

LEGAL STATUS OF REFUGEES IN NIGERIA

BY

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I. INTRODUCTION

Nigeria is one of the few West African countries, which has given shelter to a large number of refugees from neighbouring countries. Since independence, Nigeria has experienced minor and major influxes of refugees. Nigeria before 1989 was confronted with the tasks of assistance, care and protection of refugees according to regional¹ and international standards.² Finally, in the 1989 the enactment of legislation or the Decree³ led to refugees protection and treatment in line with internationally recognised principles.

From time immemorial people - individually, in family groups, or as a community, moved from one state to another. For some, the movements or transfrontier movements of people had been voluntary either for spread of culture and religion, or for pilgrimage, growth of trade and commerce, or for development of governmental relations, including foreign policies, etc. Whilst, for many others, they are due to the circumstances beyond their control like persecution or the perception of persecution, famine, drought, civil wars, external aggression, foreign domination, ethnic conflicts and terrorism⁴ etc. The reasons behind the flight of refugees may be many⁵ but in the final analysis they are attributable either to the actions of man, or natural environmental disasters. Whatever may be causes the African continent harbours thirty percent of the world's 20 million refugees,⁶ but the burden of caring and protection of refugees is disproportionate among African countries.⁷

II. CAUSES OF MIGRATION

As mentioned earlier, Nigeria since independence witnessed the influx of refugees individually or *en masse* from neighbouring countries but had handled all of them according to international standards. A greater proportion of refugees in Nigeria are Chadians, Ghanians, Namibians and Liberians. The causes of influx of refugees into Nigeria should not be seen in isolation but in the wider context of influx of aliens.⁸ The major reasons that account for this phenomenon may be summarised as follows:-

First, the political instability or civil war situation, including oppression and suppression of human rights in the neighbouring countries, such as Chad, Liberia and Ghana, etc. forced their citizens to seek refuge in Nigeria. The earlier policy of apartheid in South Africa and situation in Namibia compelled many black South Africans, mostly students, to take refuge in Nigeria. The second reason is that of the Sahelian drought, or desertification or famine or natural disasters in the Republic of Benin and Sudan compelled nomadic immigrants to rush to Nigeria.

The third reason is the "pull factor", i.e comparative better economic opportunities or life conditions attracted many refugees as well as aliens to Nigeria for employment and safe haven.⁹ However, during the period of 1967-70 Nigerian civil war or Biafra war a few Nigerians ran into neighbouring and other countries for political asylum.

At present, it is estimated that about 4800 refugees from different countries have sought asylum in Nigeria and are at Oru Refugee camp in Ogun State.¹⁰

III. BACKGROUND TO NIGERIAN REFUGEE LAW

Since independence, Nigeria had been a refugee generating or receiving state. The reception and treatment of refugees was based on African customary practice of hospitality,¹¹ some domestic laws,¹² the United Nations Convention. Relating to the Status of Refugees, the 1969 Q.A.U. Convention, Governing the Specific Aspects of Refugee problems in Africa,¹⁴ and other relevant human rights instruments,¹⁵ such as, the African Charter on Human and People's Rights.¹⁶

It is necessary to mention that the promulgation of Refugee Decree in Nigeria has been influenced by the following factors. First, before passing the Decree, the National Commission for Refugees, the refugees in Nigeria were admitted and treated under customary international law.¹⁷ The Nigerian state practice welcomes strangers and refugees, based on the African tradition of hospitality.¹⁸ In other words, xenophobia was not the feature of Nigeiran national life. A refugee was considered to be a member of the family, and family members are ready to make sacrifices to accomodate refugees. Second, the governmental *ad hoc* or administrative decisions were not consistent with regard to recognition and treatment of refugees, hence there was a necessity of uniform rules and regulations.¹⁹ Third, Nigeria's committment to universal and regional treaties regarding the status of refugees,²⁰ prompted Nigeria to promulage the Decree of the National Commission for Refugees. The main objective is to incorporate the refugee principles and norms expressed in the international and regional

instruments in the national legal system. Fourth, the inadequacies of customary practice, alien and extradition laws to cover all aspects of refugee protection.²¹ For example., refugees may be treated as "illegal immigrants" and as such are liable to forcible deportation²² etc. Fifth, Nigeria's constitutional obligation dealing with foreign policy²³ - Africa as centre piece, encourages her to adopt generous policy and law towards refugees. Besides this, Nigeria's policy of promoting and protecting international human rights²⁴ includes protection of refugees, which may ensure world peace and security.

To sum up, these factors in one way or the other have influenced Nigeria to promulgate a comprehensive Refugee Decree - the aim of which is to safeguard the interest, treatment and to provide legal protection to refugees as well as asylum (political) seekers in the country.²⁵

IV. DEFINITION OF REFUGEE

Under customary international law the term refugee has not been defined but discussed under the subject of aliens and their treatment.²⁶ However, in general terms the international political refugee may be defined as a person who is forced to leave or stay out of his country of origin because of a well founded fear of persecution, or any other reason including natural catastrophe and he lacks the diplomatic and consular protection of the country of his nationality or habitual residence.²⁷

Section 20 of the Decree defines a person as a refugee, if he satisfies the criterion of refugeehood as provided in the 1951 Geneva convention²⁸ read in conjunction with 1967 Protocol.²⁹ Secondly, if he falls within added category of persons including displaced persons, as defined in the OAU definition of a refugee.³⁰

Thirdly, if he ceases to be a refugee³¹ or excluded³² from being a refugee under the conditions as enumerated under the Decree. In other words, Section 20 of the Decree defines a person as refugee, if he satisfies the Conventional criterion of "well founded fear of persecution, or he falls within the expanded meaning of the term refugee based on the objective criteria i.e. the unbearable and dangerous conditions prevalent in the country of origin."^{32(a)} Sub-Section 3 of Section 20 of the the Decree further enumerates the conditions under which a person ceases to be a refugee, or excluded from refugee status - this is also part of refugee definition under the Nigerian Law.

