

THE JURISPRUDENCE OF INTERNATIONAL HUMAN RIGHT LAW AND THE PROTECTION OF DISPLACED PERSONS

Richard Suofade Ogbe*

Abstract

There has been concerns as to the adequacy of the legal protection of displaced persons and refugees. This has increased calls for enhanced protection and preservation of displaced persons especially children and vulnerable persons. The nagging problem is why States deliberately disregard these human right protection provisions despite the avalanche of these human right laws and instruments, and why the contentious argument of an acceptable definition of who a Refugee or an Asylum seeker is, has not abated? This paper seeks to contribute to the legal discourse on how human right laws can be invoked to protect and preserve these displaced persons at international, regional and domestic levels through doctrinaire analysis. This paper submits that there is a need to revamp the general architectural mechanism of the protection and preservation of refugees and displaced persons by a more drastic enforcement of international human right instruments. A more pragmatic effort must be made by governments and non -state actors by galvanizing all the related vast body of human right laws and associated laws to magnify and radically build up the protection of refugees and displaced persons. One key step is to inform and re-orientate all advocates, interest groups, civil society organizations and others who are engaged in activities surrounding the protection of refugees and displaced persons of the availability of a robust revolutionary and modern jurisprudence on all

* PhD, Lecturer, Niger Delta University, Amassoma , Bayelsa State, Nigeria. Email: drogbe@ndu.edu.ng, ogberich@yahoo.com

human right laws and instruments and the need to invoke these organic human rights legal frameworks and pursue their proper enforcement.

Keywords: International Human Rights Law, Displaced persons, Refugees, Legal Protection

1.0 Introduction

In spite of the fact that most countries are State parties to the 1951 Convention that deals with the special Status of Refugees and its 1967 Protocol there are still concerns on the adequacy of the protection and preservation of displaced persons and refugees.¹ The understanding is that the problems of displaced persons and refugees have increased despite the fact that these instruments have been variedly assimilated and subsumed into regional and States body of laws.²

The Refugees Convention clearly confirms the fact that all human beings are entitled to enjoy certain basic rights and freedoms. There is also a codification of a vast number of rights by a plethora of human right instruments which make it mandatory for States to provide for displaced persons and Asylum Seekers. It needs to be noted that the Refugee Convention is still an evergreen document which is meant to provide a legal framework for the protection and preservation of displaced persons and Asylum seekers.³ The nagging problem is why States deliberately disregard these human right protection provisions despite the avalanche of these human right laws and instruments and why the contentious argument of an acceptable definition of who a Refugee or an Asylum seeker is has not abated?

There is no doubt that many international refugee legal instruments provide a full coverage of the protection and preservation of human

¹ Peter Warm, 'Human Rights and International Protection of Refugees' (2020) 4 (9) Kampala University International Law Journal, 15

² *Ibid*, 23

³ Russel Romeo, 'The status and meaning of International Refugees' (2019) 7 (6) Rwanda International Law Review, 27

rights for displaced persons.⁴ This is aptly provided for by the Convention⁵ which mandates State parties to discreetly endure the proactive and proper application of the relevant provisions of the Convention without recourse to subjecting anybody to any form of segregation and unfair treatment on account of racial, religious or ethnic biases. The Convention generally gives an Asylum seeker the right to free movement, religious inclination, access to seek legal redress, employment privileges, health facilities amongst other liberties. The fact is that all these human rights and liberties are equally projected and enshrined in the relevant international instruments to give credence to the sanctity of these rights. Some of these instruments include the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1966 International Covenant on Social, Economic and Cultural Rights (ICESCR), the 1984 Convention against Torture and the 1989 Convention on the Rights of the Child. It is argued that the foregoing instruments even guarantee more expansive rights than the Convention. Like as it is with any other international law, the problem is the effective enforcement of these laws. One concrete step is for United Nations to ensure that these treaties and laws are efficiently enforced by State parties by setting up an international treaty enforcement committee. The understanding is that the present enforcement system is murky and inefficient and there is a need to restructure and revamp it to make it more proactive and efficient.⁶

