



An Appraisal of the Laws Regulating Refugee and Asylum Status in Nigeria

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ABSTRACT

Nigeria is a Country which presents a fertile ground for both migration by its citizens and by neighbouring states. The insecurity and economic embarrassment in Nigeria has made it inevitable for Nigerian citizens to seek for greener pastures elsewhere, causing an unprecedented brain drain in the country, and the quest for asylum in other countries by Nigerian citizens. The big brother posture that Nigeria assumes in Africa makes it the best option for citizens of neighbouring countries torn by conflict to seek asylum. This work seeks to examine the laws regulating the issue of asylum and the state and status of refugees in Nigeria, and where necessary proffer possible recommendations to challenges.

Keywords: Laws, Refugees, Asylum status, Nigeria.

1. INTRODUCTION

The constitution or the governing law of a country generally provides the fundamental human rights for each person and hence guarantees their protection. These rights are generally not absolute but are subject to the rights of others and security of the entire country¹. For this purpose every country no matter the stage of their development, is made up of three categories of people, the citizen, aliens (including refugees) and stateless persons. African countries seem to generate the highest number of refugees and internally displaced persons and the reason is not farfetched. At one point or another, many countries in Africa are either producing the refugees or playing host to other African countries. This is as a result of incessant hostilities and conflicts emanating in these countries such as gross violation of human rights, civil wars, natural disasters, religious and ethnic cleansing among others. It is no longer only a question of individual political persecution but it has extended to generalized and group flow of refugee and asylum seekers. These asylum seekers encounter grave danger in their own countries which entails that they move across borders seeking for protection. This paper examines the laws on asylum and refugee status in Nigeria, ultimately to determine their ability to protect those who seek to use them.

2. Conceptual Framework

‘Refugees’ are people who are recognized as refugees under the 1951 Convention relating to the status of Refugees or its 1967 protocol. The term refugee is coined from the French word *refugie*, which means to flee for safety. A refugee may be ordinarily be considered as a person fleeing from or is outside his nationality due to well founded fear of persecution of any sought and is seeking for safety and protection in another country². The definition of Refugee in any country depends on the national laws, Constitutions and legislations of the said country on the issue. The Refugee Convention is the primary Convention dealing with refugees. By its Article 1A (2), the term ‘refugee’ shall apply to 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

1. RC Chhangani, ‘Refugee Definition and the Laws in Nigeria’ *Journal of the Indian Law Institute* vol. 53:1

2. R Plender, *International Migration Law* 415(1988)

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.³

The Nigerian Refugee Act gives this a wider scope as it incorporates both the Geneva Convention and the OAU Refugee Conventions definitions. A Nigerian refugee therefore is a person who is forced to flee across borders on account of persecution. It accommodates both the individual and the group influx. Internally displaced people on the other hand by the UNHCR are ‘persons who have had to leave their homes for refugee – like reasons and are in refugee – like situation, but who remain within the border of their own country. They are fleeing from persecution, hostilities and imminent death from their immediate and natural surroundings to a place considered safe but within their country.

Refugee as the word is used in the convention is an asylum seeker whose application or subsequent appeal against initial refusal has been successful. This should be differentiated from a person who is just fleeing e.g. civil war or national disaster and not necessarily fearing persecution as provided in the Convention.

‘Economic migrant’ means a person who has left his or her own country and seeks by lawful or unlawful means to make a living for himself or herself (and family) in another country. In fact many asylum seekers are actually economic migrants who hope to secure entry into greener pastures.

‘Asylum’ is different from refugee status as the former constitutes the institution for protection while the latter refers to one of the categories of individuals among others who benefit from such protection although the two are always used interchangeably.

