

Appraisal of the Rights of Refugees' under International Humanitarian Law

Akintunde Adebayo*

Abstract

Following the experience of World War II when several people became homeless and displaced, the United Nations took it upon itself to address the issue of refugees by adopting the 1951 Geneva Convention Relating to the Status of Refugees.¹ The Convention was meant to protect fundamental human rights and freedom of individuals. It was also meant to help in resettlement of displaced persons after the 2nd world war. As a result of the increase in the number of refugees around the world, the United Nations adopted the 1967 protocol which applies to persons who became refugees after 1st January 1951. In terms of the Convention and the Protocol, refugees are entitled to the same kind of protection as nationals in a state. The international community has reiterated its commitment to the implementation of the various conventions on the protection of rights of refugees all over the world, and also seeks a lasting solution to their problems. It has however been observed that, while some contracting states to the conventions adhere to the provisions of the conventions strictly, other states' who are also parties to the conventions have failed to adequately implement their international legal obligations in a holistic and transparent manner, coupled with lack of enforcement mechanisms. This paper examines refugees' rights and the protection under the Geneva Convention 1951 and the African Union Convention Governing the Specific Aspects of Refugees 1969. The paper compares the protection offered by the two instruments. It also examines case laws and general comments and makes appropriate recommendations.

Keywords: Asylum, refugees, refugee status, human rights, well-founded fear of persecution

* LLB (Ilorin, Nigeria), BL (NLS), LLM (Aberdeen, UK), Lecturer & Doctoral Candidate, Faculty of Law, Adekunle Ajasin University, Akungba-Akoko, Ondo State, Email: akintunde_adebayo@yahoo.co.uk or akintunde.adebayo@aaua.edu.ng

¹ Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137
African Union Convention Governing the Specific Aspects of Refugee Problems in Africa (adopted 10 September 1969, entered into force 20 June 1974) 1001 UNTS 45

Introduction

It has been observed that since World War II, so many people have been forcibly displaced as a result of armed conflicts, war situations, insurgencies and persecution² with children constituting about 41% of the population of refugees. About two-third of the world's refugees have been in exile for more than 5 years, many of them with no end in sight. Also worthy of note is the fact that about four-fifth of refugees are in developing countries that can least afford to host them.³ Several thousands of Nigerian refugees flee to neighbouring countries such as Niger, Chad and Cameroun every week due to conflict and insecurity in the North-East of Nigeria. Record has it that there are currently about 66,000 Nigerian refugees in Cameroun.⁴ The Secretary-General of the United Nations, Ban Ki-Moon reiterated the commitment of the United Nations towards the settlement and welfare of refugees thus; "Refugees have been deprived of their homes, but they must not be deprived of their future".⁵ It is in the bid to achieve this, that the United Nations through the United Nations Refugees Agency (UNHCR) and the United Nations Relief and Works Agency for Palestine Refugees in Near East (UNRWA) have been working relentlessly to see to the welfare and wellbeing of refugees all around the world.

Black's Law Dictionary defines a refugee as "a person who flees or is expelled from a country, especially because of persecution and seeks haven in another country"⁶ "The term 'refugee' is a term of art, and in ordinary usage, this term has a broader, looser meaning signifying someone in flight, who seeks to escape conditions or personal circumstances found to be intolerable. Implicit in the ordinary meaning of 'refugee' lies an assumption that the person concerned is worthy of being, and

² The figure has hit 50 million around the world. "*Refugees- The number*" available online at www.un.org/en/globalissues/briefingpapers/refugees/ (accessed on 7th May, 2015).

³ Ibid.

⁴ "*Some 16,000 refugees seek shelter in Cameroon following clashes in north-east Nigeria*", available online at www.unhcr.ie/news/irish-story/some-16000-refugees-seek-shelter-in-cameroon-following-clashes-in-north-east (accessed on 7th May, 2015).

⁵ *Supra*, note 3.

⁶ Black's Law Dictionary, (9th Edition, West 2009), page 1394

ought to be, assisted, and if necessary, protected from the causes and consequences of flight.”⁷ According to Article 1(a) (2) of the 1951 Geneva Convention, a refugee is defined as a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country. Going by this definition, internally displaced persons including individuals fleeing natural disasters and generalized violence, not outside their country of habitual residence or not facing persecution, and individuals who have crossed international boundaries fleeing generalized violence, are not considered refugees within the meaning of the Convention.⁸

Article 1(2) African Union (AU) Convention Governing the Specific Aspects of Refugee Problems in Africa 1969 on the other hand regards as refugees persons who owing to external aggression, occupation, foreign domination or events seriously disturbing public peace and order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. An asylum seeker is regarded as a person within a state party who has applied for recognition as a refugee. If the asylum seeker is determined to meet the definition of a refugee, he is granted asylum.⁹ The refugee status is also called asylum. A person who flees his country under the aforementioned circumstances and enters a foreign country is called an asylum seeker. He requests refuge from the foreign country and he is granted the status of refugee, the asylum, with all the special rights and obligations that follow this status, from the moment that the request is accepted. To establish a claim of refugee status under the Geneva Convention 1951 the following elements must be proved. They are (a) alienage; (b) a well-founded fear; (c) persecution; and a nexus to civil/political rights.