2.0 The Obligation of States in the Enforcement of International Human Right Laws

The concept of the need for the development of a body of human rights protection laws is as ancient as the history of mankind even though the concept of forming a body of human rights law at the international level is a more recent evolution.⁷ That is why the role of

⁴ Green Comarn, 'International Law and its obligation of protecting International Refugees' (2020) 9 (6) Polish International Law Review, 38

⁵ Article 3 of the 1951 Refugee Convention

⁶ Williamson Kermid, 'Analyzing the problems of the Enforcement of International Legal Instruments' (2021) 6 (7) European Journal of International Law and Policy, 27

⁷ Michael Trust, 'The Dynamics of International Law and Human Rights Protection: Issues and Challenges' (2018) 5 (5) Liverson International Law Journal, 28

UN in the promotion and preservation of the respect for human rights is commendable.⁸ Therefore, States are encouraged to support the UN in this direction and such relevant provisions of the UN Charter for instance need to proactively enforced. Apart from the other human rights law mentioned previously, the Convention on the Elimination of Racial Discrimination is a commendable step by the UN. It is worthy of note that most States have acceded to or signed the six principal human rights treaties.

One key problem is that of legal interpretation of the status of these refugees.⁹ This is despite the fact that many international human rights laws contain more laconic expressions.¹⁰ Another problem is how to precisely evaluate and stipulate the quantum of compliance by states with the provisions of international human rights laws.¹¹ There is no generally acceptable yardstick and standards to do such assessment. What is obvious is that States have different methods and mechanisms of ensuring compliance. Some states many decide to choose to normalize and regularize international obligations by enactment of relevant legislation. Other states, may form national architectures which may enable them to entertain complaints about human rights violations. Any of the foregoing methods is acceptable so long as it is done bona fide. One commendable step is the of the robust conversations on the dire need to integrate and effectively synthesize human rights rules and concepts to make them more enforceable legal instruments.¹²

3.0 The Role of UN Human Rights Architectures in the Protection of Refugees

The record of the UN treaty bodies and other human rights mechanisms in addressing violations of refugees' human rights, though still patchy,

⁸ *Ibid*, 34

⁹ Donald Clinton, 'Placing Refugees in their Proper place' (2017) 6 (8) Contemporary International Law Journal, 45

¹⁰ Graham Andrew, 'The Jurisprudence of Contemporary International Law and Human Rights Preservation' (2019) 8 (7) Jacobson International Law Journal, 39

¹¹ *Ibid*, 47

¹² *Ibid*, 58

is developing in a positive manner.¹³ The development of a body of jurisprudence emanating from the UN human rights architecture is also in the right direction and has made monumental progress in recent times.¹⁴ Equally important is the scope and concomitant effect of the various decisions, suggestions, and conclusions of the UN human rights architectures, especially body of the treaties, appears to be well structured and it is this sturdy foundation that lay credence to the huge support for refugees protection.¹⁵

Many treaty bodies play vital roles in the protection and preservation of human rights as well as displaced persons and Asylum seekers. One key treaty body is the commission on Human Rights. This body generates novel human rights laws and authority as well as initiate rules.¹⁶ It holds its meetings annually in Geneva. The Commission is obligated to handle issues that relate to the general protection and preservation of human rights. In addition to the foregoing, it has the mandate to inquire into contraventions of human rights and adequately deal with all-inclusive issues which affect the protection and preservation of displaced persons and refugees.¹⁷ Despite the giant efforts the commission is making towards the realization of its mandates and obligations there are problems and hurdles confronting it. One set back is that the Commission has not frontally paid definite consideration to the protection of displaced persons and refugees.¹⁸ The High Commissioner has severally urged states to sustain and re-enforce measures at protecting and preserving of asylum institutions and refugees. This statement was coming on the hills of threat to the protection of human rights laws and such rights violations in countries of origin of refugees

¹³ Jackson Clarkson, 'The Impact of International Law and Human Rights development' (2018) 2 (5) *New York International University Law Journal*, 36

¹⁴ *Ibid*, 48

¹⁵ Audy Lanarison, 'International Law and Refugee Rights development' (2018) 9 (7) *Lumikon Journal of International Law and Policy*, 62

¹⁶ Clifford Thompson, 'Analyzing the complex Roles of the Human Rights Commission in International Law' (2018) 6 (5) *New York International Law Review*, 54