3. Qualifications for refugee or asylum status in Nigeria

Generally the commonest way to identify a refugee in any country depends on how the term refugee has been defined in their national laws on the issue. The refugee problems usually affect the refugees, the asylum state, and the international community. Therefore issues about refugees are properly placed under the jurisdiction of both national and international law.⁴ For Nigeria, it is the national laws and the international instruments viz – the 1951 United Nations Conventions relating to the Status of Refugees⁵ and its optional protocol and the 1969 OAU Convention Governing the Specific Aspects of Refugee problems in Africa. The qualification for refugee or asylum status in Nigeria is therefore based on these three. Nigeria has ratified the two international treaties and one is minded to believe that the national law is domestication or at least an attempt to adopt the international treaties. The 1951 convention mandates that an asylum seeker fulfils four conditions (a) he or she must be outside his or her state of origin, (b) he or she is unable or unwilling to return to this home country in order to be protected (c) (b) must stem from a well founded fear of being persecuted, (d) this persecution must be on account of nationality, race, religion or political opinion or membership of a social group⁶. This definition and qualification for refugee has been under criticism as it focuses only on the individual who has to show specifically, a persecution where he is the sole target on the grounds provided. It also does not consider other circumstances prevalent in the person’s immediate surroundings that may warrant his or her flight to protection (e.g. massive abuse of human rights, violent displacement, civil wars e.t.c.).

The protocol gave a new light to the provisions of the convention. A large number of refugees were produced as a result of colonial domination in the 1960s necessitating a means of protection for those who could not be protected by the restrictive provision of the Convention. The 1967 protocol relating to the status of refugees was adopted.⁷ It retained substantially the provisions of the convention but removed the geographical and time limitations⁸. The remedying part⁹ reads;

3. This Convention is known as Convention Relating to the Status of Refugees. It was signed on 28/7/51 at Geneva and came into force on 22/4/54

4. R C Chhangani *Refugee Definition and the Law in Nigeria* 2011 Praveen Kumar Chhangani. Text 189 UNTS 150

5. Text 1000 UNTS 46.

6. C O Miranda ‘Towards a Broader Definition of Refugee: 20th Century development Trends 20 *Cal. West*

7. R C Changani, ‘Refugee Definition and the Law in Nigeria’ *Journal of the Indian Law Institute* Vol. 53:1.

8. Article 1 (1) (2) and (3).

9. Cap 21 Laws of the Federation 2004.

1. The state parties to the Present Protocol undertake to apply articles 2 to 34 inclusive of the convention to refugees as hereafter defined.
2. For purposes of the present protocol, the term refugee shall except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the convention as if the words ‘As a result of events occurring before 1 January 1951 and ... the words ‘as a result of such events’ in article 1 A (2) were omitted.
3. Protocol shall be applied by the states already parties to the convention in accordance with article 1 (B) (a) of the convention shall be extended under article 1 (B) (2) thereof, apply also under the Protocol.

While the protocol remedied the convention by protecting refugees fleeing from African and other regions of the world, it did not protect people fleeing from internal aggression e.g. creation of new states, decolonization, civil wars, human rights violations, civil war among others. The OAU refugee convention complimented the convention and its protocol. It recognized the fact that the incident of refugee movement and asylum seeking in Africa is not limited to persecution but extends to far more reaching non-persecutory situations such as events that disturb public order, external aggression and others.

The Nigerian qualification and definition of refugee and asylum seeker is based on the convention of 1951 and its protocol of 1967, on the one hand, and the 1969 OAU Refugee Convention, on the other hand, which all have been ratified by Nigeria. In line with this, Nigeria enacted the National Commission for Refugees Act 1989. This Act seeks to safeguard the interest and treatment of asylum seekers and refugees in Nigeria¹⁰. The Act does not really define the word refugees but reveals that anybody that satisfies the definition in the convention, the protocol and the OAU Convention is a Nigerian refugee¹¹. It embraces the OAU Convention and its complimentary effect on the 1951 Convention and its Protocol. It therefore includes both the subjective criteria of fear of persecution eliminating the geographical and time limitations and also compelling circumstances disturbing public order in the victim’s country of origin.

4. Laws protecting Refugees and Asylum Seekers in Nigeria

The main legal framework protective of refugees and asylum seekers in Nigeria is the National Commission for Refugees. This commission was established by Decree 52 1989 during the Military era but now National Commission for Refugees e.t.c. Act¹². The commission was created to protect and safeguard the interests of Refugees, in other words, to administer the provisions of the Act. The constitution of the commission is as follows:

1. Chairman shall be appointed by the President.
2. Vice Chairman shall be a representative of the Secretary to the Federal Government.
3. The Federal Commissioner for Refugees or his representative.
4. The Permanent Secretary of the Ministry of Foreign Affairs or his representative.
5. The Permanent Secretary of the Ministry of Internal Affairs or his representative and
5. The representative of the United Nations High Commissioner for Refugees in Nigeria who is an observer and gets invited by the commission to their meetings.

