

International Legal Framework for the Protection of Refugees

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Abstract

International refugee law operates to guarantee the protection of refugees and displaced persons, making the issue of protection of refugees more relevant and global. Refugees face grave dangers in their own countries which have forced them across international borders in search of protection. They are forced to flee their countries of origin, to seek asylum and be granted legal protection (refugee status) in the country of refuge as a result of issues such as ethnic and religious strife, internal armed conflict, militancy and insurgency. These persons are vulnerable economically, socially, psychologically and politically. The national and international community are confronted with the obligation to ensure protection for this group of persons. This paper therefore seeks to examine the problems confronting the refugees and consider their legal status and right to protection. Thus, it primarily investigated the international legal framework for their protection. It paper argued that international law is not the only solution to the problems the refugees are facing and challenges produced by migratory flow, but it can be a facilitator and guide to the principled effectiveness of measures which member states may take.

Keywords: International, Legal Framework, Protection, Migrants, Refugees

1. Introduction

The 1951 UN Convention Relating to the Status of Refugees emerged in the early days of the Cold War particularly to resolve the situation of some hundreds of thousands of refugees who remained displaced by World War II and fascist/Nazi persecution . At its core, this treaty substitutes the protection of the international community (in the form of a host government) for that of an unable or unwilling sovereign. The treaty limits this stand-in protection to those who were unable or unwilling to avail themselves of the protection of their home countries because of a “well-founded fear of persecution based on their race, religion, nationality, political opinion or membership in a particular social group”. The Convention had time limits (refugees displaced by 1951) and geographic restrictions (Europe) lifted in the 1967 Protocol Relating to the Status of Refugees. The core legal

obligation of States under the Convention/Protocol is non-refoulement to refrain from forcibly returning refugees to countries in which they would face persecution.

Several treaties and bodies make up the ‘international refugee regime’. The main international instruments are the 1951 Convention relating to the status of refugees (the 1951 Refugee Convention) and the 1967 Protocol relating to the status of refugees (the 1967 Refugee Protocol). There are also regional instruments that include broader definitions of the term “refugee”. These regional instruments were adopted to consider the specificities of movements of populations in different regions. As a result, asylum seekers may be recognised as refugees under some rules but not others. The UNHCR also has an important role to play regarding assistance to and protection of refugees. What this implies is that most developed of these frameworks apply to refugees as defined by the 1951 UN Convention that is, persons who have a well-founded fear of persecution- and persons who would be tortured if they were returned to their home countries. However, there is a growing international consensus about the rights of persons displaced by conflict and other situations that are likely to pose serious harm if return takes place.

The Convention drafters recognised that among refugee populations would be found individuals whose actions made them undeserving of international protection. The so-called “exclusion” clauses of the Convention set forth two significant kinds of individual rights violators and serious criminals. Thus, those who have committed a crime against peace, a war crime, crime against humanity, or a serious non-political crime are excluded from international protection. That is, they are not to be granted refugee status and its attendant benefits separately, there are two exceptions to a state’s non-refoulement obligation under Article 33. States may return to a country of persecution an individual regarded “as a danger to the security of the country” of refuge, as well as someone who “having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.”

Several rights are been accorded refugees, however, do not need to match those of citizens. Rights as fundamental as the right of association under Article 15 of the Universal Declaration of Human Rights (UDHR) and freedom of movement under Article 26 of the UDHR are accorded to refugees to the same degree that they are accorded to nationals of other countries. Rights regarding public education beyond elementary school and housing are also accorded to refugees in a manner no less favourable than those accorded to citizens of other countries. However, with regard to wage-earning employment, refugees are accorded national treatment after three years of residence in the host country and certain legal matters are left complexly to the host state. States are encouraged to facilitate the naturalisation of refugees, though they are not required to match any naturalisation rights provided to other non-citizens. This paper seeks to examine the issues confronting the refugees and consider their legal status and right to protection. It will primarily investigate the international legal framework for their protection and make recommendations accordingly.