An analysis of the above definition of refugee suggests that for a person to be recognised as refugee in Nigeria, he must satisfy the following conditions:

(i) he person must be outside the country of his nationality, or residence;

(ii) he must be outside that country because of a well founded fear of persecution" for reasons of race, religion, nationality, membership of a particular social group or political opinion;

(iii) he must thus be unable, or, by reason of his fear unwilling, to avail himself of the protection of that country.

(iv) he or they must flee or be compelled to flee from the country due to war, invasion, or civil strife, etc irrespective of fear or no fear of persecution.³⁴ It means this part of the definition takes into account the practical, social and political upheavals which cause refugee problems. In short, the objective criterion - unbearable and dangerous conditions prevalent in the country of origin provides guidance in determining (including group determination) refugee status.

(v) He must not fall in any of the conditions prescribed either in exclusion or cessation clauses. The Nigerian definition of refugee analysed above appears to be more practical and takes into account actual causes of migration of refugees in Africa. In sum, the expanded definition is the most reasonable and appropriate one for the purposes of determining refugee status.

vi. **Determination of the Refugee Status**

Every country has different eligibility procedure. The aim of proper determination of the refugee status is to distinguish between refugees and non-refugees on the basis of refugee definition provided under the Decree. It is also to prevent forcible return of genuine refugees to the country of origin and to confer certain rights and protection to recognised refugees under the law. In Nigeria, prior to the promulgation of the Decree, refugee status used to be determined on the basis of *ad-hoc* or administrative decisions.³⁵

Now, under the Decree a detailed procedure for the determination of refugee has been laid down.³⁶ The Federal Commissioner for Refugees³⁷ grants refugee status to applicants on the favourable recommendation of the Eligibility Committee. The Eligibility Committee³⁸ examines the facts of each case and evaluates the causes and circumstance. If it satisfies that the applicant fulfills the criteria of refugeehood as laid down in Section 20 of the Decree, it then recommends to the Federal Commissioner for Refugees for the grant of refugee status. In short, the Federal Commissioner for

Refugees on the favourable recommendation of the Eligibility Committee takes the decision regarding the granting of refugee status.

It is for the applicant to prove and established that his case falls within the refugee definition under the Decree. In other words, the onus is on an applicant to establish his refugeehood under the Degree, be it an individual or group of persons.

In case of a refusal to grant refugee status by the Eligibility Committee, the applicant may appeal against such decision to the Refugee Appeal Board.³⁹ The Refugee Appeal Board also decides appeals against the negative decisions of the Federal Commissioner for Refugees,⁴⁰ provided it is submitted within 30 days of his being notified of the decision (refusal). In the Board's proceedings, if an applicant wishes or so desires he will be represented by a legal practitioner.⁴¹ Besides this, UNHCR's representative may make oral or written representation in the Appeal Board on behalf of the applicant⁴². However, his role is that of the "observer" status in determining refugee status. It is relevant to mention that untill the final decision by the Appeal Board, the applicant has a right to remain in Nigeria.⁴³ If the applicant's appeal fails or he is refused refugee status, he shall be given reasonable time to seek admission, as a refugee in another country, or still he settles somewhere.⁴⁴

The Decree relying on the provision of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, specifically provides for "*groups or collective determination of refugees*".⁴⁵ The sudden and massive nature of influx of refugees in African states, compelled the framers of the Decree to incorporate group or collective determination of refugees. Because in such situations individual determination of refugees is neither practicable nor feasible. The members of the group as a whole have to prove that they were compelled to leave the country of origin due to external aggression, occupation, foreign domination, civil war or events seriously disturbing public order, etc and not the well founded fear of persecution or refusal of national protection.⁴⁶ In such circumstances, the National Commission for Refugees advises the Federal Military Government to declare them as refugees collectively or refugees in groups.⁴⁷ Besides this, the Federal Commissioner for Refugees is empowered to review or withdraw refugee status⁴⁸ on the recommendation of the Eligibility Committee. The committee, if satisfied that the applicant has obtained refugee status on false or untrue statement or by concealing material facts or he ceased to be a refugee due certain reasons, they may recommend to the Federal Commissioner for withdrawal of refugee status. In case of withdrawal of refugee status by the Federal Commissioner, the aggrieved person may appeal against such decision to the Secretary to the Federal Military Government.⁴⁹

The Secretary to the Federal Military Government may invite UNHCR's representative to defend such person's case or refer the matter back to the Eligibility Committee for further inquiry and investigation. Or, may confirm or set aside the decision of the Federal Commissioner.⁵⁰ In short, the Decree provides two times appeal opportunities to the aggrieved person to justify his refugeehood, with the participation of the UNHCR's representative or by his legal practitioner. Thus, the Nigerian procedure for the determination of refugee status is in conformity with the basic requirements as recommended by the Executive Committee of the High Commissioner's Programme⁵¹. The decision to withdraw the grant of refugee status of a person, equally applies to his family members⁵². Consequently, such persons cease to be refugees.