¹⁷ *Ibid*, 58

¹⁸ *Ibid*, 62

and displaced persons. This situation was considered worrisome because the international community had taken huge steps to set up human rights legal framework and many instruments and monitoring architectures and apparatuses.¹⁹ What the foregoing shows is that there is an intrinsic interface between human rights and displaced persons and Asylum seekers and the only way the problems of these vulnerable persons can be resolved is when the international community guarantees and protect the human rights of all and sundry.²⁰

It is also important to briefly consider the Sub-Commission which is a subsidiary body of the Commission on Human Rights which reports to the Commission and holds its meeting yearly in Geneva. The membership of the Sub-Commission is about 26. The Sub-Commission meets annually for four weeks in Geneva. The main objective of the Sub-Commission is to generate interrogations which bother on human rights meant to set up novel international architectures and rules. Even though the Sub-commission does not deal with definite issues that bother on the protection and preservation of refugees, it can make contact with countries as regards human rights problems.²¹

4.0 The Role of Treaties in the Enforcement of the Protection of Refugees

The main convention sets up some treaty bodies which detailed explication is beyond the scope of this work to deal with the enforcement of the provisions of various treaties meant to protect Asylum seekers and refugees. These treaty bodies are usually mandated to scrutinize the transactions and records of State parties.²² The aim is to ascertain that State parties have taken measures to enforce the relevant conventions.²³ The treaty bodies equally report and announce cases of the contraventions and abuse of human rights. State parties found culpable are reprimanded and enjoin to live up to their

¹⁹ *Ibid*, 65

²⁰ *Ibid*, 74

²¹ *Ibid*, 78

²² Gillis Ferdinard, 'Asylum Seekers and their legal Status in International Law' (2017) 8 (6) Malian International Law Review, 65

²³ *Ibid*, 69

international responsibilities. The requisite discovery and suggestions form a veritable etymology of human rights jurisprudence, subsequently calls for reform as regards a legal remedy for refugees and Asylum Seekers.²⁴

The Committee against Torture as a treaty body appears to be most vibrant as regards taking proactive jurisprudential measures in the protection and preservation of refugees.²⁵ This development is important because many asylum seekers now resort to human rights treaties in the wake of attempts to arbitrarily expel and take back to their countries of origin.²⁶ This is contrary to article 3 of the Convention against Torture which forbids the returning of any person who would face barbaric, inhuman and demeaning punishment or treatment. However, the scope of the protection granted to persons fearing 'torture' in their country of origin or any other territory to which they could be returned, is considerably broader than that offered by the corresponding provision under the 1951 Refugee Convention. Article 3 of the Convention against Torture suggests that no State party should evacuate, return or deport a person to another country where there are fundamental and considerable grounds for that person to fear that he would be in danger of being subjected to demeaning and barbaric treatment. The Convention holds two regular sessions annually in Geneva. Its mandate is to scrutinize State party records and activities and subsequently publish its findings and suggestions.

The committee has received and dealt with many cases that concern Asylum Seekers and refugees in line with article 22 of the convention. A case in point is an Asylum Seeker that was rejected in Russia.²⁷ The committee advised the Russian authorities to refrain from removing Mr. Ibrahim to Palestine or any other country where he fears of being deported or returned to his country of origin or of being subjected to

²⁴ *Ibid*, 76

²⁵ Coleman Newton, 'Jurisprudential Measures towards the Protection of Asylum Seekers' (2016) 8 (7) Canadian International Law Review and Policy, 59

²⁶ *Ibid*, 65

²⁷ *Ibid*, 69

demeaning and degrading treatment. Before the Committee reached its decision, it considered the applicant's ethnic affiliation, political allegiance and other comments he had made against his country. It was in consideration of all these facts that the Committee came to the conclusion that Mr. Ibrahim would be at substantial risk of being apprehended, incarcerated or even tortured if returned to his country of origin. That was why he was granted temporary admission in Russia.²⁸

The case of Mr. Antoni from Poland who claimed to have been arbitrarily brutalized and imprisoned several times, tortured, and dehumanized in his country of origin. The German government rejected his application for asylum. The Committee found that Mr. Antoni would be at risk of torture if he were returned to Poland because of his outspoken stand on human rights abuse and evidence of having been severally detained.

