



An Analysis of the Right to Life of Refugees under the International Conventions and Nigerian Laws

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Abstract

Millions of people are today forced to flee their homes as a result of conflict, systematic discrimination, or other forms of persecution⁵². As a result of the above, the concern of the International and local communities were caught. This and many other reasons led to the creation of many International instruments and local legislations for the protection of refugees. The 1951 Convention Relating to the Rights of Refugees and its 1967 Protocol, the 1969 OAU Convention, the Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), African Charter on Human and Peoples Rights and the various fundamental human rights contained in the various Constitutions (local legislations), contain some human and fundamental rights, which humans are entitled to. Central to all these of bundle of rights, is the right to life. Right to life of a refugee is the backbone of any other rights. All other rights are secondary to right to life. This paper examined the right to life of refugees under the various Instruments. This paper is arranged into four chapters (Chapter 1-5) .As the reader will discover at the end of this paper, the right to life of refugees has not been expressly captured under the 1951 Convention Relating to the Rights of Refugees and its 1967 Protocol, the 1969 OAU Convention and the National Commission for Refugees Etc Act. However, such right is

⁵² Erika Feller, Volker Turk and Frances Nicholson

"Refugee Protection In International Law". www.unhcr.org/uk/3ae6bd900.pdf. Accessed on 04/06/2017

presupposed under the instruments Most of the writings on this area of law centred on the general rights of refugees as provided under the various instrument. For instance an article captioned ‘ the rights of refugees and internally displaced persons made by HREA accessed online on 21/11/207 at www.hrea.org>Learn>E-Leaning researched on the rights of refugees generally as provided by the 1951 UN Convention and no more. This paper gave a special reference to the right to life of refugees under various International Instruments. This paper shall adopt the Doctrinal research method otherwise known as qualitative research. In this work, the primary sources of data are the various International instruments; the 1951 Convention Relating to the Rights of Refugees and its 1967 Protocol, the 1969 OAU Convention, the Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), African Charter on Human and Peoples Rights and the various Constitutions (local legislations) of States. Secondary data which include work of learned authors in books and articles in Journals will be referred. Also reference may be given to finding tools like dictionary.

Keywords: International, Refugees, Conventions, Laws and An Analysis.

Introduction

CONCEPTUAL CLARIFICATION OF TERMS REFUGEE

The term refugee has been given a statutory definition under the various Instruments. The Convention Relating to the Status of Refugees provides as follows;

- A. For the purpose of the present Convention, the term “refugee” shall apply to any person who:
 - (1)

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to, owing to such fear, is unwilling to avail himself of the

(3) protection of that country; or who not having nationality and been 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.....⁵³

AU Convention defines a Refugee as:

“Every person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself with the protection of that country, or who, not having 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”

“The term refugee shall apply to any person who, owing to external aggression, occupation, foreign domination or events seriously disturbing the public order in either part or the whole of the country of origin or nationality, is compelled to leave the place of his individual residence in order to seek refuge in another place outside his country of residence or nationality”

The above definition of who, refugee is, is not as elaborate as the definition proffered under the OAU Convention, 1969. The OAU Convention defined a refugee in below words.

1. For the purpose of this Convention, the term “refugee” shall mean every person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. Is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside of his former habitual residence as a result of such events in unable or, owing to such fear, is unwilling to return to it.
2. The “term refugee” shall also apply to every person who, owing to external aggression, occupation or foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of

⁵³ Article 1, Convention Relating to the Status of Refugees (CRSR) 1951

habitual residence in order to seek refuge in another place outside his country origin or nationality.⁵⁴

The above definitions of refugee by the two 1951 and the 1969 Conventions, one will understand that, there are various reasons which may make a person entertain a fear of persecution. These reasons may be economic, social, political, religious, environmental, public peace, external aggression, war, foreign domination et cetera.

The term “refugee” has been often confused with the term asylum seeker. It is important to make a distinction here, between the two terms. An asylum seeker is a person who is seeking international protection as a refugee, but who has not been formally recognized as one. The term normally applies to a person waiting for the government or the United Nations High Commissioner for Refugees (UNHCR) to decide on their claim for refugee status.⁵⁵

HUMAN RIGHT

Right has been defined among other things to be “a legally enforceable claim that another will do or will not do a given act; a recognised and protected interest the violation of which is wrong.” Or “something that is due to a person by just claim, legal guarantee or moral principle..”⁵⁶

Human rights has been defined by the Black’s Law Dictionary to mean “The freedom, immunities, and benefits that, according to modern values (esp. at an international level), all human beings should be able to claim as a matter of right in the society in which they live.”⁵⁷

RIGHT TO LIFE

The Instruments did not provide a definition of the right to life. However, they provided only statements of the rights. For instance, the 1999 Constitution of Nigeria, as amended, Section 33 provided:

⁵⁴ Article 1, Convention Governing the Specific Aspect of Refugee Problems in Africa (OAU Convention) 1969.