(vi) Admission of Refugees

Under customary international law, a state has discretion to admit or not to admit aliens or persecuted aliens or refugees.⁵³ Neither the 1951 Convention nor the 1967 Protocol has dealt with the admission of refugees and the question of asylum, however, they deal with the status of refugees once they have been admitted by the asylum state⁵⁴. It means under international law, there is no general right of asylum except by treaties or municipal legislation. Article 14 of the Universal Declaration of Human Rights 1948⁵⁵ and article 12 (3) of the African Charter on Human and People's Rights⁵⁶ authorize persecuted aliens to seek or ask for asylum but the requesting state may, or may not grant it. In short, the admission of refugees, or the question of asylum is still considered to be a right of a state rather than that of the requesting individual.

Relying on the twin principles⁵⁷ of the OAU convention governing specific aspects of refugee problems in Africa (to which Nigeria is a party) Section 1 (1) of the Nigerian National Commission for Refugees Decree specifically recognizes refugee's right of admittance to Nigeria in the following words: "... no person who is a refugee within the meaning of the Decree shall be refused entry into Nigeria..." It means the decree permits entry of refugees or entrants provided they can establish that they fall within the "definition of refugee", as defined in the Decree.⁵⁸ In other words, the persecuted aliens or victims of external aggression, occupation, foreign domination, or natural disasters, etc. shall be entitled to enter Nigeria.⁵⁹ In this regard, the Decree, however, imposes two limitations, first, a refugee should not be a danger to the security of Nigeria,⁶⁰ and secondly, he must not be convicted by a court or tribunal for any serious crime.⁶¹ Section 1(4) of the Decree incorporates the principle of provisional asylum for lawful entrants or lawfully present refugees in Nigeria.⁶²

The spirit of this section is to allow refugees a reasonable period

within which to obtain admission or asylum to another country. This means, such persons should not be expelled till they have found another country of asylum. The institution of temporary asylum provides a safe-haven to genuine refugees pending arrangement for their settlement in another state and is based on the principles of international solidarity and equitable burden sharing.⁶³ The concept of temporary refuge is broad in Africa and Asia than in Europe.⁶⁴ The essence of the principle of temporary asylum is not only to protect the interest of lawful refugees but also to lighten the burden of the first asylum country, especially when there is sudden and massive influx of refugees, and it is difficult for the first asylum country to grant them permanent asylum.⁶⁵

Nigeria in pursuance of the call of front line states and the O.A.U., as well as, keeping in view the letter and spirit of Section 1(4) of the Decree decided to admit refugees from Liberia and South Africa inspite of the economic predicament of the country.⁶⁶

(vii) **Principle of Non-refoulement**

Non-refoulement, which is derived from the French verb "refouler", meaning to drive back or repel is embodied in various international instruments including the Geneva Convention⁶⁷ and Protocol relating to the Status of Refugees. Article II of the 1969 O.A.U. Convention has stated the principle of *non-refoulement* without exceptions.⁶⁸ In simple words, it means that the refugees shall not be forcibly returned to a country of origin or persecution.⁶⁹ The aim of the principle of *non-refoulement* is to prevent forcible return of a refugee to a country, where he is likely to suffer political persecution.

Relying on the principle of *non-refoulement* as embodied in the OAU Convention,⁷⁰ Section 1(1) of the Nigerian Refugee Decree has incorporated the principle of *non-refoulment* as follows "..... No person who is a refugee within the meaning of this Decree shall be refused entry into Nigeria, expelled, extradited or returned in any manner whatsoever to the frontiers of any territory where -

- (a) his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular group or political opinion; or
- (b) his life, physical integrity or liberty could be threatened on account of external aggression, occupation, foreign domination or events seriously disrupting public order in any part or the whole of that territory"⁷¹

It is necessary to mention that the Nigerian Refugee Decree has incorporated the principle of non-refoulement for two reasons. First, once admitted into a country of asylum the refugee is protected, i.e. the prohibition of forcible return of genuine refugees to the country of persecution. Secondly, it comprehends the institution of temporary asylum. The main features of the principle of non-refoulment are summarised as follows: First, the principle of non-refoulement is wider in scope. That is, it is not restricted to only the victims of persecution but also extends to persons who have become refugees due to the circumstances of civil and social disorder as well as the conditions of famine and natural catastrophies. In short, the principle is applicable not only to the 1951 refugees, but also to African refugees as defined in 1969 OAU convention. Secondly, the refugees who had already entered the state of asylum, or those who had presented themselves to the frontier of the asylum state are treated on equal footing and both kinds of asylum seekers are protected by the principle of non-refoulement.⁷² The Decree empowers state to expel refugees on grounds of national security or public order.⁷³ Thirdly, it permits temporary asylum to individuals or persons in groups pending arrangement for the resettlement. Such persons shall not be expelled till they have found another country of asylum.⁷⁴ Lastly, the Decree prohibits the expulsion of illegal entrants or refugees if they are directly coming from the country of persecution.⁷⁵

In the early 1980's about 100,000 Chadians crossed over to Nigeria as refugees. The Government of Nigeria followed the policy of non-refoulement and never forcibly returned them to Chad, but emphasized upon them that if the conditions improve in their country of origin, they should leave Nigeria voluntarily.

(viii) Rights and Obligations of Refugees

One of the most important legal consequences of acquiring refugee status is that such a person acquires certain minimum rights in the asylum state without discrimination as to race, religion or country of origin, etc. Unlike the 1951 Geneva Convention, the OAU Convention as well as the Nigerian Decree of Refugee Law does not contain a detailed catalog of the rights.⁷⁶ Not only this, relying on the practice of a number of African states, and keeping in view the economic predicament of the country, Nigeria objects to welfare rights of refugees as enumerated in articles 20 to 28 of the Geneva Convention which deals with rationing, housing, public education, public relief, labour legislation and social security.⁷⁷

In Nigeria,⁷⁸ the rights of refugees are like those of aliens and subject to minimum standard of treatment except where Nigeria is a party to Refugee conventions, or international instruments of Human Rights.

le this, some of the refugee's rights have been transformed into the principal laws.