This Act defines a refugee as a person who falls within the definition given by Article I of the Convention and its Protocol, and the 1969 OAU Convention¹³ thus, the Nigerian definition takes into

10. S. 20 of the Act.

11. Cap N₂₁ LFN 2004

12. 1st 2nd and 3rd Schedules of the Act.

13. S. 20 (2) of NCFR Act and Article 5 of the OAU Convention¹³. S. 9

14. 1 (2) (b).

consideration well founded fear of persecution, colonial rule, foreign occupation, events disturbing public order, manmade conditions which do not permit humans to reside safely in their countries of origin, civil wars, famine and natural disasters. Under Nigeria law, however a person is denied refugee status;

- a) If there are reasons to believe that he or she has committed a crime against humanity as inscribed in an international instrument to which Nigeria is a party.
- b) He or she is or has been guilty of acts inimical to the dictates of the Organization of African Unity.¹⁴

The functions of the commission permitted by law are,

- a) To lay down general guidelines and policy on issues relating to refugees and persons seeking asylum in Nigeria.
- b) Advise the Federal Government on policy matters in relation to refugees.
- c) Consider such matters as the Secretary to the Federal Government may from time to time, refer to it and make recommendations thereon to the Secretary to the Federal Government.

Empowered by the above function, the commission sees to it that the provisions of the NCFR Act are carried out effectively.

The Act itself makes extensive provisions protective of Refugees and the procedure to be followed by applicants' seeking for refugee status and for appeals in the event of refusal thus;

1. Application for the grant of a refugee's status shall be made to Federal Commissioner through the nearest competent officer or through the United Nations High commissioner for Refugees in Nigeria (UNHCR).
2. A competent officer to whom a person seeking asylum first presents himself shall, if he is not himself immigration, as soon possible notify an immigration officer that a person seeking refugees status has entered into or is present in Nigeria.
3. An application received by the office of the United Nations High Commissioner for Refugees shall be forwarded to the Eligibility Committee Constituted under S. 6 (1) of this Act.
4. The Eligibility Committee may invite the applicant to appear before it.
5. The decision of the Eligibility Committee shall be notified in writing to the applicant by the Federal Commissioner.
6. If the eligibility committee recommends that the applicant shall not be granted refugee status, it shall give reasons for its decision.
7. In the case of a refusal to grant refugee status, the applicant may appeal against the decision of the Eligibility Committee to the Board established by S. 7 of this Act within thirty days of his being notified of the refusal.
8. While awaiting the final decision by the Board, the applicant shall be allowed to remain in the Country in accordance with S. 1 (3) of this Act.
9. If the applicant is finally refused a refugee status, he shall be given reasonable time to seek admission as a refugee into another country.¹⁵

Other important provisions of the Act are: The Act prohibits expulsion or return of refugees. It stipulates that a refugee in Nigeria shall not be expelled, extradited or returned in any manner whatsoever to the frontiers of any territory where his life or freedom will be threatened on account of his race, religion, nationality and so on, unless the refugee himself or herself is a danger to the security of Nigeria, or is convicted of a serious crime as stipulated by law¹⁶. This protection exists whether the refugee entered Nigeria legally or illegally.¹⁷ The refugees are not only granted residency

15. S. 1 (3)

16. National Commission for Refugees (Establishment, ETC.) Act.

17. Cap 257 Laws of the Federation 1990.

in Nigeria, together with their families, they also have identity cards and are also subject to all laws in force within Nigeria. Every refugee and members of his or her family lawfully staying in Nigeria shall be issued with the United Nations Travel Document in accordance with Article 28 of the 1951 United Nations Refugees Convention and Article VI of the OAU convention 1969 Governing the Specific Aspect of Refugees' Problems in Africa. The family members of the refugee also benefit from the same treatment in S. 1 (3) of the Act (no expulsion). They are also permitted to enter and remain in Nigeria as long as the refugee concerned is permitted to remain in Nigeria under the Act. Refugees are also subject to Rights and Duties. These are prescribed by the convention and its protocol, and the O A U conventions set out in the first, second and third schedules to the Act. Of course, the law also provides for withdrawal of Refugee Status, if at any time the Federal Commissioner considers that there are reasonable grounds for believing that a person who has been granted a refugee status for the purposes of this Act¹⁸ should not have been so granted, or has ceased to be a refugee. The eligibility committee is mandated to deal with this issue. Notice of the withdrawal is given and the refugee has a right of appeal in such circumstance.