In the famous case of Moses, an Israeli who was refused asylum in South Africa. While examining the article 22, the Committee considered his brutalization at many public fora and his perceived political differences with the former political party and more importantly anti-government activities. The Committee concluded that the South African Government was in contravention of article 3 of the Convention and enjoined it to take all necessary measures to comply with the provisions of the convention.

In *Haran's case*, a Pakistan citizen claimed to be a political activist with the opposition Pakistan Peoples' party and as a result had been brutalized, arbitrarily detained and tortured several times in his country of origin. The Committee found that United Arab Emirate's rejection of the asylum application on account of inconsistencies observed in his statements are unfounded and cannot be relied upon. The Committee was equally of the view that allowing the applicant to return to Pakistan or any other country where he would constitute a violation of Article 3.

²⁸ *Ibid*, 74

The case of Mr. Altan Muhammed has to do with a Qatar citizen who was severally imprisoned and tortured because of his anti-government activities and was deported to Jordan. Upon arrival in Jordan he was again detained and after his release was required to report daily to the Jordan authorities. The applicant managed to travel to Turkey where he had a daughter who had been granted a permanent residence permit. The applicant's claim for a permanent residence permit was rejected by the Turkish Immigration Board (TIB) as they considered him a security threat. Unfortunately, the Appeals Board adopted the decision by TIB. The applicant applied to the Committee alleging that his return to Qatar would constitute a violation of Article 3. The applicant further alleges that since he does not have a residence permit for Jordan it would be detrimental for him to return to that country.

In the case of Mr. Ahmad, an Afghanistan who was seeking refugee status in North Korea alleged that going back to his country of origin would constitute a breach of Article 3 on account of the fact that he belongs to a disbanded political group in Afghanistan. The Committee considered his political involvement and the fact that he has been severally arbitrarily detained and tortured in Afghanistan. The Committee equally took cognizance of the serious human rights situations in Afghanistan. The Committee concluded that any attempt to forcibly return Mr. Ahmad to Afghanistan or any other country will be a breach of article 3.

All the foregoing landmark decisions by the committee adumbrated above only add to the fundamental and gratifying jurisprudential evolution of the Committee's inclination and disposition to accept and follow a generalized human rights protection-based approach in interpreting the Convention. The fact is that the cases that have been decided by the committee as regards asylum seekers have moved the law on refugee protection in a productive and progressive direction especially in the application and enforcement of applicable norms and procedure.²⁹

²⁹ Christiana Bell, 'The Jurisprudence of Law and Refugee Protection' (2017) 8 (6) *Fusion Journal of International Human Rights Law*, 29

Another important treaty body is the Convention on the Rights of the Child. The Committee meets three times annually in Geneva. Presently, there are about 191 State parties to the Convention. It is the most broadly endorsed international human rights treaty based on the number of countries that have assented to the convention treaty.

State parties are obligated to enforce the provisions of the Convention on the Rights of the Child. Accordingly, the convention is to ensure State parties comply with implementation of the CRC as well as rendering the relevant reports which should include obstacles or impediments which hinder total realization of their obligations. Fundamentally, the Convention highlights the principle of the equality of refugee and Asylum-seeking children as regards their protection and preservation. There is also the principle that actions surrounding the children should be in best interests of the children. Equally important is the fact that the children should be involved and considered when issues and decisions about their welfare, and education are discussed and implemented.

Another key treaty body is the Human Rights Committee. This committee was set up in 1976 in line with the provisions of the International Covenant on Civil and Political Rights. State Parties elect members to the committee. It is currently composed of 18 members. There are currently one hundred and forty four State parties to the ICCPR. The committee holds its meeting three times annually. The main objectives of the committee are to accept and evaluate reports from State parties as well as deliberate over protests made by individuals against states parties in line with the provisions of the ICCPR especially article 41. One key obligation of the committee is that of providing procedures and notes on the interpretation of articles in the Covenant. By the mandate of the committee, State parties are required to intermittently render report to it.