1.1 The Legal Concept of “Refugee”

The term refugee has been variously described by different persons, groups, and instruments all trying to capture a common characteristic. The main purpose of the definition of refugee is to facilitate and justify aid and protection and for the satisfaction of rights and benefits, to avoid confusing refugees with other groups of people who cross borders. The 1951 UN Convention identified a refugee as a person who:

As a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country. Or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing to such fear is unwilling to return to it¹

In analysing the above definition, the following characteristics of refugees are deducible:

- a) The person seeking asylum must be outside his country of nationality.
- b) He is unable or unwilling to avail himself of the protection of that country or to return there.
- c) The inability or unwillingness is attributed to a well-founded fear of being persecuted.
- d) The persecution being feared must be for reasons of race, religion, nationality or membership of a particular social group or political opinion.
- e) The events which compelled the person to leave his country of nationality or country of habitual residence must have occurred before 1 January 1951.

Commenting on the above characteristics, an erudite scholar, professor Gasiokwu² opined that a person is regarded as a refugee if he has been so rendered by events occurring before 1 January 1951. In the absence of other instruments without this time limitation what it would have meant is that persons who would have qualified for protection as refugees may be denied such privilege because they found themselves in such a position after that stipulated date. Conversely, there would not have been refugees in the United Nations context in Africa today. There is no doubt that such events that existed before 1 January 1951 are still much and even more serious with man including many more. The drafters of the convention could not have convinced anyone that the reasons which gave birth to the events that may have occurred before 1951 which motivated this clause would have ceased after that date.

¹ Article 1A (2) UN Convention 1951

² M.O. Gasiokwu, Problems of Citizenship and Free Movement Jos Mono Expression, 1996 p.92, quoted in O. K. Chinwe and N.C. Cecilia, The Role of United Nations High Commissioner for Refugees in Africa, BIU Law Journal (2015) vol 2, no1, p.241

Furthermore, what may constitute “well-founded fear” for one person may not necessarily be enough fear for another person for him to flee his country. “The well-founded fear is a subjective category that may sparsely apply to individuals but certainly not applicable to the mass movement of refugees prevalent in Africa. Professor Hathaway³ also commenting on the phrase states that it is the sustained or systematic violation of basic human rights which is demonstrative of a failure of state protection.

2. The International Refugee Regime

The international refugee regime is a system of laws, principles and practices that protect individuals who have been compelled to leave their homes. The protection is based on human rights and international treaties and conventions which will be considered shortly.

2.1 United Nations Convention Relating the Status of Refugees, 1951.

The United Nations Convention Relating to the Status of Refugees which is a legal document that defines the rights of refugees was adopted on 28 July 1951.⁴ Following the sixth instrument of ratification it entered into force on 22 April 1954. The Convention consists of a preamble and 46 Articles and has been subjected to one amendment in the form of the 1967 protocol.⁵

The Convention consolidates previous international instruments relating to refugees and provides the most comprehensive codification of the rights of refugees yet attempted on the international level. It lays down basic minimum standards for the treatment of refugees, without prejudice to the granting by States of more favourable treatment.⁶ The Convention is to be applied without discrimination as to race, religion or country of origin and contains various safeguards against the expulsion of refugees. It also makes provision for their documentation, including a refugee travel document in passport form. Certain provisions of the Convention are considered fundamental that States Parties could not make reservations. These include the provisions relating to the definition of the term “refugee”, and the so-called principle of non-refoulement, against his or her will, in any manner whatsoever, to a territory where she fears persecution.⁷

The Convention does not apply to those refugees who are the concern of United Nations Agencies other than UNHCR, such as refugees from Palestine who receive protection or assistance from the United Nations Relief and Work Agency for Palestine Refugees in the Near East (UNRWA), nor to those refugees who have a status equivalent to nationals in their country of refugees.

³ J.C. Harthway. J.C, Fear of Persecution and the Law of Human Rights in Africa in O.K. Chinwe and N.C. Cecilia, The Role of the United Nations High Commissioner for Refugees (UNHCR) and the Protection of Refugees in Africa, BIU Law Journal (2015) vol 2, No 1, 239

⁴ 1951 United Nations Convention Relating to the Status of Refugees.

⁵ 1957 Protocol Relating to the Status of the Refugees

⁶ Ibid

⁷ Ibid

While earlier international instruments only applied to specific groups of refugees, the definition of the term “refugee” contained in Article 1 of the 1951 Convention is couched in general terms. However, the scope of the Convention is limited to persons who became refugees as a result of events occurring before 1 January 1951. The main provisions of the 1951 Convention can be grouped into four parts⁸

- a) The provisions giving the basic definition of who is a refugee, who has ceased to be a refugee and who is excluded from refugee status⁹
- b) The Rights and Obligations of Refugees
- c) Obligations of States Parties to the 1951 Convention.