Alienage

⁷ Goodwin-Gill, G.S. & McAdam, J. *The refugee in International Law*, (3rd Edition, Oxford University Press, 2011) at 15.

⁸ Geneva Convention 1951, *op.cit.*, Article 1 (a) (2).

⁹ “*Asylum-Seekers*”, available online at www.unhcr.org/pages/49c3646c137.html (accessed on 7th May 2015).

Alienage is defined as the condition or state of being an alien.¹⁰ For an applicant to establish a claim for refugee status, such an applicant must prove that he is outside his country of nationality.

Well-founded Fear

There must also be fear of going back to one's home country because of a well-founded fear of persecution. Fear of persecution is well-founded if it is clear that the refugee will be persecuted if he returns to his country of nationality. Therefore, not all involuntary migrants qualify as refugees; only those who have genuine fear of persecution in their home country are entitled to protection provided for under the Geneva Convention 1951. This was the position of the court in *R v. Home Secretary, Ex Parte Sivakuniara*.¹¹ Similarly, Lord Goff of Chiveley opined that "real and substantial risk of persecution will do".¹² Also, in the US Supreme Court case of *Immigration and Naturalization Service v. Cardoza Fonseca*,¹³ Stevens J. with reference to statutory provision in Article 1(a) (2) of the Geneva Convention 1951 and the case of *Immigration and Naturalization Service v. Stevic*¹⁴ stated his preference for the expression 'a real chance' when it comes to establishment of well-founded fear of persecution by a claimant. It clearly conveys a notion of substantial and not remote chance of persecution occurring and also because the expression had been explained and applied in Australia.¹⁵

Mason, J., Wilson, J., Deanne, J. in *Boughey v. R*¹⁶ stated that "if an applicant establishes real chance of persecution, then his fear

¹⁰ Black's Law Dictionary, *op. cit.*, at 1194.

¹¹ (1988) A C 958, 1. *In this case, the six applicants for asylum were Sri Lankan nationals who belonged to the Tamil ethnic group. Their application for asylum was refused on grounds that based on the facts available, the applicants had no reason to fear if they returned to Sri Lanka. Lord Keith of Kinkel was of the opinion that the applicants must show a reasonable degree of likelihood that they would be persecuted if they returned to their country of nationality.*

¹² *Ibid.* at 100, Lord Templeman and Lord Griffiths shared the same opinion.

¹³ (1987) 94 LE d 2 d 434.

¹⁴ (1984) 467 US 407 at 425.

¹⁵ *Chan Yee Kin v. Minister for Immigration and Ethnic Affairs, Soo Cheng Lee v. Minister for Immigration and Ethnic Affairs, Kelly Kar Chun Chan v. Minister for Immigration and Ethnic Affairs, High Court of Australia*, 87 A.L.R 412, 12th, September 1989 at page 7.

¹⁶ (1986) 65 ALR 609, 161 CLR 10 at 21.

as such is well-founded notwithstanding that there is less than 50 per cent chance of persecution occurring”.

Persecution

In order to establish a claim for refugee status, claimant must establish that he is facing persecution or has faced persecution. Persecution is not expressly defined in the Geneva Convention 1951 but can be inferred.¹⁷ Persecution could be violation of fundamental human rights resulting from failure of state protection or even harm by private actors.

In a general comment on protection of refugees’ rights, Hathaway was quoted as describing persecution as “sustained or systematic violation of basic rights demonstrative of a failure of state protection”.¹⁸ Agents of persecution include; state, police, military, or even private actors where the state cannot prevent or stop the harm.¹⁹ Those persecuted by private actors are called ‘third party refugees’.

In establishing refugee status, an applicant needs to prove present, well-founded fear of persecution and not the situation when he fled his country of nationality. Serious harm combined with failure of state to protect will result in persecution.²⁰ Also, persecution in addition to failure of state to protect will result in refugee status.²¹

Nexus to Civil, Religious or Political Rights

Persecution alone is not sufficient to establish refugee status. It must be proved that the harm occurred due to reasons of race, religion, nationality and membership of a social group or political opinion.²² The House of Lords in the case of *Adan v. Secretary of States for Home Department*²³ refused to grant refugee status to a Somali family on the ground that they could not satisfy the nexus

¹⁷ Geneva Convention 1951, *op. cit.*, at Article 33.