GENERAL RIGHTS

Right to life, liberty and security of person

The right to life of refugee has been permitted in the Constitution of Nigeria.⁷⁹ The right of a man (refugee) to live is the most important of all possessions, without it, other rights have no sense at all. The physical safety and security of refugee either in the camps or in the country is a responsibility of the asylum state. It means refugee camps should be well protected and armed attacks on refugee camps must be prevented and violators must be punished according to the law of the land. Incidences of killing of refugees in camps must be prevented. The refugee camps should be located far away from the border of the country of origin, as well as, places or location in the asylum state where antagonized population do live. No one should be subjected to arbitrary arrest, detention or exile. Life and security of refugees is a basic human right and the exercise of this, may need the fulfilment of other necessities of life in refugee camps, such as, food, shelter and essential sanitary and health facilities.

Non-Refoulement

A recognised refugee acquires the right not to be expelled or returned to the country of persecution or origin, where his life or freedom would be threatened.⁸⁰ The exceptions under the Nigerian Decree are that of national security or public order, provided that no refugee shall be expelled to a country where he has reasons to fear persecution.⁸¹

Non-discrimination

Art. 3 of the 1951 Refugee Convention, and Art. 4 of the OAU Refugee Convention both lay down a principle of non-discrimination as to race, religion, nationality, etc. Nigeria in the past has admitted refugees - whether Muslims or Christians coming from neighbouring countries, viz, Chad, Cameroon, Liberia, etc. Not only this, the principle of non-discrimination has been consistently applied by the Government of Nigeria with regard to treatment of refugees.⁸²

) **Freedom of Religion**

Nigeria being a secular country it respects freedom of religion and religious education of refugees and their family members. This is also enshrined in the Nigerian constitution,⁸¹ and Nigeria has always allowed this freedom to refugees.

Equality of Treatment

In accordance with Art. 7 of the 1961 Refugees Convention, Nigeria accords to the refugees the same or equal treatment, as it being accorded to aliens generally.⁸⁴

Access to Courts

In accordance with Art. 16 of the 1951 Refugees Convention a refugee has free access to the courts of law for the purposes of enforcement of his rights under the Constitution of Nigeria.⁸⁵

Wage Earning Employment

Recognised refugees have the right to engage in wage earning employment and are treated at par with aliens. They have the right to engage in agriculture, industry, handicraft, and commerce and also to establish commercial and industrial companies subject to the general restrictions equal to that of aliens.⁸⁶

Political Rights

A recognised refugee is prohibited to enter or take part in political activities in Nigeria.⁸⁷

Lastly, in conformity with article 12 of Geneva Convention, a refugee's personal status shall be governed by the law of his domicile, or if he has no domicile then by his country of residence.

The Specific Rights of Refugees

Besides the general rights, the Nigerian Refugee Decree enumerates some specific rights of refugees as follows:-

Identity Cards and Residence

Recognised refugees are entitled to identity cards⁸⁸ for internal use as well as for the purposes of identification. Consequently, they are entitled to residence and employment in the country.⁸⁹ This right extends to his family members and dependents. The Nigerian state practice is to tolerate the residence of refugees unless they become threat to national security or public order. The lawful

residence is not an essential requirement for obtaining identity papers, however, it is necessary for obtaining travel documents.

Travel Documents

Every refugee and his family members lawfully staying in Nigeria are entitled to the United Nations Travel Document, in accordance with the U.N. Convention and schedule annex thereto.⁹⁰ The OAU Convention also imposes a mandatory obligation on asylum states to issue travel documents to refugees lawfully staying in the country.⁹¹ However, this obligation is not absolute but subject to conditions of national security or public order.⁹² The aim of issuing travel documents to a refugee is to facilitate his travel outside the country and to enable him to settle in a third country or to return to the country of asylum,^{92(a)} or to espouse his claims.⁹³ It is pertinent to mention that the issuance of travel documents neither entitles him to the nationality of the asylum country nor the diplomatic or consular protection.⁹⁴

Freedom of Movement

Freedom of movement, as stipulated in Art. 26 of the 1951 Refugee Convention is available to refugees residing in Nigeria subject, of course, to any regulations applicable to aliens generally in similar circumstances.⁹⁵

Naturalization of Refugees

Section 17 of the Decree permits a refugee to acquire the naturalised citizenship of Nigeria provided he satisfied the criteria laid down in the Constitution.⁹⁶ This is an improvement over the 1969 OAU Convention because the OAU Convention does not contain any provision regarding naturalization. Further, section 17 of the Decree imposes an obligation on the Federal Commissioner to make *best endeavours* to assist refugees in acquiring Nigerian citizenship according to the law of the land.

Regularization of status

Since refugees are essentially fugitives from persecution or compelled to leave their country due to famine or natural disasters, hence in such circumstances, it is not possible for them to carry their passports, or obtain visas of the country of refuge. Consequently, they have to enter the country of asylum illegally and reside illegally. Section 1(3) of the Decree permits regularisation of status of such refugees. Thus, the Nigerian

refugees Decree does not punish the refugees who have entered illegally or reside in Nigeria but permits their regularisation provided they present themselves without delay and show good cause for their illegal entry or presence.⁹⁷ Besides this no suit or proceedings shall be instituted or continued against such persons, for illegal entry or illegal residence.⁹⁸

(f) **Obligations**

A refugee not only enjoys certain minimum rights in Nigeria but has to comply with the laws and regulations of the country.⁹⁹ It means, he is under legal obligations to obey the criminal and civil laws (including revenue laws) of the country. In other words, we can say that his continued residence and employment depend upon the fulfillment of the laws of Nigeria. Thus, in case of violation of criminal laws, or breach of civil contracts or any other legal obligations, the refugees will be liable under the Nigerian laws like ordinary residents of the country.