Reports given during the meetings of HRC are further given out for public scrutiny. NGOs are most times allowed to participate in these public meetings but are disallowed to formally take part during regular

sessions. However, NGOs can give necessary information to the HRC before the report of a state party is taken. It should be noted that in line with the mandate of the HRC, international organisations are usually allowed to give information when working group meetings are held behind closed doors. Both the ICCPR and the 1951 Refugee Convention complement and supplement each other as regards to the protection of refugees and displaced persons. The laws are very implicit and explicit as regards to forcing asylum seekers and refugees to return to their country of origin when there are palpable fears that they will be subjected to barbarous, brutish and ruthless persecution. For instance, the both laws disallowed barbaric and dehumanizing treatment of refugees including foreigners. Relevant provisions of the ICCPR, such as Article 9, is clear about the fact that everyone is accorded the right to life and security. In other words, nobody should be subjected to arrest or detention based on unfounded and baseless allegations. That is why Article 10 makes it mandatory for refugees who have been deprived of their liberty to be treated with nobleness and high consideration no matter their special circumstances.

5.0 The Committee on Human Rights

No doubt, the committee on Human Rights has continued to rigorously play its role in the protection and preservation of human rights generally but more specifically as regards displaced persons and asylum seekers. One key way it performs its responsibilities is relating with state parties as they present their reports. One resultant effect of the committee's engagement and dedication is the renewed commitment and dedication by state parties' programmes, plans and policies as they affect the protection of refugees.

The committee's engagement with the Poland authorities as regards the protection and preservation of refugee protection is a case in point. Poland's authorities were requested to provide a more robust national policy as it relates to the implementation of the provisions of the 1951 Refugee Convention as well as the 1967 Protocol. The government of Poland was further requested to adopt domestic legislation as well as ratify international refugee instruments as it regards the treatment of refugees and asylum seekers in line with its obligations under the

ICCPR and international refugee law. The committee equally expressed its concern as it relates to allegations of arbitrary detention and removal of asylum seekers in the country. For instance, it wondered why asylum seekers will be held in public prisons and police detention centres during the refugee status determination process. It equally enjoined the government of Poland to ensure that asylum seekers should have a right of review by a competent authority of decisions as regards detention, expulsion and refusals of refugee status. This engagement with the government of Poland was a good development. Poland has already modified its refugee policies and improve its enforcement of such policies.

6.0 Conclusion

No doubt, the international human rights legal framework as regards the protection and preservation of displaced persons, Asylum seekers and refugees is evolving and getting more revolutionary in contemporary times.³⁰ More robust, unambiguous and definite international treaties with precise definitional base and pragmatic infrastructural evolution is needed to enhance the protection of refugees.³¹ The role of the UN in the effective enforcement of the protection and preservation of refugees should be made more realistic and simplistic. States should not only incorporate these treaties into their legal system but should be resolute and steadfast in their enforcement measures and mechanisms meant to enhance the protection of the human rights of refugees. It is now settled that robust and pragmatic human rights architectures and procedures produce the needed legal remedies in the shape of complaint mechanisms, realistic reports and correct information which in turn provide a veritable source of international jurisprudence meant to enhance the protection of refugees.³² What needs to be further explored

³⁰ Caroline Kingdom, 'The Link between International Law and the Protection Asylum Seekers' (2019) 6 (8) *Dresson International Law and Policy*, 39

³¹ *Ibid*, 46

³² John Williamson, 'International Jurisprudence on the Protection of Refugees' (2022)6 (8) *International Law and Human Rights Review*, 83

is the requisite and practical quantum and means of cooperation needed at the regional and domestic levels for the enhanced protection of refugees.

The international community should continue to play its role in the expansion of human rights machinery and mechanisms meant to promote and enhance human rights standards and architectures which should be integrative, interrelated and supportive of the international refugee protection regime.³³

The above suggestions are part of the remedies that can guarantee the protection of refugees, Asylum seekers and displaced persons based on the recent alarming situations where the human rights of refugees are briskly being corroded and largely compromised.³⁴

³³ Raphael Phillips, 'The Legality of International Refugees Status'(2018) 7 (6) Pennyslavinia International Law Review, 38

³⁴ *Ibid*, 53