¹⁸ Hathaway, J.C. “*The Law of Refugees under Status*”, (Butterworths, Toronto, 1991), page 103.

¹⁹ *Horvath v Secretary Of State For The Home Department, House Of Lords, (2000) 3 All E.R 577, (2000) 3 W.L.R 379.*

²⁰ Hathaway, J.C, *op. cit.*, note 19, at 108; *Canada (Attorney-General) v. Ward, Supreme Court Canada, (1993) 2 SCR 689 at 733.*

²¹ *Islam and Shah (1999) 2 AC 629 at 653F.*

²² Hathaway, J.C. “*The Causal Nexus in International Refugees Law*”, Michigan Journal of International Law, (2002), Volume 23, No. 2.

²³ (1998) 2 All ER 453.

requirement. The required nexus may be established by evidence of the reason for the threat or infliction of harm, for the withholding of state protection, or simply for predicament faced whether (intentional or not).²⁴ “A convention ground need not be the sole or even the dominant cause of risk of being persecuted but it must be a contributing cause to the risk”.²⁵

The fact that somebody is outside his country of nationality or has a well-founded fear of persecution does not automatically qualify him for refugee status under the Convention,²⁶ until he has established that the risk faced by him is linked to any of religion, nationality, membership of political/social group or race. Sometimes, two or more convention grounds combine in a person to establish a well-founded fear of persecution.²⁷ The required causal link is between the convention ground and applicant’s well-founded fear of being persecuted. Attribution of the convention ground to the applicant by the state or non-governmental agents of persecution is sufficient to establish the required causal link.²⁸ Causal link may also be established in the absence of proof of intentions to harm or withhold protection provided it is established that the convention ground did not contribute to the claimant’s exposure to risk of persecution.

Overview of Convention relating to the Status of Refugees 1951

Right not to be discriminated against: A refugee shall not be discriminated against by the contracting state based on religion, race, or country of origin.²⁹ Discrimination on the ground of sex is not excluded neither is discrimination on the ground that the person is a refugee.

Freedom of religion: Refugees in contracting states to the Convention shall have the freedom to practice their religion and also their children just like the nationals of that country.³⁰ This right is intended to cover the situation in countries where there are

²⁴ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva 1979, re-edited 1992) at paragraph 54.

²⁵ *Ibid.*

²⁶ Geneva Convention 1951, *op.cit.*, Article 1 (a) (2).

²⁷ *Ibid.*, Articles 1, 31 and 33.

²⁸ Hathaway, J.C., *op.cit.*, at note 23.

²⁹ Geneva Convention 1951, *op.cit.* Article 3.

³⁰ *Ibid.*, Article 4.

limitations on religious freedom, particularly countries in which there is a state religion to which the refugees do not belong or where the refugees' religion is not represented in the local population. The Article does not oblige the contracting states to provide the material or financial means for the exercise of their religion by the refugees or the religious education of their children where such means are not provided for nationals.

Right granted apart from this convention: Nothing in this Convention shall be deemed to impair any rights and benefits granted to refugees prior to or apart from this Convention. This Convention should not impair any greater rights which refugees may enjoy prior to or apart from the Convention. Such rights and benefits may be based on national legislation or on treaty, for instance the treaties concluded by the IRO with certain states; such rights are not abrogated by the Convention.³¹

Term "in the same circumstance": It simply means that the treatment of refugees should correspond to that meted out to other aliens '*ceteris paribus*' in the host territory.³²

Exemption from reciprocity: The enjoyment of the rights and favours accorded to foreigners subject to reciprocity shall not be refused to refugees in the absence of reciprocity. Where aliens enjoy rights subject to reciprocity, a contracting state shall continue to accord these rights and benefits, without regard to reciprocity, to a refugee who was already entitled to them on the date on which the convention comes into force in relation to that state.³³

³¹ Ibid., Article 5.

³² Ibid., Article 6.

³³ Ibid., Article 7; *The French Cour d'Appel of Orléans decided on 27 April 1967 in Spouses Wagué v. Agut, that the denunciation of an agricultural lease of a Spanish refugee was invalid and granted him the right of renewal of his lease for nine years. A law of 28 May 1943 reserved explicitly to foreigners whose law of nationality granted the advantages of analogous legislation as well as to foreigners exempt from reciprocity by international agreement, the right to agricultural leases accorded to French nationals. The Court referred to Article 7 paragraph 2 of the 1951 Convention.*

In Belgium members of Belgian families with four or more children enjoy a reduction of 50% on the price of tickets on the Belgian railways. This benefit is granted to foreigners on the basis of reciprocity. The Ministry of

Exemption from exceptional measures: With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign state, the contracting state shall not apply such measures to a refugee who is formally a national of the said state solely on account of such nationality.³⁴