One of the most specific duties of the refugee is to abstain himself from any "*subversive activities*" against any other African state, including the asylum state.¹⁰⁰ This is in conformity with a provision of the OAU Convention¹⁰¹. This is why Nigeria does not allow refugees (in camps or outside) to involve in subversive activities against any state. It is for this and for security reasons that Nigeria at present hosts refugees at Oru camp in Ogun State - which is reasonably far away from the frontiers of their country of origin.¹⁰²

In sum, it is the duty of refugees in Nigeria to comply with the Government measures which aims at public peace and order and not to act contrary to the "national interest" of the asylum State.

(ix) **Settlement, Resettlement and Repatriation**

We may know that refugeehood is a temporary status and can be terminated by:

- (i) Local Integration;
- (ii) Resettlement, and
- (iii) Repatriation.¹⁰³

(a) The ordinary meaning of local integration is that refugee is given an opportunity to mix, integrate (social and economic) and assimilate with the local community, and in the end he acquires the citizenship of the asylum country. Naturalization is one of the ways of terminating the refugee status. This can be encouraged by providing vocational education

or training to refugees, and to enable them to find jobs, issuing them with work and residence permits or a piece of land on which they may start their new lives and to obtain a measure of self sufficiency. In Africa, people take refuge in a neighbouring country due to ethnicity, tribe or religion etc. The Chadian refugees who obtained asylum in Nigeria had no difficulty in adjusting to the culture and the way of life of Nigerians. In such circumstances, the refugees can inter mix with Nigerians and can make contributions to the national development.

Section 17 of the Nigerian Refugee Decree provides for assimilation and naturalisation of refugees. Nigeria has a liberal attitude towards refugees and encourages their assimilation and naturalisation. It is necessary to mention that Section 17 of the Decree does not impose a duty on Nigeria to naturalise all refugees but should use their best endeavours to secure the settlement of refugees.

(b) **Resettlement**

In many cases, after residing for more than twenty years, and refugees neither naturalise nor return to their country of origin, then the resettlement is the other possibility to solve the refugees problems.

The main objective of resettlement of refugees in the third states is to highlighten the socio-economic and security problems of the first asylum state especially in cases of mass influx of refugees.

Keeping in view the principles of African solidarity and international cooperation the asylum state, in cases of mass influx of refugees, may appeal to other states for lightening the burden of refugees.

It is based on an equitable principle that some states should endeavour to ease the burden of first asylum states, who have difficulty in coping with a huge influx of refugees. Re-settling the refugees in other countries in Africa is being carried out by the *Bureau of the Placement and Education of African Refugees* (BPEAR) within the OAU. Nigeria under the resettlement scheme accepted South African and Namibian refugees students.

(c) **Voluntary Repatriation**

The voluntary repatriation is the simplest and most desirable solution of refugee problems.¹⁰⁴ It is due to compelling or unfortunate circumstances that people flee their country of origin but not for ever. Thus, in the changed circumstances, such as, the change of despotic regimes by democratically elected governments etc refugees may like to come back to the country of origin rather than to continue their stay abroad.

Neither the 1951 Geneva Convention nor the 1967 Protocol mention "repatriation", however at the regional level, the principle of

voluntary repatriation of refugees was stressed in article V of the OAU Convention which states: "The essential voluntary character of repatriation shall be respected in all cases, no refugee shall be repatriated against his will".

The voluntary repatriation of refugees is advocated as opposed to forced repatriation, of course; forced repatriation amounts to forcible return" which is explicitly forbidden by the principle of non-refoulement. Refugee's right to return to his country of origin must be voluntary and shall be based on his or her free wish or decision in accordance with article 13(2) of the Universal Declaration of Human Rights.¹⁰⁵

. It is necessary to mention that although the Nigerian Decree has not specifically incorporated the principle of voluntary repatriation, but keeping in view the letter and spirit of article V of the OAU Convention, the Government of Nigeria has consistently supported and implemented the policy of voluntary repatriation of refugees. In 1988 the Government of Nigeria following the policy of voluntary repatriation was able to successfully repatriate 66,000 Chadian refugees to Chad.

(x) Concluding Observation

Refugee status is not recognised by customary international law. That is why, it has given rise to international instruments which regulate the regime of refugees. The Geneva Convention of 1951 and the Protocol of 1967 have established universal legal regimes to protect refugees. However, it failed to take into account a new wave of African-Asian refugees and displaced persons. Keeping in view, the huge number of African refugees, their peculiar characteristics and problems, African States have adopted a regional - OAU Refugee Convention in order to provide adequate protection to African refugees. The OAU Convention Governing the Specific Aspects of Refugees Problems in Africa has not only complemented the Geneva Convention and Protocol relating to refugees, but has significantly contributed in the development of contemporary refugees law.