It is the principal responsibility of States to provide international protection to refugees. As a general principle of international law, every treaty in force is binding upon the parties to it, and must be performed in good faith. By adhering to the 1951 Convention, States commit themselves, vis-à-vis each other and the international community, to afford refugees on their territories such rights as stipulated by these instruments.

The Convention itself is the constitution for the protection of people refugees. It tries to cover all the basic needs of refugees. It does not only portray the rights of refugees but also, realizes the obligations of refugees and States Parties to the Convention. The Contracting States all apply the provision of non-discrimination to race, religion¹⁰ or country of origin. Noting the Convention of the juridical status of refugee, respects their dignity, in the same way, gainful employment¹¹, and welfare provisions are highly appreciable. These provisions reflect the fulfilment of the basic needs of a human being to survive with a dignified life. The Convention contains provisions for the contracting State to accord refugees the same treatment as is accorded to aliens generally¹². This provision also applies the jurisprudence of non-discrimination between the categories of people within a state. Nonetheless, the Convention has not left the provisions of administrative assistance, freedom of movement, travel documents, identity papers, and transfer of assets which are essential for the recognition of human rights.

The above-mentioned rights and obligations are equally applicable to refugee women. Still, refugee women are a much more vulnerable group within the refugee society. Thus, they require more effective protection and promoting measures the Convention portrays the rights of women’s work in the provision of labour legislation and social security¹³

Importantly, the ‘well-founded fear of persecution’ criterion set out in the 1951 refugee convention has traditionally been interpreted as referring to an ‘individual’ fear of

⁸ Information Package, on Accession to the 1951 Convention and the 1967 Protocol Relating to the status of Refugees, UNHCR, January 1999, p.10

⁹ Convention Relating to the Status of Refugees 1951, Art. 1, 1(C), (D), (E), and (F).

¹⁰ Convention Relating to the Status of Refugees 1951, Art.2

¹¹ Convention Relating to the Status of Refugees 1951, Chapter III Art. 17, 18 and 19

¹² Convention Relating to the Status of Refugees 1951, Art. 7(1)

¹³ Convention Relating to the Status of Refugees 1951, Art. 24(a)

persecution. This requires that the persons concerned demonstrate that they were personally at risk of being persecuted on one of the five grounds of persecution.¹⁴ However, the Refugee Convention is silent as to how the refugee status of an individual should be determined. States party to the 1951 refugee convention are therefore expected to establish national refugee status Determination (RSD) procedures to determine the claims of asylum-seekers.¹⁵ As already noted above, the 1951 Refugee Convention was initially limited to ‘events occurring in Europe before 1 January 1951’ but these geographic and temporal limitations were removed with the adoption of the 1967 refugee protocol to fill the gap.

2.2 Protocol Relating to the Status of Refugees, 1967

With the passage of time and the emergence of new refugee situations, the need was increasingly felt to make the provisions of the Convention applicable to such new refugees. As a result, a protocol relating to the status of Refugees was prepared and submitted to the United Nations General Assembly in 1966. In Resolution 2198 (XXI) of 16 December 1966, the Assembly took note of the protocol and requested the Secretary-General to submit the text thereof to States, to enable them to accede. The authentic text of the protocol was signed by the president of the General Assembly and the Secretary-General in New York on 31 January 1967, and transmitted to Governments. It entered into force on 4 October 1967, upon the deposit of the sixth instrument of accession.¹⁶

By accession to the protocol, states undertake to apply the substantive provisions of the 1951 Convention to all refugees covered by the definition of the latter, but without limitation of date. Although related to the Convention in this way, the protocol is an independent instrument, accession to which is not limited to states parties to the Convention¹⁷. The important provision of the 1967 protocol relating to the status of Refugees is Article 1 which has removed the geographical and temporal limitations in the definition of ‘refugee’ in the 1951 Convention, thus making it broader and encompassing people all over the world who are fleeing persecution for similar reasons at any point of time.

The Convention and the Protocol are the principal international instruments established for the protection of refugees and their basic character has been widely recognized internationally. The General Assembly has frequently called upon States to become parties to these instruments. Accession has also been recommended by various regional organizations, such as the Council of Europe, the Organization of African Unity, and the Organization of American States.