Provisional measure: Any exceptional measure which a contracting state may be called upon to take against the person, property or interests of nationals of a foreign state, shall not be applied to refugees who are *de jure* nationals of the said state, solely on account of the fact that they legally belong to that state.³⁵

Continuity of residence: Persons who have been forcibly displaced during the Second World War and have sought refuge in the territory of a contracting state to the convention and reside there, the period of such sojourn shall be deemed lawful residence in that territory.³⁶

Refugee seamen: For refugees serving as crew members on board of a ship of a contracting state, the state shall see to their welfare and establishment in that territory including issuance of valid travel documents.³⁷

Personal status: The personal status of a refugee shall be governed by the law of the country where he is domiciled or resident. In the case of *May v. May*, it was held that refugee acquire domicile of choice in the country of reception.³⁸

Movable and immovable property: In addition to the above, a refugee shall have the right to lease, sell, rent, and buy movable

Communications informed UNHCR that the facility extended to all refugees under the mandate of UNHCR.

³⁴ Ibid., Article 8.

³⁵ Ibid., Article 9; *After the outbreak of the Second World War, many refugees who had been persecuted by the Governments of the Axis countries were subjected to exceptional measures taken against the nationals of enemy countries (internment, sequestration of property, blocking of assets, etc.) because of the fact that formally they were still de jure nationals of those countries.*

³⁶ Ibid., Article 10.

³⁷ Ibid., Article 11.

³⁸ Ibid., Article 12, (1943) 2 All E.R. 146.

and immovable property within the territory of the contracting state just like nationals of the state.³⁹

Artistic and industrial property rights: In respect of the protection of industrial property, such as inventions, designs or models, trademarks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country.⁴⁰

Freedom of association: As regards non-political and non-profit-making associations and trade unions, the contracting states shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.⁴¹

Rule of law and access to courts: Refugees shall have access to courts in the territory of the contracting state and also enjoy rule of law.⁴²

Wage earning employment: Refugees are entitled just like the nationals of the contracting state to be gainfully employed within the territory of the state.⁴³

Self-employment: A refugee also has the right to be self-employed in different areas like agriculture, commercial or industrial

³⁹ Ibid., Article 13.

⁴⁰ Ibid., Article 14.

⁴¹ Ibid., Article 15.

⁴² Ibid., Article 16; *In the Federal Republic of Germany the Federal Court held, on 10 June 1982, ATF 83 (1951) I p. 16, concerning the maintenance compensation of a Yugoslav wife living in Yugoslavia who had been divorced from her refugee husband living in the Federal Republic, that since the spouse had the status of refugee according to the 1951 Convention and had his habitual residence in the Federal Republic he had, according to Article 16 paragraph 2 of the Convention, the same access to courts as German nationals and was accordingly as to international competence in the same position as a German national. From the international competence concerning the divorce procedure, followed that for the procedure concerning maintenance.*

⁴³ Geneva Convention 1951, *op. cit.*, Article 17.

companies and handicraft within the territory of the contracting state.⁴⁴

Liberal profession: A contracting state shall accord to refugees within its territory with recognised diplomas and other certificates with the right to practice a liberal profession within that territory.⁴⁵

Rationing: Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals of the contracting states. It refers to consumer goods in short supply, not to commodities for commercial or industrial use. It will also not apply to commodities in sufficient supply.⁴⁶

Housing: As regards housing, the contracting states, in so far as the matter is regulated by law or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances. Refugees shall also be treated like nationals in rent control and allocation of flats and premises.⁴⁷

Public education: A contracting state shall accord refugees in its territory the right to education, recognition of foreign certificates, and scholarships.⁴⁸ In Austria, refugees are exempted from university fees.⁴⁹ Ethiopia on the other hand, made reservations to Article 17 and 22 of the Geneva Convention 1951 (on public education) as if these provisions are mere recommendations and not obligations.⁵⁰

Public relief and assistance: The contracting states shall accord to refugees lawfully staying in their territory the same treatment with

⁴⁴ Ibid., Article 18.

⁴⁵ Ibid., Article 19.

⁴⁶ Ibid., Article 20.

⁴⁷ Ibid., Article 21.

⁴⁸ Ibid., Article 22.

⁴⁹ Weis, P. "Refugee Convention 1951, *the travaux preparatoires analysed with commentary*," at 122.