Relying on "new trends" in refugee law introduced by the OAU Convention, the Government of Nigeria passed a Decree - The National Commission for Refugees in 1989. The Nigerian Refugee Decree is a comprehensive legislation based on humanitarian principles and provides effective legal protection to refugees in Nigeria. The special features of the Decree are as follows: First, the Decree has expanded the scope of protection of refugees by providing a "wider" meaning to the term "refugee" which includes "displaced persons". Second, Nigeria's long tradition of admitting refugees into the country has been incorporated in Section 1(1) of the Decree, which imposed an obligation to grant asylum

genuine refugees. Not only this, the Decree provides for granting of temporary refuge to asylum seekers pending resettlement and not to return to the country where their lives or freedom may be endangered. And, the Decree has incorporated the principle of "*non-refoulement*" and interprets it in a wider sense, hence;

it applies to victims of "persecution" as well as to the persons, who have become refugees due to the circumstances of civil and social disorder etc.,

it prohibits expulsion of refugees, who present themselves at the frontier or those who are within the territory of Nigeria. Fourth, prior to the 1989 Decree, the refugee's status in Nigeria used to be determined by *ad hoc* and administrative decisions, but now, the Decree has laid down details and standard procedures for determination of refugees. Fifth, the refugees in Nigeria enjoy general and specific human rights as laid down in the 1951 U.N. Convention, viz food, shelter, and clean environment etc are provided to the refugees in refugee camps, and outside. The Nigerian Government and voluntary organisations do employ the refugees. Recognised refugees are issued *Conventional Travel Documents* (CTD), so that they can travel outside the country for resettlement, education and seek asylum in the third country. The Decree provides that refugees can acquire naturalised citizenship of Nigeria. The Nigerian Government in the past has encouraged Chadian refugees to acquire Nigerian Citizenship. The refugees have free access to the courts of law for the purposes of enforcement of their rights. Refugees are expected to comply with laws and regulations and their continued residence depends upon the fulfilment of laws. Refugees in Nigeria are prohibited to undertake "*subversive activities*" against any member of the OAU. Sixth, although, the Nigerian Refugee Decree does not specifically provide for the voluntary repatriation of refugees, but it is a cornerstone of Nigeria's refugee policy. In pursuance of this policy objective, Nigeria in cooperation with Chad and the UNHCR was able to repatriate Chadian refugees to Chad voluntarily. Seventh, the Decree emphasised the equitable principle of burden sharing of refugees among the states. Eight, the Nigerian refugee Decree is a comprehensive national legislation which establishes effective, impartial and human protection of refugees - right from admission (asylum) to voluntary repatriation. The author feels that it may serve as a *model* for other African countries. Lastly, we may conclude that the best solution of refugee problem lies in eliminating the root causes of migration of persons or refugees

from the country of origin, and effective implementation of refugee law in the asylum state, which in turn, will be beneficial for all persons including refugees.

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See The 1969 Organisation of African Unity convention on Refugees and Problems in African, 14 UNTS 691.

The 1951 Convention on the Status of Refugees, 606 UNTS 267.

See The National Commission for Refugees, Degree No. 52/1989.

Dr. Reiner Hofmann narrates four basic causes of migration of refugees, (i) Violation of fundamental human rights, (ii) Civil wars, (iii) foreign armed intervention, and (iv) natural disasters. See Hofmann, R. "Refugee Law in Africa", *Law and State*. 39 (1989) p. 72.

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Ricca, S, "Refugees in Africa: Legal and Administrative Aspects", *The Courier A.C.P. Euro-Community*, May - June (1990) pp. 74 - 79 e.g. Somalia, Sudan, Malawi and Tanzania alone harbour 25% of the total African refugee population.

See Chhangani, R. C. *Illegal Aliens Under Nigerian Law*, 1983 p. 18 - 24.

Chuke, P. I., "Refugee Problems and Development in Intra-African Relations," *Nigerian Forum*, NIIA, May - June 1990 p. 147; Popoola, I., "Nigerian Law of Asylum and Refugees", in *The Legal Position of Aliens in National and International Law*, Eds, Frowein, J. A. and Stein, T. 1987 p. 964; See also, *Seminar on Situation of Refugees in West Africa. Dakar (Senegal) June, 1983. UNHCR Publications, Geneva, 1994 p. 74.*

See *The Democrat*, July 1993, p. 3.

Eze, O. C. *Human Rights in Africa - Some selected problems* 1984, p. 163; See Popoola, *supra* note 9, p. 967.

See *Immigration Act (Nigeria) 1963* Chhangani, R. C. "Aliens and Immigration Laws in Nigeria", *Nigerian Forum*, NIIA, March 1982 p. 506; *Extradition Act 78 (1966)*; Chhangani, R. C., "Recent Developments in the Extradition Law of Nigeria," 26 *I.J.I.L.* (1986) P. 483.

See *Supra* note 2

See *Supra* note 1

See *The Universal Declaration of Human Rights*, 1948.

See *The African Charter on Human and People's Right*, 1981.

See Sinha, S. P. *Asylum and International Law*, 1970, p. 90; also, Goodwin-Gill, G. S. *The Refugee in International Law*, 1983, p. 215.

Chhangani, R. C. "Legal Status aliens in Nigeria", 23 *J.I.L.I.* (1981) p. 276.

See Popoola, *supra* note 9.

Supra notes 2 and 1.

