mainly by naturalization. Under this, the applicant must meet the following conditions:

- i. Must be of full age and capacity
- ii. Good character
- iii. Has shown clear intention to be domiciled in Nigeria
- iv. In the opinion of the Governor of the State where he is or proposes to be resident acceptable to the local community in which he intends to live permanently and has been assimilated into the way of life of Nigerians

¹⁰ Cap 244 Laws of the Federation of Nigeria 1990

¹¹ United Nations Refugees Conventions 1951

¹² United Nations Protocol 1967

¹³ National Commission for Refugees Act Cap 244 LFN 1990 (hereinafter referred to as the Act)

¹⁴ Section 3 of the Act

¹⁵ Section 3 (1) (f) of the Act

¹⁶ (n 11)

¹⁷ Section 27 (n 3)

Statutory Provisions and Legal Framework for Safeguarding Refugees in Nigeria: An Appraisal

- v. Has made or is capable of making useful contributions to the advancement, progress and well-being of Nigeria
- vi. Ready to take the Oath of allegiance to the Nigerian State.
- vii. Has been resident for 15 consecutive years or has 12 months continuously, during twenty years period preceding the 12 months, has resided in Nigeria for periods aggregate to not less than 15 years.

The applicant must, upon meeting these requirements, have renounced previous citizenship status held.¹⁸

THE LEGAL FRAMEWORK

The legal framework for the protection of Refugees deals with the Regulations for their protection. These Regulations are designed to be applied to the specific context of the protection of Refugees and formed part of the larger international standard. This has found expression in the 1951 United Nations Convention dealing with the status of Refugees which established certain general obligations for States or Refugees and contains civil, economic and social rights for the Refugee on an integrated basis.

Under the provisions of the United Nations High Commissioner for Refugees (UNHCR), there is an understanding that international protection for Refugees means defending their legal rights to admission and non-refoulement. In the same vein, it gives Refugees who lawfully reside within the territory of a foreign State, a status close to that of its nationals.

Again, Refugees protection means defending the rights, security and welfare of Refugees particularly their personal security against acts of violence and mistreatment. This protection enjoyed by the Refugee entails an unrestricted human right competence to ensure dignity and integrity. Due to the fact that Refugees are outside

their national territory and lack the protection of their Government, international law substitutes its own protection for which the Country of origin cannot or will not provide.

The legal framework could be classified into International and Municipal legal sources. Firstly, at the international level, the principal sources of existing standards for the protection of Refugee as well as the foundations for the articulation of further standards are found in international human right law specifically, International Conventions.¹⁹

International Humanitarian law which comprises the four General Conventions²⁰ were held and Regulations were made for the physical safety, liberty, health care, food, shelter, clothing, work and respect for the integrity and dignity of human person. Restrictive measures imposed on the employment of aliens in order to protect domestic labour market are inapplicable to Refugees who have had prior exemption from such measures and to those who fulfill the following requirements.

- i. Completion of three years residence in the host community;
- ii. Marriage to a national of the country of residence on the condition that both cohabit;
- iii. Where at least the Refugee's children possess the nationality in the country of residence²¹. At the municipal or regional level, these international standards are generally applicable in African States. The right to asylum in Africa as contained in the OAU convention explicitly sees this as a humanitarian act and member state of OAU are obliged to receive and secure

¹⁹ International Conventions on Civil and Political Right 1966 and the International Convention on Economic Social and Cultural Rights 1996

²⁰ 1949 and the two additional Protocols of 1977 and International Refugee Law as embodied principally in the 1951 Convention Relating to the Status of Refugees and the 1967 Protocols.

²¹ J C Hathaway, *'The Law of Refugee Status'*, Seminar Paper (1991) 9

¹⁸ Section 28 (n 17)

the settlement of Refugees in their Countries consistent with their respective national laws even where the States in question have not ratified the OAU convention²². The OAU Convention is premised on legally institutionalized temporary protection in which there is side-by-side individual status determination as part of the obligation of protecting Refugees in Africa that arises from group eligibility, is the establishment of settlement or camps²³. As of right, no Refugee shall be repatriated against his or her will²⁴. In Nigeria, the national Institution that also has dealing with Refugees is the National Emergency Relief Agency established under the Act²⁵.

CONCLUSION AND RECOMMENDATIONS

It is observed that the procedure for attaining Refugee status is cumbersome given the reality of a person seeking asylum or refugee status. In spite of the ample statutory provisions regarding protection of Refugees, Refugees have been known to have been forcibly repatriated and the conferment of Refugee status has depended on the mercy of the receiving State.

A broad refugee maintenance program is recommended to meet up with emergencies and facilitate speedy maintenance of those seeking asylum. Looking at the statutory provisions, it is clear that there is low level of awareness of refugee rights by asylum seekers and where there is awareness, demanding for such rights will not be easy due to poor condition asylum seeker may find himself.

The important way to guarantee against the generation of Refugees and its attendant challenges lies in the ascendancy of good governance in the

recognition and protection of Refugees status, the defense of democratic right and liberties.

REFERENCES

STATUTES

- Constitution of the Federal Republic of Nigeria 1999 (as amended)
- National Commission for Refugees Act Cap 244 Laws of the Federation of Nigeria 1990.
- National Emergency Relief Agency Act Cap 257 Laws of the Federation of Nigeria 1990
- Organization of Africa Unity (OAU) Convention 1969
- The International Convention on Economic, Social, and Cultural Rights, 1996
- The International Conventions on Civil and Political Right 1966
- The United Nations Convention on the Status of a Refugee 1954
- The United Nations High Commissioner for Refugees (UNHCR) 1952
- The United Nations Protocol on Status of a Refugee 1967
- The United Nations Protocol on Status of a Refugee 1977
- The United Nations Protocols on Status of a Refugee 1949
- United Nations Refugees Conventions 1951

BOOKS

- Madsen G, *Status of Refugees in International Law* (Leiden Sijthoff, 1996)
- Osita E, *Human Right in Africa; Some Selected Problem* (Lagos Macmillian Publishers, 1984)
- Shaw M N, *International Law* (4th edn, Cambridge University Press 2007)

JOURNALS

- Benedicta D, 'Legal and Institutional Framework for the Protection of Refugees in Nigeria' (2004) Journal of Delta State University
- Gasiokwu M U, 'The Legal and Administrative Mechanism for the Protection of Refugees in Nigeria' (2004) (3) (11) Lawyers' Bi-Annual Journal
- Hathaway J C, 'The Law of Refugee Status', (Unpublished) (1991)

²² M N Shaw, *International Law* (4th edn 1997, Cambridge University Press 2007)

²³ Article 2(6) OAU Convention 1969

²⁴ Article 5(1) OAU Convention 1969

²⁵ National Emergency Relief Agency Act Cap 257 Laws of the Federation of Nigeria (LFN) 1990