⁵⁰ "2015 UNHCR sub-regional operations profile – West Africa", available online at www.unhcr.org/pages/49e484f76.html (accessed on 5th May, 2015).

respect to public relief and assistance as is accorded to the nationals of the state.⁵¹ For instance, the Malawian government integrated refugees healthcare into her national health service (that is, refugees whether in camp or within the large populace) just like every other national of the country will have access to healthcare.⁵²

Right to labour and security: Refugees shall enjoy rights to labour and social security in their host countries. In Luxembourg for instance, according to the Decree of the Minister of Labour, Social Security and Mines of 25 May 1955, refugees unemployed for reasons beyond their control are assimilated to unemployed Luxembourg nationals for admission to unemployment benefits if they are permanent residents in the territory of the Grand Duchy and are in possession of a travel document issued by the Ministry of Foreign Affairs under Article 28 of the 1951 Convention.⁵³

Administrative assistance: Where a refugee in the territory of a contracting state needs assistance of a foreign authority to which it does not have access, the state shall arrange that such assistance be afforded to him by its own authority or the international authority. In Belgium for instance, the *Direction Générale de la Chancellerie et des Contentieux* of the Ministry of Foreign Affairs has been so designated.⁵⁴

Freedom of movement: Each contracting state shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to nationals and aliens generally in the same circumstances.⁵⁵

Identity and travel document: A contracting state shall also issue valid travel documents to refugees staying in its territory in case they want to travel outside the territory.⁵⁶

⁵¹ Geneva Convention 1951, *op. cit.*, Article 23.

⁵² U.S Commissioner for Refugees & Immigrants, World Refugee Survey 2009: Ethiopia (2009).

⁵³ Geneva Convention 1951, *op. cit.*, Article 24; and Weis, P. "Refugee Convention 1951, *the travaux préparatoires analysed with commentary*," at 136.

⁵⁴ *Ibid.*, Article 25; Weis, P. "Refugee Convention 1951, *the travaux préparatoires analysed with commentary*," at 144.

⁵⁵ *Ibid.*, Article 26.

⁵⁶ *Ibid.*, Articles 27 and 28.

Fiscal charges: Refugees in the territory of a contracting state shall be treated equally with nationals of the state when it comes to the issue of tax.⁵⁷

Transfer of asset: Refugees in a contracting state shall be allowed to transfer assets brought into the territory from another state in case they want to resettle there.⁵⁸

Unlawful asylum seekers: Refugees who unlawfully enter a contracting state shall not be penalised provided they can prove that their life is in danger and threatened in the sense of Article 1 of the Geneva Convention 1951 and they surrender themselves to the authorities without delay.⁵⁹ In Austria, an asylum-seeker may, if it is necessary for the determination of the relevant facts⁶⁰, until the termination of the recognition procedure, but for not more than two months, be obliged to reside in the designated part of the refugee camp *Traiskirchen* and may be subject to such movement restrictions as are necessary for his transfer there.⁶¹

In Belgium, the Aliens Law of 15 December 1980 (M.B.1980 p.14584) prescribes in Article 50 that an alien shall within 15 working days of entry claim his refugee status from the competent authority or present himself to a competent authority. The Ministry of Justice may decide not to admit for residence or settlement a person claiming refugee status if the request is made with an unjustifiable delay or if since his departure from his country he has resided for more than three months in a third country and has left it without constraint (Article 52).⁶²

Expulsion of refugee: A contracting state shall not expel any refugee staying in its territory except on grounds of national

⁵⁷ Ibid., Article 29.

⁵⁸ Ibid., Article 30.

⁵⁹ Ibid., Article 31.

⁶⁰ 'Law concerning the Residence of Convention Refugees' of 7 March 1968 (BGB1.55/1955),

⁶¹ Weis, P. "Refugee Convention 1951, *the travaux preparatoires analysed with commentary*," at 218.

⁶² Ibid.

security and public order. Any expulsion shall be through the due process of law.⁶³

Refoulement: No contracting state shall return or expel any refugee in its territory to a country where his life is being threatened on account of race, religion, nationality, and membership of a social group or political opinion (also known as *refoulement*).⁶⁴ While other aliens can, in cases of expulsion, be returned to their country of nationality, this is not possible in the case of refugees.

Naturalization: Contracting state shall see to the quick assimilation and naturalization of refugees lawfully staying in its territory as far as possible.⁶⁵

Cooperation of contracting states with United Nations: Contracting state shall cooperate with the office of United Nations High Commissioner for Refugees and the other United Nations agencies in implementation and enforcement of the convention⁶⁶ and also protection of refugees.

Cessation of Refugee Status

In a general comment on the rights of refugee to return, cessation was described as the “cessation of international protection and voluntary repatriation of refugees to their own country where they can avail themselves of the protection of their country”.⁶⁷

A refugee loses his status under the Geneva Convention 1951 in the following circumstances; he voluntarily re-avails himself of the protection of his country of nationality;⁶⁸ having lost his nationality, he has voluntarily re-acquired it;⁶⁹ he has acquired a new nationality;⁷⁰ he has voluntarily re-established himself in the

⁶³ Geneva Convention 1951, *op. cit.*, Article 32.