The prevailing atmosphere of insecurity, hostilities and other manmade situations have made it imminent that many people and groups live in refugee-like conditions, but within the boundaries of Nigeria. These are properly called Internally Displaced Persons. The Odi, Choba and several other communities displaced by violence are evidence of this. Nigeria also has a legal frame work for the protection of the Internally Displaced Persons. The National Emergency Management Agency (NEMA) is saddled with this responsibility. This agency came into being through the enacting of the National Emergency Relief Act of 1976¹⁹ now transformed into the National Emergency Management Agency (Establishment, e.t.c) Act 2004. This agency works by being ready for eventualities of disaster and tackling same pronto. That is the 'vulture concept' but an 'eagle concept' which is preventive involves early warning and mitigative to circumvent the occurrence of disasters.

5. Challenges to Reducing the Incidence of Refugee and Asylum Seekers into Nigeria

The discussion so far points to the fact that most Nigerians and indeed Africans who seek refugee status and asylum do so because they are fleeing from

1. Civil wars.
2. Ethnic conflict.
3. Frustration resulting from unworkable systems in their countries of origin.
4. Hunger and poverty.
5. Terrorist attacks.
6. Religious cleansing.
7. Ethnic cleansing.

Not necessarily race, social inclination and others prescribed by the 1951 convention.

Reducing the incidence of asylum seeking and refugee status will necessitate identifying the root cause(s) and eliminating them. Many factors have conspired to generate the above listed reasons and surmounting these factors will go a long way in reducing asylum seeking by Nigerians and indeed many Africans. These factors include but not limited to

- a) Lack of accountability at all levels.
- b) Unemployment.
- c) Lack of relevant legislations and non implementation.
- d) Corruption.

6. CONCLUSION AND RECOMMENDATIONS

The issue of accountability at all levels will take care of the ailing economy, unemployment and frustrations. This will also stem corruption. Every person in authority, no matter how big should be accountable to the people he or she is serving. Nigerians should learn to checkmate one another. That way economic recession, poverty, hunger will be eliminated as these are not considered in

18. Cap N₃₄ LFN 2004.

19. Ralf Sanftenberg, Global Head of Program, Migration and Development, Center for International Migration and Development during his visit to Nigeria in February 2018.

granting asylum in Western countries. Many Nigerians are being deported from Germany for example because they were refused asylum. It is said that in 2018 alone over 12000 Nigerian asylum seekers would likely be deported from Germany. They do not consider Nigeria to be a war ravaged country. The strict criteria are aimed at people fleeing war or persecution, not those fleeing poverty and/or unemployment. While it is true that there is a legal framework to protect refugees and asylum seekers, this should be extended into the constitution. A review of the constitution should extend to eradication of all strife, conflicts and civil unrest that make people flee their original communities. It is also advocated that Chapter II of the constitution be made justiciable. The provisions here are the rostrum upon which one stands to enjoy the provisions of Chapter IV.

Still on this, the massive unemployment in Nigeria has made it difficult for Nigerian citizens to be gainfully employed. One wonders then how Nigeria can provide same for refugees as stated in the Act. The tendency is for these people to join the teeming number of unemployed youths in Nigeria and this will cause more harm than good to the Nigerian society. The Human Rights of citizens, refugees, Internally Displaced People and other migrants should be protected to the letter and assistance of refugees, internally Displaced should be ensured at all stages and at all times. This should also be reflected in government policies and legislations, hence we are calling for the mainstreaming of refugees and internally displaced people's interest in all government actions. Finally, instead of seeking to be ready to combat displacement caused by strife, wars, ethnic hostilities and others, Nigeria should seek the early warning signs of such disasters and stem them from the bud. In other words don't wait until it happens but prevent it from happening, so that people don't get internally displaced because, they form a special and difficult group of refugees in the country.