⁵⁵⁵⁵ Akinmade Idowu Ola, ‘Examination of the Concept of Refugee Status Determination Under the Nigerian Law’ Unpublished seminar presentation delivered at the Faculty of Law, University of Jos, on 23rd May, 2017..

⁵⁶ Bryan A. Garner (Ed.) “Black’s Law Dictionary” 9th Edition, Page 1436.

⁵⁷ Bryan A. Garner (Ed.) “Black’s Law Dictionary” 9th Edition, Page 809..

- (1) Every person shall have the right to life, and no one shall be deprived intentionally of his life, save in execution of a sentence of a court in respect of criminal offence of which he has been found guilty in Nigeria.
- (2) A person shall not be regarded as being deprived of his life in contravention of this section, if he dies as a result of the use, to such event and in such circumstances as are permitted by law, of such force as is reasonably necessary
 - (a) For the defence of any person from unlawful violence or for the defence of property;
 - (b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
 - (c) For the purpose of suppressing a riot, insurrection or mutiny

Right to life connotes that the life of every human being shall not be taken arbitrarily except as provided under the law.

CONCEPTUAL LEGAL FRAME WORK

The United Nations Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), African Charter on Human and Peoples Rights formed the basis of human rights in the international community.

In above instruments, rights were spelled out to which every human being is entitled to, these sets of rights are inalienable and to be enjoyed by human beings irrespective of one's race, religion, nationality, cultural political or social affiliation.

Under the UNDHR, such rights ranging from right to life, right to freedom from discrimination, to personal liberty, freedom of movement et cetera were provided. These bundle of rights are generally categorised into what is called the three genres of rights, they are; civil and political rights, social, economic and cultural rights and solidarity rights.

The rights to be enjoyed by refugees are two fold; the rights generally provided for all human beings and the specific rights provided based on their special circumstances. The second leg of the above, include the rights provided under the 1951 Convention Relating to the Rights of Refugees and its 1967 Protocol, the 1969 OAU Convention. These rights have limited applications, as they only applies to refugees, asylum seekers et cetera.

The foundation/back born of all rights to be enjoyed by a refugee can be traced to the provision on non-refoulement. The concept of non-refoulement means that no refugee or asylum seeker should be forced back or returned to his country of origin. Under 1951 Convention, it is provided “no contracting state should expel or return (“refoulé”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, or membership of a particular social group or political opinion”.⁵⁸

Some of the specific rights of a refugee captured under the 1951 Convention include; right of freedom from discrimination⁵⁹, freedom of religion⁶⁰, right to own movable and immovable property⁶¹, artistic rights and industrial property⁶², freedom of movement⁶³ among others.

The legal framework is summarized as follows.

1. The 1951 UN Convention and its 1967 Protocol
2. The 1969 AU Convention
3. The Nigerian Commission For Refugees ETC Act
4. The United Nation Declaration of Human Rights 1948
5. The African Charter on Human and Peoples Rights
6. The International Covenant on Civil and Political Rights 1966
7. The International Covenant on Economic, Social and Cultural Rights 1966.
8. Constitution of the Federal Republic of Nigeria, 1999, as amended.

AN EXAMINATION OF THE RIGHT TO LIFE OF REFUGEES UNDER THE INTERNATIONAL INSTRUMENTS.

As earlier on pointed out, the rights to be enjoyed by refugees are two folds. Firstly, the rights enjoyed by refugees as human beings as contained under the UNDHR and under the other International Bills of Rights and secondly the rights refugees enjoy because of their status as refugees.

⁵⁸ Article 32 of 1951 Convention.

⁵⁹ Article 3 of 1951 Convention.

⁶⁰ Article 4 of 1951 Convention.

⁶¹ Article 13 of 1951 Convention.

⁶² Article 14 of 1951 Convention.

⁶³ Article 23 of 1951 Convention.

RIGHT TO LIFE OF REFUGEE UNDER THE 1951 CONVENTION

Under the 1951 Convention and the 1969 OAU Convention, the right to life of a refugee is not specifically spelt out. However, right to life being the primary right over any other right can be presumed to have been guaranteed under the two Conventions. The right not to be return back (non-refoulement)⁶⁴ back to where a refugee entertains fear of persecution put the solid foundation for the protection of the life of a refugee or asylum seeker. Also a careful study of the preamble of the 1951 Convention, one will realise that the Convention in all its intent and purposes, is aimed at protecting the life and other inalienable rights of refugees as human beings.