⁶⁴ *Ibid.*, Article 33.

⁶⁵ *Ibid.*, Article 34.

⁶⁶ *Ibid.*, Article 35.

⁶⁷ Human Rights Watch Policy on the Right to Return, “*Convention Relating to the Status of Refugees (28 July 1951)*” available online at <http://m.hrw.org/legacy/campaigns/israel/return/crsr-rtr.html> (accessed on 9th April 2015).

⁶⁸ Geneva Convention 1951, *op. cit.*, Article 1 (c) (1).

⁶⁹ *Ibid.*, Article 1 (c) (2).

⁷⁰ *Ibid.*, Article 1 (c) (3).

country he left;⁷¹ circumstances leading to status of refugee cease to exist in country of nationality.⁷²

Voluntary re-availment of protection of country of nationality: If a refugee loses his status as a refugee the moment he re-avails himself of the protection of his country of nationality.⁷³

Voluntary re-acquisition of lost nationality: A refugee having being stripped of his nationality of a country in respect of which he is recognised as having a well-founded fear of persecution, voluntarily re-acquires same thereby coming under the protection of his former country will lose his status as a refugee.⁷⁴

Acquisition of new nationality: A refugee loses his status the moment her acquires a new nationality, different from that of his country of refuge and has no fear of persecution in that country.⁷⁵

Re-establishment in country where persecution was feared: A refugee loses his status the moment he chooses to voluntarily re-establish himself in the country from which protection was sought, with a view of taking permanent residence. A short visit to that country would normally not constitute re-establishment.

Where circumstances leading to the status of refugee cease to exist in the country of nationality: A refugee will lose his status where the circumstances which led to the refugee fleeing his country of nationality to take refuge in a foreign country cease to exist.⁷⁶ The Australian government opined that this change in

⁷¹ Ibid., Article 1 (c) (4).

⁷² Ibid., Article 1 (c) (5).

⁷³ *United Kingdom Border Agency, Operational Policy, Process Policy, Guidance & Casework Instruction: Cancellation, Cessation and Revocation of Refugee Status in the United Kingdom*, December 2008, Section 4.2.1 1 C (1) Voluntary re-availment of national protection, at 15.

⁷⁴ Ibid., 4.2.2 1 C (2) Voluntary re-acquisition of lost nationality, at 15.

⁷⁵ Ibid., 4.2.3 1 C (3) Acquisition of new nationality, at 15.

⁷⁶ O'Connor, K. "*Contesting Refugee Status Cessation: The Rwandan Case*", available online at <http://ohrh.law.ox.ac.uk/contesting-refugee-status-cessation-the-rwandan-case/> (accessed on 7th May 2015).

circumstances does not include change in the level of provision of social or economic services available in that country.⁷⁷

Certain categories of people are, however, restricted from the protection of the Geneva Convention 1951.⁷⁸ They are:

- (a) Someone who has committed a serious crime against peace, war crime or humanity.
- (b) Someone who has committed a serious non-political crime outside the country of refuge prior to admission to the other country.
- (c) Someone who is guilty of acts contrary to purposes and principles of the United Nations.

Overview of Provisions of African Union Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

A refugee under Article I (1) of the AU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969⁷⁹ was defined as a person who owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a social group or political opinion is outside the country of his nationality and is, owing to such fear, unwilling to avail himself protection of that country or return to it.

The convention will not protect a person who;

- (a) Has voluntarily re-availed himself of the protection of the country of his nationality.⁸⁰
- (b) Required his nationality after losing it.⁸¹
- (c) Acquired new nationality and enjoys the protection of the new state.⁸²
- (d) Voluntarily re-establishes himself in a country he has left.⁸³

⁷⁷ Protecting Refugees: Cessation under Article (1) (c), published in UNHCR's "Year in Review" No. 1/2003 – Discussion paper No. 1/2003 – United Nations High Commissioner for Refugees Regional Office for Australia, New Zealand, Papua New Guinea and South Pacific at 2.

⁷⁸ Geneva Convention 1951, *op. cit.*, Article 1(f) (a-c).

⁷⁹ AU Convention on Refugees 1969, *op. cit.*

⁸⁰ *Ibid.*, Article I (4) (a).

⁸¹ *Ibid.*, Article I (4) (b).

⁸² *Ibid.*, Article I (4) (c).

⁸³ *Ibid.*, Article I (4) (d).