Chhangani, R. C. "Recent Development in the Nigerian Refugee Law", a paper presented at the National Refugee Law Seminar organised by the UNHCR and the Nigerian Institute of International Affairs, on June 23 - 25,

- 1995, Lagos.
2. See Section 17 (1) of the Immigration Act, 1963.
 3. Section 20 of the 1989 Constitution of the Federal Republic of Nigeria.
 4. See Weis P. "Human Rights and Refugees" 10 International Migration (1972), p. 20; Moussali, P. M., "Human Rights and Refugees", Year Book of International Institute of Humanitarian Law, 1984, pp13-21.
 5. See Explanatory End Note of the National Commission for Refugee Decree 52/1989.
- See Sinha Supra note 17, p 95; Goodwin-Gill, Supra note 17. p. 1.
- See Sinha, Supra Note 17, p. 95.
- See Art 1 of the 1951 U.N. Convention of Refugees
- See Art 1 of the 1967 Protocol Relating to the Status of Refugees
- See Art 1 of the 1969, O.A.U. Convention Governing the Specific Aspects of Refugees Problems in Africa.
- Section 20(3) of the Decree narrates the grounds of cessation of refugee status:
- if he has voluntarily reavailed himself of the protection of the country of his nationality.
 - if he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution.
 - if he can no longer because the circumstances in connection with which he was granted a refugee status have ceased to exist.
- Section 20(2) of the Decree lists the ground which excludd individuals from acquiring refugee status:
- if he committed a crime against peace, a war crime or a crime against humanity,
 - if he has committed as serious non-political crime outside Nigeria, prior to his entry,
 - if he has been guilty of acts contrary to the purposes and principles of the OAU.
- "Refugee means any person who leaves the country of his nationality owing to fear of persecution of dangers by reason of race, religion, or membership of any social or political group or owing to fear of military operations, occupation outside aggression, foreign domination or internal disturbances, is unable or is owing to such fear (unwilling) to return to his country, or he has no nationality and (has) left the country where (he) habitually resides by reason of such events and is unable, or is (un-willing, by reason of fear to return hereto".
- Note the 1951 Convention read in conjunction with the 1967 Protocol consider the "criterion of persecution" as the soul of refugee character. The concept of well founded fear of persecution has not been defined in the Convention, Protocol and Nigerian Refugee Decree, however in assessing it both subjective and objective factors should be considered. The term persecution has been interpreted to include threats to life, limb or physical freedom, economic measures as such as prevention from taking qualifying examination for political reasons. Or depriving of legal capacity or persistent refusal to permit re-entry in the home country; See Plender, R. International

Migration Law, 1988, pp. 416 - 417; See *Sinha supra* note 17, p. 102.
 See Art 1(2) of the 1969 OAU Convention Governing the Specific Aspects of Refugees in Africa. This part of definition expands the basis for permitting refugee status, and adds additional category of persons as refugees including displaced persons
 Note, For Pre-Decree determination of Refugee status in Nigeria, see *Seminar on the situation of Refugees in West African*, UNHCR Publication, Geneva 1984, p. 74. See also, *Popoola, Supra* note 9, p. 977.
 See Part V of the National Commission for Refugee Decree 52 of 1989.
 Section 5(a) of the Decree 52 (1989).
 Section 6(2) (a) of the Decree.
 Section 7(4) of the Decree.
Ibid.
 Section 7(6) of the Decree.
 Section 7(2) of the Decree.
 Section 8(8) of the Decree.
 Section 8(9) of the Decree.
 Section 4(4) of the Decree.; See also *Changani, R. C. "African Refugee Law: Problems and Prospects" University of Maiduguri: inaugural lecturer series No. 53, 1992 p.8.*
 See *Eze, O. C. supra* note 11, p. 173; See Also, *Aiboni, S. A. Protection of Refugees in Africa, 1978 p. 35.*
 Section 4 of the Decree.
 Section 12(4) the Decree.
 Section 13(1) the Decree 52/1989.
 Section 13(1) *Ibid.*
 See UNHCR Hand book of procedures and Criteria for Determining Refugee Status, 1988; *Goodwin Gill, G. S., "The determination of Refugee status: Problems of access to procedures and the standard of proof", 1985 Yearbook of International Institute of Humanitarian Law p.56; see also, Henkel, J. "International protection of Refugees", in Defence of the Alien, Vol. II Refugees and Territorial Asylum proceedings, 1982 P.56-61.*
 Sec. 13(3) of the Decree.
 See *oppenheim, L. International Law, Vol. 1 8th Ed. 1955, p. 675. See also, Art 2. Asian-African Legal consultative Committee Report, 1961 p. 53; Weis, P, "International Protection of Refugees", 48 Am. J. I. L. (1954) P. 193; See also, Chhagani, supra* note 45, P. 9.
Rifaat, A. M. "Refugees and the Right of Asylum: An African perspectives 40 Revenue Egpt De Droit International (1984) P. 71; Weis, P. "The Convention of the OAU Governing the specific Aspects of Refugees Problems in Africa", 3 Revenue Des Droits De L'Homme (1970) P. 449; Van Krieken, P. I., "African Refugee Law," Annaire del' A. A. A. 1975-76 (Vol. 45(46) P. 124. Art 14(1) reads: "Everyone has the right to seek and to enjoy in other countries asylum from persecution".
 Art 12(3) reads: "Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those

countries and international convention".

e.g. (i) principle of non-refoulement, (ii) principle of burden-sharing.

Section 20 of the Decree

See Chibangu *supra* note 21 p. 10.

Section 2(a) of the Decree

Section 2(b) of the Decree

Section 1(4) reads: "A person who has lawfully entered into or is lawfully present in Nigeria and who wishes to remain in Nigeria on the grounds that he is a refugee within the meaning of this Decree shall not be compelled to leave Nigeria, unless he has found another country to asylum".

See Art. 11(4) of the OAU Convention; Principles Concerning the Treatment of Refugees, Report of the 8th Session of the Asian-African Legal Consultative Committee, 1966.

Hailbronner, K. "Non-Refoulement", 26 *Va J. Int' L. L.* (1986) P. 958.