RIGHT TO LIFE OF REFUGEE UNDER THE OAU CONVENTION 1969

The OAU Convention 1969 is not as rich in terms of spelling out the rights pf refugees as the 1951 Convention. And also the OAU Convention did not spells out the right to life of a refugee. However, the implication of all the rights contained thereunder, presupposed the right to life of a refugee.

RIGHT TO LIFE OF REFUGEE UNDER THE NATIONAL COMMISSION FOR REFUGEES ETC ACT

The right to life of a refugee under the National Commission for Refugees, Etc Act is not also spell out therein. However, reference has been made to the effect that, refugees shall enjoy all rights provided under any other law in force in Nigeria.⁶⁵ The right to life of has been provided under Seton 31 of the 1999 Constitution FRN.

When a look is given to the first fold of the set of rights to be enjoyed by refugee for being a human being, the UNDHR provided for the right to life of any human being⁶⁶ .

RIGHT TO LIFE OF REFUGEE UNDER THE UNDHR 1948

Article 2 of the UNDHR provided among other things that every human is entitled to all the rights provided under the UNDHR, thus:

⁶⁴ Article 33 of 1951 Convention.

⁶⁵ Article 15 of the National Commission for Refugees ,Etc Act

⁶⁶ Article 3 of the UNDHR

Everyone is entitled to all the rights and freedoms set up in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, neither it be independent, trust, non self-governing or under any other limitation of sovereignty''.

Article 3 of the Declaration provided for the right to life of every human being as follows; “Everyone has the right life, liberty and security of person.

RIGHT TO LIFE OF REFUGEE UNDER THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS

The African Charter was made by the Organisation of African Union now African Union. The Charter is applicable throughout Africa especially ion the countries that are signatories to it and that have ratified it. This position is capture under Article 2 of the AU Charter as follows

‘Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind, such as race, ethnic group, colour, race, religion, political or any other opinion, national and social origin, fortune, birth or other status’.

The right to life under the African Charter is provided under Article 4 of the Charter, as follows.

‘Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of the person. No one may be arbitrarily deprived of this right’.

RIGHT TO LIFE UNDER THE 1999 CONSTITUTION FRN, AS AMENDED

The 1999 Constitution of Nigeria, as amended, Section 33 provided

1. Every person shall have the right to life, and no one shall be deprived intentionally of his life, save in execution of a sentence of a court in respect of criminal offence of which he has been found guilty in Nigeria.

2. A person shall not be regarded of been deprived of his life in contravention of this section, if he dies as a result of the use, to such event and in such circumstances as are permitted by law, of such force as is reasonably necessary
3. For the defence of any person from unlawful violence or for the defence of property;
4. In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

For the purpose of suppressing a riot, insurrection or mutiny

As can be seeing from the fore going analysis, the UNDHR and the African Charter and the Constitution of the FR Nigeria provided for the right to life of humans. Refugees being human beings are entitled to all the bundle of the rights so provided and such rights shall not be deprived. The African Charter is more emphatic on that.

ENFORCEMENT

It is notorious that rules of Internal law especially as it regards to rights, duties and privileges provided for persons and bodies, are very difficult, if not impossible to enforce.

Bearing in mind the fact that refugees are set of very much vulnerable people who may have left their country of nationality without preparation in a sudden and unexpected manner, they are mostly poor, ignorant of their rights and dependants.

Even though, the law gave them the right to enforce their rights in the host country, they will be faced with problems like lack of knowledge of the legal system of the host country, lack of funds to hire the services of a legal practitioner and sometimes restrictions are been placed on the movement of the refugees only to their camps.

CONCLUSION

Based on the above discussion, it is the conclusion of this research that, the right to life of refugees is not provided directly in black and white under the 1951 Convention and its Protocol, the OAU Convention 1969 and the National Commission For Refugees Etc Act. However, the right to life can is presupposed under these instruments.

The UNDHR under Article 3 has provided for the right to life of any human being whether a refugee or any other, except as provided otherwise by law. Also Section 31 of the 1999 Constitution FRN has guaranteed the life of any citizen and by extension refugees, pursuant to Article 15 of the National Commission for Refugees Etc Act.

RECOMMENDATION

1. The right to life of refugees should be expressly incorporated into the various Covenants.
2. An enforcement mechanism of such right should be strengthened and enhanced.
3. Human rights education should be enhanced and provided to all manner of people of all segments of the society, because a citizen living in peace today, may be a refugee of tomorrow
4. The UNHCR should be provided with adequate funds and facilities to enable it carry out its responsibilities more effectively and efficient.

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