- (e) Where circumstances with which he is recognized as a refugee ceases to exist.⁸⁴
- (f) Has committed a serious non-political crime outside his country of refuge prior to his admission to that country as a refugee.⁸⁵
- (g) Has seriously infringed the provisions of the convention.⁸⁶

The convention shall also not apply to persons who the country of asylum sees that;

- (a) Has committed crime against peace, war crime, humanity.⁸⁷
- (b) Has committed a serious non-political crime outside the country of refuge before his admission as a refugee.⁸⁸
- (c) Has been guilty of acts contrary to the purposes and principles of the Organization of African Unity.⁸⁹
- (d) Has been guilty of acts contrary to the purposes and principles of the United Nations.⁹⁰

The contracting state shall for the purposes of this convention determine who a refugee is.⁹¹

Member states of AU shall receive refugees who cannot return to their country for well-founded fear of persecution and also see to their settlement.⁹²

Grant of asylum shall be seen by member states as peaceful and humanitarian act and not an unfriendly.⁹³

No refugee shall be expelled or forced to return to a country where he is being persecuted for reasons.⁹⁴

⁸⁴ Ibid., Article I (4) (e).

⁸⁵ Ibid., Article I (4) (f).

⁸⁶ Ibid., Article I (4) (g).

⁸⁷ Ibid., Article I (5) (a).

⁸⁸ Ibid., Article I (5) (b).

⁸⁹ Ibid., Article I (5) (c).

⁹⁰ Ibid., Article I (5)(d).

⁹¹ Ibid., Article I (6).

⁹² Ibid., Article II (1).

⁹³ Ibid., Article II (2).

Where a member state has difficulty to continue to grant asylum to refugees, such a state may call on other states through the AU and they will in the spirit of African solidarity and cooperation come to its aid.⁹⁵

Refugees are as far as possible settled in a reasonable distance from their countries of origin. This is for security reasons.⁹⁶

Member states are to treat all refugees in their territories equally and without discrimination as to race, religion, or membership of a social group or political opinion.⁹⁷

No refugee shall be returned or repatriated against his will. Where refugee requests repatriation, the country of asylum and country of origin shall collaborate to see to his safe return. The country of origin on receiving the refugees shall see to their resettlement and also grant their full rights and privileges as nationals of the country.

Refugees who return to their country of origin shall not in any way be penalized for leaving it for any reasons giving rise to refugee condition. Such a refugee who voluntarily decides to go back to his home country shall receive the assistance of the country of asylum, his home country, and international organisations to facilitate his safe return.⁹⁸ Member states shall issue valid travel documents to refugees in their territories for the purpose of travelling out of the territory.⁹⁹

Member states are to cooperate with the office of United Nations High Commissioner for Refugees in enforcement, and protection of refugees' rights.

Similarities and differences between the Convention relating to the Status of Refugees, 1951 and African Union Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

⁹⁴ Ibid., Paragraph 1 of Article 1.

⁹⁵ Ibid., Article II (4).

⁹⁶ Ibid., Article II (5) and (6).

⁹⁷ Ibid., Article IV.

⁹⁸ Ibid., Article V (1), (2), (3), (4) and (5).

⁹⁹ Ibid., Article VI (3).

Areas of similarities in protection offered by the two Instruments include;

- (a) Persons not covered by the provisions of the conventions and non-discrimination.¹⁰⁰
- (b) Expulsion.¹⁰¹
- (c) Travel documents.¹⁰²
- (d) Cooperation between office of United Nations High Commissioner for Refugees and contracting states.¹⁰³

Areas of differences in protection of refugees in the two conventions include;

- (a) *Movable and Immovable Property*: While Article 13 of the 1951 Convention protects refugees in case of acquisition of movable and immovable property, the AU Convention¹⁰⁴ does not.
- (b) *Intellectual and Industrial Property Rights*: Article 14 of Geneva Convention 1951 protects the intellectual and industrial property rights of refugees in territories of contracting states while under the AU Convention,¹⁰⁵ there is no such provision.
- (c) *Access to Court*: Refugees have access to courts, right to fair hearing in the territory of contracting state under the Geneva Convention 1951¹⁰⁶ while under the AU Convention,¹⁰⁷ there is no such provision.

¹⁰⁰ Geneva Convention 1951, *op. cit.*, Article 3 and AU Convention on Refugees 1969, *op. cit.*, Article IV.

¹⁰¹ Geneva Convention 1951, *op. cit.*, Article 32 and AU Convention on Refugees 1969, *op. cit.*, Article II (3).

¹⁰² Geneva Convention 1951, *op. cit.*, Article 28 and AU Convention on Refugees 1969, *op. cit.*, Article VI.

¹⁰³ *Geneva Convention 1951, op. cit.*, Article 35 and AU Convention on Refugees 1969, *op. cit.*, Article VIII.

¹⁰⁴ AU Convention on Refugees 1969, *op. cit.*

¹⁰⁵ *Ibid.*

¹⁰⁶ Geneva Convention 1951, *op. cit.*, Article 16.