¹⁴ International Federation of Red Cross and Crescent Societies, Geneva 2017. *The Legal Framework for Migrants and Refugees: An Introduction for Red Cross and Red Crescent and Volunteers*, available at www.ifrc.org. Accessed 10 December 2023.

¹⁵ *Ibid*

¹⁶ 1967 Protocol Relating to the Status of Refugees

¹⁷ *Ibid*

2.3 The ExCom Resolution

UNHCR's Executive Committee (ExCom) was created by ECOSOC in 1958, following a request from the UN General Assembly and consists of member states. Its main task is to approve the High Commissioner's assistance, programmes, and advise the High Commissioner in the Exercise of his/her statutory functions, notable international protection, and scrutinize all financial and administrative aspects of the agency.¹⁸ Members of ExCom are elected by ECOSOC. ExCom meets annually for one week in October in Geneva; Standing Committee meetings are held up to five times per year. The annual Conclusions adopted by ExCom form part of the framework of the international refugee protection regime.¹⁹ They are based on the principles of the Refugee Convention and are drafted and adopted by consensus in response to particular protection issues. Executive committee Conclusions represent the agreement of more than 50 countries that have great interest in and experience with refugee protection. These and other countries often refer to ExCom Conclusions when developing their own laws and policies.²⁰

Regarding the Refugee Status of Women, ExCom has made some pertinent Conclusions that is, Executive Committee, Conclusion No. 64(XLI), 1990, on Refugee Women and International Protection; as repeated in part in Executive Committee, Conclusion No. 39(XXXVI), 1985, on Refugee Women and International Protection; Executive Committee.²¹ Conclusion No, 54(XXXIX), 1988 on Refugee Women; as repeated in part Executive Conclusion No60(XL), 1989, on Refugee Women; Executive Conclusion No. 105(LVIL), 2006 on Conclusion on Women and Girls at Risk.

2.4 The Universal Declaration of Human Rights (UDHR) 1948

The Universal Declaration of Human Rights (UDHR) is the foundation of international human rights law, proclaimed by the United Nations General Assembly in 1948, it was the first internationally agreed statement of fundamental human rights to which all human beings are entitled²². The Declaration is not a legally binding treaty but rather an inspirational statement which aims to set "a common standard of achievement for all people and all nations". however, the Declaration is an extremely influential document and is widely regarded as the standard by which we measure compliance with human rights principles. Article 14 of the Declaration which is the right to seek and end asylum states clearly that everyone has the right to seek and end asylum.²³ The declaration is regarded as a milestone in international human rights law.

Since then, the right to asylum has been incorporated into countless international treaties and constitutions. Despite this, the right to asylum and the human rights of migrants and refugees have continuously been the centre of violent political attacks.

¹⁸ UN Economic and Social Council Resolution 549 (XVIII)

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² Universal Declaration of Human Rights 1948.

²³ Ibid Art 14

2.5 Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 1984.

State parties to the 1984 convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT) commit themselves not to return a person “where there are substantial grounds for believing that he would be in danger of being subject to torture (Art.3)”,²⁴ a similar provision is included in the European Convention on Human Rights and Fundamental Freedoms, which has been interpreted to prohibit the return to a state where there is a “real risk” that the person will be subject to inhuman or degrading treatment and punishment²⁵. Unlike the refugee convention’s refoulement provision, CAT contains no exceptions on the basis of national security.

3. Lessons from Selected Global Regional Models

The 1951 Convention and 1967 Protocol cannot address all the features and issues related to refugee status due to various limitations of the nature of the humanitarian crisis, geography and other concerned subject matters. Therefore, the Executive Committee encourages states and UNHCR to continue to promote, where relevant, regional initiatives for refugee protection and durable solutions, and to ensure that regional standards which are developed conform fully with universally recognized protection standards and respond to particular regional circumstances and protection need”.