See Coles, G. J. L. "Temporary Refuge and the large scale influx of Refugees", 8 *Australian year book of Int. L. Law*, 1978 - 80 p. 189; Fonteyne, J. P. L.,

Burden-sharing: An Analysis of the Nature and Function of International Solidarity in cases of Mass Influx of Refugees", 8 *Australian yearbook of International Law*, 1978 - 80 P. 162; See also Goodwin-Gill, G. S. *supra* note 17, P. 114. Melander & Nobel, *African Refugees and Law* 1978 P. 58.

See Seminar on the Situation of Refugees in West Africa 1983.

See Art. 33 of the 1951 Convention.

Of. Art. 32(2) of the 1951 Geneva Convention provides two exceptions to the principle of non-refoulement, viz;

(i) danger to the security of the country;

(ii) Convicted of a serious crime.

See Sinha, *supra* note 17, P. 110.

W. Welamira, M. R. K., "Some Reflection on the OAU Convention on Refugees: Some pending issues", 16 *Comparative Int'l Law Quarterly of Southern Africa* (1983) P. 155 - 178; See also, D'sa, R. M., "The African Refugee Problem: Relevant Int'l Conventions and Recent Activities of the OAU", 31 *Netherlands Yearbook of Int'l Law* (1984) P. 378; Nobel P. "Refugees, Law and Development in Africa", 1 *Mich Y, Int'l Legal St* (1982) P. 261.

Section 1(4) of the Decree.

Section 1(3) of the Decree reads:

"No person, claiming to be a refugee within the meaning of this Decree who has illegally entered into or is illegally present in Nigeria, shall be expelled, extradited or returned merely by reason of his illegal entry or presence in Nigeria or any part of Nigeria pending the determination of his application for a refugee status", See also identical Art 31(1) of the 1951 Geneva Convention; See also, Goodwin-Gill *supra* note 17, p. 83.

Note: the 1951 Geneva Convention has been called the Magna Carta of refugees; See also, Mbaya, E. R. "Political Asylum in the Charter of the OAU: Pretensions and Reality", 35 *Law and State*, 1987, p. 63; Weis, P. *supra* note 54 P. 449; Grahl-Madsen A. "Political Rights & Freedom of Refugees" in

African Refugees & the Law 1979, PP. 47.

Eze, *supra* note 11, P. 184.

See Popoola, I, *supra* note 9 P. 979.

See Section 32 of the 1989 Constitution of Nigeria, reads "Every person has a right to life...." See also Weis, P. *Human Rights and Refugees*, 10 *International Migration* 1972, P. 20; See also, Art. 4 *The African Charter on Human and People's Right*, 1981.

See *supra* note, sub-heading VII "Principle of non-refoulement" See also, Section 1(1) of the National Commission for Refugees, 1989.

Section 1(2) of the Decree, 1989, Also Section 16(1) of the Decree, 1989.

See *supra* note 35 P. 74.

See Section 37 of the Constitution of Nigeria, 1989; See also, Akande J. O. *The Constitution of the Federal Republic of Nigeria*, 1979, London 1982 P. 35.

See also, Art. 3 *The African Charter on Human and People's Right*, 1981; See also, Weis, P. "Refugee Law - A New Branch of Law" 1973 *International Bar Journal* p. 30.

Section 44 of the Constitution of Nigeria, 1989.

See Popoola, I. *supra* note 9 at P. 979.

Ibid.

Section 11(1)(a) of the Decree, 1989.

Section 11(1)(b) *ibid.*

Art 28 of the Geneva Convention 1951; See also, Grahl-Madsen, A. *The status of Refugees in international Law II* P. 234.

Art VI of the OAU Convention, 1969; see also, Aiboni, *supra* note 46 P.46.

Art VI (2) *ibid*; see also, Plender R, *The Right of Asylum centre for Studies and Research, The Hague*, 1989 P.63.

Goodwin, Gill, G.S. *International Law & Movement of persons between states* 1977 P.42.

See Chhangani, R.C. "Espousal of Refugees claims", a paper presented at the Center for studies and Research in International Law, The Hague Academy of Internatioal Law, The Hague, 1989.

Ibid.

Ibid.

See sec. 27 Constitution of Nigeria, 1989. See also, Chhangani, R.C. "Law of Naturalization in Nigeria," 18 J.C.P.S.)1984) P.56. See also, Art. 34 *The Geneva convention 1951 which facilitates the assimilation and naturalization of refugees.*

Section 1(3) of the Decree, 1989. Note the regularisation of status means granting of asylum to such illegal immigrants, or refugees, or allow them to stay in the country for a reasonable period till they obtain admission in another country.

Section 10 of the Decree, 1989.

See also, Myaba, E. R. *supra* note 76, P. 68.

See Art. III(3) OAU Charter; Art 2(4)(7) U.N. Charter. See Eze, *supra* note 11 at P. 182; See also, Weis, *supra* note 54 at P. 458

See Art. III of the 1969 OAU Convention.

See Art. II(6) of the 1969 OAU Convention.

Note: For discussion of local settlement, resettlement and repatriation, See Van, Krieken, supra note 54 at P. 129; Sinha, supra note 17 P. 118; Eze, supra note 11 P. 163; Miller, J. C. "The Homeless of Africa", Africa Today, 1982 P. 5

See Gorman, R. "Refugee Repatriation in Africa", 40 World Today 1984 P. 436; Krieken, P. "Repatriation of Refugees under International Law" 13 Netherlands Y. Intl Law 1982 P. 93; See also, Chhangani, R. C. "Repatriation of Chadian Refugees", 3 The Mobilizer Magazine 1990, P. 34.

See Art 12(2) The African Charter on Human and People's Right, 1981.