¹⁰⁷ AU Convention on Refugees 1969, *op. cit.*

- (d) *Naturalization*: The 1951 Convention¹⁰⁸ requires contracting states to assimilate refugees in their territory through process of naturalization. There is no such protection under the AU Convention.¹⁰⁹
- (e) *Wages and Employment*: Refugees under the 1951 Convention¹¹⁰ have the right to take up gainful employment and be paid. They also have the right to be self-employed. There is no such provision under the AU Convention.¹¹¹
- (f) *Fiscal Charges*: The 1951 Convention¹¹² provides for protection of refugees in territories of contracting states from over-tax. They are to pay the same tax as nationals of the state. The AU convention¹¹³ does not have any provision in this regard.
- (g) *Refugee Seamen*: The 1951 Convention¹¹⁴ protects refugees who are crew members on board a ship of a contracting state while the AU convention¹¹⁵ does not have such provision.
- (h) *Voluntary Repatriation*: The AU Convention¹¹⁶ provides for voluntary repatriation of refugees while the 1951 Convention¹¹⁷ is silent on that.
- (i) *Assistance to Member States*: Article II (4)¹¹⁸ provides that; where a member state is in need of help to take care of refugees in its territory the other member states within

¹⁰⁸ Geneva Convention 1951, *op. cit.*, Article 34.

¹⁰⁹ AU Convention on Refugees 1969, *op. cit.*

¹¹⁰ Geneva Convention 1951, *op. cit.*, Articles 17, 18 and 19.

¹¹¹ AU Convention on Refugees 1969, *op. cit.*

¹¹² Geneva Convention 1951, *op. cit.*, Article 29.

¹¹³ AU Convention on Refugees 1969, *op. cit.*

¹¹⁴ Geneva Convention 1951, *op. cit.*, Article 11.

¹¹⁵ AU Convention on Refugees 1969, *op. cit.*

¹¹⁶ *Ibid.*, Article V.

¹¹⁷ Geneva Convention 1951, *op. cit.*

¹¹⁸ AU Convention on Refugees 1969, *op. cit.*

the AU will come to its aid. The 1951 Convention¹¹⁹ does not provide for this.

- (j) *Rationing, Housing, Public Education, Public Relief*: The 1951 Convention¹²⁰ provides for equal treatment of refugees and nationals of a state when it comes to rationing of products in short supply, housing, education and public relief and assistance. The AU convention¹²¹ does not contain any such provision.
- (k) *Definition of Refugee*: The AU Convention¹²² contemplated internal displacement in its definition of refugees while the 1951 Convention did not.

Conclusion and Recommendations

In the light of the foregoing provisions of the two international instruments relating to the status of refugees, appreciable protection of their rights have been achieved, so also is the setting up of relevant agencies dealing with refugees matters such as the United Nations High Commission for Refugees which conduct refugee status determination and provide material assistance. In the same vein, the commitment of the international community to see that refugees all over the world enjoy their basic rights without any form of discrimination has been made possible. It has however been observed that, while some contracting states to the conventions are adhering to all the provisions of the conventions to the letter, other states who are also parties to the conventions do not feel obligated to accord refugees their full or equal fundamental rights. By retaining the political discretion to determine to whom, and when, protection will be granted, states have complicated the protection regime. Diverging statuses, different eligibility thresholds and variations from State-to-State have created incentives for asylum-seekers to forum-shop and appeal decisions granting subsidiary status. It is arguably in the interest of states to grant a single legal status based on the

¹¹⁹ Geneva Convention 1951, *op. cit.*

¹²⁰ *Ibid.*, Articles 20, 21, 22 and 23.

¹²¹ AU Convention on Refugees 1969, *op. cit.*

¹²² *Ibid.*, Article I (2).

convention to all persons in need of international protection.¹²³ It is the implementation of the various provisions on international and regional instruments on rights of refugees in domestic legal orders or constitutions that will ensure that persons forced to flee their habitual residence due to persecution and seek refuge in another country outside their country of nationality receive the protection, assistance, succour and lasting solutions they need. Contracting states to the conventions and non-contracting states, United Nations High Commission for Refugees (UNHCR), civil society organisations and national governments must collaborate and see to the full implementation of the various provisions of the conventions in order to ensure that refugees are accorded protection, succour and needed assistance.

It is recommended, that to enhance the legal status of refugees and asylum seekers, states should base the international protection to be offered on individual's need rather than on which treaty provides the legal source of the obligation.

It is further recommended, that there should be some form of sanctions for contracting parties to the conventions for failure to adhere to the provisions of the convention and protection of refugees in their various territories. This could take the form of suspension from the United Nations, so as to serve as deterrence to other non-complying states.

¹²³ U.S Commissioner for Refugees & Immigrants, World Refugee Survey 2009: Ethiopia (2009)