3.1 The Organization of African Unity (OAU) Refugee Convention 1969

In the mid-1960s, states in Africa were engaged in the process of decolonization. Many African populations struggled against colonial or apartheid governments, which led to significant numbers of people leaving their countries to escape oppression. The 1951 refugee convention requirement that there must be an individualized ‘fear of persecution’ excluded these groups of people from the definition of ‘refugee’ and was therefore inadequate in the African context. Against this back, in 1969 the Organization of African Unity (OAU) adopted the OAU Refugee Convention governing the specific aspects of refugee problems in Africa (OAU convention). While the 1951 convention was considered to be a ‘euro-centric’ instrument, it can also be said that the OAU convention reflects the specificities of population movements in Africa during this period.²⁶ The definition of ‘refugee’ in the OAU convention includes the “well-founded fear of persecution” criterion but also extends 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

²⁴ 1984 Convention Against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment, Art 3

²⁵ Aleinikoff T, Linda S. B and Vincent C. Migration and International Legal Norms, American Journal of International Law, 98(1) 234.

²⁶ 1969 Organization of African Unity (OAU) Refugee Convention.

leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.²⁷

This expanded definition, which includes people fleeing situations of violence and armed conflict, does not require an asylum seeker to demonstrate a subjective fear of persecution. Refugees who flee armed conflict and violence are thus recognized as groups of refugees on a prima facie basis, without the need to follow an RSD procedure. Consequently, the expanded refugee definition provided for in the OAU convention is often considered more “generous” than the definition in the 1951 convention. Although the 1951 Refugee Convention is the basis and universal instrument relating to the status of refugees”, the OAU Convention is, to date, the only legally binding regional refugee treaty.²⁸ Notably, the OAU Convention follows the refugee definitions found in the 1951 Convention, however, it includes a more objectively based consideration of any person compelled to leave his/her country because of “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationally”.

The implication therefore is that persons fleeing civil disturbances, widespread violence and war are entitled to claim the status of refugees in States that are parties to this convention, regardless of whether they have a well-founded fear of persecution. Thus, this Convention has a wider for definition of refugee, it prohibits subversive activities, and provided provision on non-discriminatory treatment, voluntary repatriation, travel document, cooperation with UNHCR, and settlement of dispute that are broader in comparison to the 1951 Convention.

3.2 Latin America - Cartagena Declaration in 1984

In Latin America, the definition of “refugee” in the 1951 refugee convention proved inadequate to capture millions of people who were displaced from 1960-1980. Many of these individuals were displaced after fleeing the outbreak of violence in Central America in the 1960s, as a result of political and military upheaval. This was followed in the 1970s and 1980s by the displacement of people fleeing massive human rights violations by dictatorial governments. In response to these events, a group of experts adopted the Cartagena Declaration in 1984²⁹ which included a definition of “refugee” that was expanded and even broader than the definition provided by the OAU convention. This new definition included “massive violation of human rights” as a ground to seek refugee status. The text of the Cartagena Declaration is as follows:

To reiterate that, because of the experience gained from the massive flows of refugees in the Central American area, it is necessary to consider enlarging the concept of a prevailing in the region, the precedent of the

²⁷ Ibid

²⁸ Ibid

²⁹ Cartagena Declaration on refugees, colloquium on the international protection of refugees in Central America, Mexico and Panama, 22 November 1984.

OAU convention (article 1, paragraph 2) and the doctrine employed in the reports of the inter-American Commission on Human Rights. Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 convention and the 1967 protocol, includes refugee persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”

Although the Cartagena Declaration is a non-binding instrument, it has had a considerable influence over the policies and legislation adopted throughout Latin America. Most Latin American countries have incorporated the provisions of the Cartagena Declaration into their domestic legal framework. However, the extended definition of “refugee” to include people fleeing massive violations of human rights has not been accepted outside Latin America.

3.3 The European Union (EU)

All European Union (EU) Member States are party to the 1951 refugee convention, as are many European countries that are not EU member states. EU law uses the criterion provided for in the 1951 refugee convention, meaning that asylum seekers are granted refugee status only if they can demonstrate that they have an individual “well-founded fear of persecution”. However, EU law also provides for what is referred to as “subsidiary protection” of people who face serious threats to their lives due to indiscriminate violence in armed conflict and massive violations of human rights. Under “subsidiary protection” people are protected against being forcibly returned to the country they fled (the principle of non-refoulement, explained above). Subsidiary protection has been applied to many Syrians fleeing to European countries since the start of the Syrian civil war. Syrians have been protected from being forcibly returned to Syria without formally being recognised as refugees in most EU countries. Nevertheless, some EU member states have followed the advice of the UNHCR and formally recognised many Syrians as refugees.”

The EU has also established a “temporary protection” regime, which establishes minimum standards for admitting and protecting groups of persons in the event of a mass influx, where refugee status is difficult to determine individually. To some extent, the “temporary protection” regime mirrors the extended definition of a refugee provided for by the OAU convention. However, this mechanism has never been applied, including during the large-scale influx of migrants and refugee refugees in 2015. The protection standards under subsidiary and temporary protection are lower than those of the 1951 refugee convention. In particular concerning the right to remain within the territory of a state.

3.4 Asia Pacific Region

A critical gap in the international regime concerning refugees is in the Asia-Pacific region. More than half of the countries in the region are not party to the 1951 Refugee Convention

and its 1967 protocol. The UNHCR undertakes RSD procedures in many of these countries based on its statute, recognizing as refugees both people with a well-founded fear of persecution and those fleeing armed conflict or generalized violence. While there is no regional binding instrument on the protection of refugees in the region, the Asia-African Legal Consultative Organization (AALCO), formerly known as the Asia-African Legal Consultative Committee (AALCC), adopted the Bangkok principles on the status and treatment of refugees in 1966 (the final version of the text was adopted in 2001),³⁰ the forty-five-member state Asia-African Legal Consultative Organisation adopted the OAU refugees³¹. As with the Latin American expansion of the refugee definition, the Bangkok Principles are declaratory.

Principles concerning the Treatment of Refugee as adopted by the Asian-African Legal Consultative Committee at its eighth session in Bangkok in 1966, define 'refugee' as a person who owing persecution of a well-founded fear of persecution for reason of race, colour, religion, political belief or membership of a particular social group, (a) leaves the state of which he is a national or the country of his nationality, or if he has not nationality the state or country of which he is a habitual resident or (b) being outside such state or country is unable or unwilling to return to it or to avail him of its protection.³² These are two exceptions.

- (1) A person having more than one nationality shall not be a refugee if he is in a position to avail himself or the protection of any state or country of which he is a national.
- (2) A person who before his admission into the country of refuge, has committed a crime against peace, aware crime, or a crime against humanity or a serious non-political crime or has committed acts contrary to the purpose and principles of the United Nations shall not be a refugee.

A person who was outside of the state of which he is a national or the country of his nationality or if he has no nationality the state or the country of which he is a habitual resident, at the time of the events which caused him to have a well-founded fear of above-mentioned persecution and is unable or unwilling to return to it or to avail himself of its protection all be considered a refugee. The dependents of a refugee shall also be deemed to be refugees.

Like the Cartagena Declaration, the Bangkok principle is not legally binding. While many states are not party to the 1951 convention, in practice, many of them admit people in need of international protection, including those fleeing persecution, armed conflict and generalised violence. These people in need of international protection are referred to as

³⁰ Asian-African Legal Consultative Organization (AALCO), final text of the AALCO 1966 Bangkok principles in status and treatment of refugees, as adopted on 24 June 2001 at the AALCO's 40th session, New Delhi.

³¹ Asian-African legal consultative organization resolution 40/3, June 24, 2001, New Delhi.

³² *Ibid*

“irregular” or “illegal” migrants. Other expressions, such as “displaced person”, have been used to describe those in need of international protection who are not formally recognised as refugees. Therefore, in countries not party to the refugee convention, ‘refugees’ (for those in a ‘refugee-like’ situation) are primarily protected under international human rights law.

3.5 National Commission for Refugees, Migrant, and Internally Displaced (NCFRMI) - Nigeria

In Nigeria, the primary legal and institutional framework for protecting refugees is the National Commission for Refugees, Migrant and Internally Displaced (NCFRMI) Act. The Commission was established by Decree 52 of 1989 now known as the National Commission for Refugees, Migrant, and Internally Displaced Act Cap N21 Laws of Federation 2004.³³ The Commission was established to protect and safeguard the interests of refugees in Nigeria, under Section 3(1) of the (NCFRMI) Act.³⁴ The commission is to operate under the supervision of the secretary to the Federal Government.

The Act stipulates that the Commission shall be constituted by a chairman who shall be appointed by the president, a representative of the Secretary of the Federal Government as Vice Chairman, the Federal Commissioner for Refugees or His representative, the Permanent Secretary of the Ministry of Foreign Affairs or his representative and the representative of the United Nations High Commissioner for Refugees in Nigeria as observer to be invited by the commission from time to time for the meetings of the commission where the matters to be deliberated upon have international dimensions. The NCFRMI Act incorporates several international and regional treaties, including the 1951 United Nations Convention Relating to the Status of Refugees as well as the 1969 Organisation of African Unity Convention which addresses specific aspects of refugee problems in Africa. Consistent with the international meaning of the term, as reflected in the above-mentioned conventions, section 20(1) of the NCFRMI) Act declares that a person shall be considered a refugee if he falls within the definition provided in Article 1 of the 1951 UN Convention relating to the Status of Refugees; Article 1 of the 1967 UN Protocol Relating to the Status of Refugees and Article 1 of the 1969 OAU Convention Governing the Specific Aspect Concerning the Refugee Problems in Africa.³⁵ Thus, the NCFRMI Act provides for the procedure which must be followed in the application for the grant of refugee status and also for appeal against refusal by the Federal Commissioner for Refugees to grant refugee status to an applicant.

4. The Challenges in Implementation of the Legal Instruments

While the norms and international legal frameworks are well accepted, serious implementation problems continue. There are several situations where people compelled to leave their homes or residences need international protection (in particular, the principle

³³ NCFRMI Act, Cap 21, LFN 2004

³⁴ Ibid, Section 3(1)

³⁵ Ibid, Section 20 (1)

of non-refoulement) but are not recognised as refugees. Such situations include People fleeing armed conflict and generalised violence to regions and countries that adopt a narrow definition of what constitutes a refugee, limited to a “well-founded fear of persecution” by the 1951 Refugee Convention. Again, People are compelled to leave their home country because of extreme poverty and deprivation. In addition, Migrants are located in states which experience a natural or man-made disaster. People in these circumstances cannot be recognised as refugees as they still theoretically benefit from the protection of the state in which they are located. While the norms and international legal frameworks are well accepted, serious implementation problems continue. The legal framework seems to be a growing confusion about the nexus between asylum and other forms of migration. Determining who a refugee is, as compared to an economic migrant, can be an extremely difficult task, mainly when individuals migrate for a complex variety of reasons.

States have adopted various policies to deter asylum seekers from reaching their territory or to shift the burden of making refugee status determinations to other states. Nevertheless, policies that fall short of actual refoulement deter bonafide refugees from seeking protection. These include visa restrictions imposed on nationals of certain states, sanctions against carriers that transport persons without proper documentation, safe third country and safe country of origin provisions through which states return asylum seekers without hearing their applications, transfer of asylum seekers interdicted on the high seas to processing centres in other countries, expedited processing provisions that turn away certain applicants (those judged to have no credible claim or a manifestly unfounded claim) without benefit of a full asylum hearing, and mandatory detention of asylum seekers. States and forced migrants will benefit when asylum systems provide meaningful access, are operated reasonably and efficiently, and minimise abuse.

5. Conclusion and Recommendations

The protection of refugees at the international level is a very crucial issue between and among the states; it engages not only states but also international organizations, and nongovernmental organizations in the process of the protection of those refugees. The protection of the refugee is followed by the recognition of the refugee status through the fulfilment of the requirements enacted in the immigration law or the 1951 Geneva Convention and the two protocols.

It is important to note that this protection is given on the foundation of a certain number of requirements or criteria. These conditions require the recognition of the refugee status to benefit from the protection from the state. However, there is a lack of uniformity in the international refugee law system. Each state in the international plan determines the conditions for the recognition of the refugee status, and most of the states refer much more to their immigration law to ensure that the asylum seeker has fulfilled the requirements. Despite the right to asylum and the plethora of statutory provisions regarding the protection of refugees, refugees have continued to be repatriated and the conferment of refugee status

has depended on the mercy of the receiving state. National and regional approaches based on the OAU Convention definition of a refugee are the best ways to ensure legal protection for the vast majority of today's refugees who flee conflict and other forms of serious harm. Thus, to help ensure the adequate protection of refugees in their region of origin, the international community should find ways to get critical refugee-receiving states to become parties to the 1951 Refugee Convention and 1967 Protocol.

Consequently, the human rights of migrants and refugees have continuously been the centre of violent political attacks. There is no gainsaying the fact the right to asylum is worthless if other human rights of asylum seekers are not respected. It is therefore recommended that measures must be put in place to avoid further infringement of their rights in all ramifications.

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