**CRITICAL REVIEW OF REGIONAL AND INTERNATIONAL REFUGEE LAWS, THEIR INSTRUMENTS AND THEIR LIMITATIONS.**

**A PROJECT DONE BY OPURUM IJEOMA WITH MATRIC NUMBER 16/SMS10/015**

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* 1. **Introduction**

Refugee law is the branch of international law which deals with the rights and duties States have vis-a-vis refugees. Respect for the rule of law and human rights forms the essence of the protection of refugees, returnees and stateless persons.  The Office of the United Nations High Commissioner for Refugees (UNHCR) has a mandate to provide international protection to refugees, including promoting the accession to international refugee instruments and other relevant human rights instruments.  UNHCR’s activities are also focused on assisting in the strengthening of legal structures that would enhance the rule of law, including in the area of transitional justice.

Statelessness is a source of human insecurity, forced displacement and serious conflict, which may pose a threat to national and regional stability. Legislation on nationality and administrative practices that are in accordance with internationally recognized human rights standards are essential elements of the rule of law and key in addressing root causes of conflict.  UNHCR provides technical advice and support to governments for the accession to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

* 1. **International Refugee Laws and Standards**

The 1951 Convention relating to the Status of Refugees is the foundation of international

refugee law. It defines the term “refugee”, establishes the principle that refugees should not be forcibly

returned to a territory where their lives or freedom would be threatened (see box below:

The principle of non-refoulement), and sets out the duties of refugees and States’

responsibilities toward them.

The Convention was drawn up shortly after the Second World War, and its authors were

focused on refugee problems existing at that time. The definition of a refugee contained

in the 1951 Convention refers to persons who became refugees as a result of events occurring before 1 January 1951, and States had to declare whether they would apply that

definition only to events that took place in Europe or also to events in other parts of the world. As new refugee crises emerged around the globe during the 1950s and early 1960s,

it became clear that the temporal and geographical scope of the 1951 Convention needed

to be widened. The 1967 Protocol to the Convention was adopted to do this.

**1967 Protocol**

The 1967 Protocol is independent of, though integrally related to, the 1951 Convention. The Protocol removes the temporal and geographic limits found in the Convention. By acceding to the Protocol, States agree to apply the core content of the 1951 Convention (Articles2–34) to all persons covered by the Protocol’s refugee definition, without limitations of time or place.

Most States have preferred to accede to both the Convention and the Protocol. In doing

so, they reaffirm that both treaties are central to the international refugee protection system. The 1951 Convention and 1967 Protocol are the modern embodiment of the age-old institution of asylum, Their strength remains their universal and non-discriminatory character and the fundamental values they reflect.

“A refugee is someone who has left his or her country of origin and is unable or unwilling to there because of serious threat to his or her life or freedom. The international legal definition of the term is contained in the 1951 Convention( Chapter 6.4). Refugees, are entitled to protection from forcible return to their country try if origin (Principle of Non-Refoulement). And have other rifts and duties that are set out in the 1951 Convention.

An Asylum seeker is a general designation for someone who is seeking international protection. In some countries tries, it is a legal term referring to a person who has applied for refugee status and has not yet received a final decision on his or her claim.

A migrant is best understood as someone who chooses to move not because of a direct threat to life or freedom, but to find work, for education or family reunion or other personal reasons . Unlike refugees, migrants do not have the fear if persecution or harm in their home countries. Migrants continue to enjoy the protection of their own government “ ( UN Gen. Assembly, 2016).

* 1. **Regional Refugee Laws and Standards.**

The 1951 Convention and 1967 Protocol were designed to assure refugees the widest possible enjoyment of their rights. In order to respond to regional specificities, States in different parts of the world have developed regional laws and standards that complement

the international refugee protection regime. 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa. The conflicts that accompanied the end of the colonial era in Africa produced a succession of large-scale refugee movements. These population displacements prompted the drafting and adoption not only of the 1967 Protocol, but also of the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. The 1969 OAU Convention confirms that the 1951 Convention is “the basic and universal instrument relating to the status of refugees”. It adopts the refugee definition found in the 1951 Convention, but also expands it to include any person compelled to leave his or her country because of “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his [or her] country of origin or nationality”.

This means that persons fleeing civil disturbances, widespread violence and war are entitled to refugee status in States that are parties to the African Convention, even if they do not have a well-founded fear of persecution for one of the reasons set out in the 1951 Convention. The OAU Convention makes other important points. It affirms that “the grant of asylum to refugees is a peaceful and humanitarian act” that is not to be considered as an “unfriendly act” by any Member State of the OAU (now the African Union), and it requires States parties to take appropriate measure to lighten the burden of a State granting asylum “in a spirit of African solidarity and international cooperation”.

* 1. **Regional Practice: Middle East and Asia.**

There are no binding regional instruments addressing refugee law in the Middle East or Asia. In 1994, the Arab Convention on Regulating Status of Refugees in the Arab Countries

was adopted by the League of Arab States (LAS), but it never entered into force. In October 2017 the League of Arab States adopted a new Arab Convention on refugees. In 2001 Asian and African countries adopted the revised Bangkok Principles on the status and treatment of refugees. Both the proposed Arab Convention and the Bangkok Principles use the refugee definition contained in the 1969 OAU Refugee Convention. The Arab Convention extends it further to persons fleeing disasters or other grave events disrupting public order.

In 2012, Member States of the Organization of Islamic Cooperation adopted the Ashgabat

Declaration at a ministerial conference in Turkmenistan. The Declaration recognizes that “over fourteen centuries ago, Islam laid down the basis for granting refuge, which is now deeply ingrained in Islamic faith, heritage and tradition”. The ministers also noted the “enduring value and relevance in the twenty-first century” of the 1951 Convention and 1967 Protocol and “the importance of respecting the principles and values that underlie these instruments”. These non-binding documents are important but have not achieved the same prominence and legal value as instruments in other regions.

* 1. **Europe**

The most far-reaching regional developments have come from the European Union (EU), which in 1999 decided to create a common European asylum system based on the “full and inclusive application of the Geneva Convention”. Since then, four key legislative instruments have been adopted in original and revised (or “recast”) versions. Each adds content to refugee laws in areas not addressed in the 1951 Convention.

These instruments concern: (a) temporary protection; (b) the reception of asylum-seekers; (c) qualification for refugee status or “subsidiary protection” and the rights and status to which beneficiaries are entitled; and (d) standards for asylum procedures. In addition, the “Dublin III Regulation” sets out the criteria for determining which EU Member State or other participating country is responsible for examining an asylum application. To provide operational support, two EU agencies were established: The European external borders agency Frontex in 2005 and the European Asylum Support Office ( EASO) in 2010 .

The Charter of Fundamental Rights, adopted in 2007, has a status equal to that of the EU’s founding treaties. It includes provisions on the right to asylum and protection from removal, expulsion or extradition to a serious risk of being subject to the death penalty, torture or other inhuman or degrading treatment or punishment.

The Court of Justice of the European Union (CJEU) has jurisdiction to interpret these EU asylum instruments and to rule on any alleged infringements by Member States. Together with the European Court of Human Rights of the Council of Europe, which has addressed asylum issues in the context of the European Convention on Human Rights and Fundamental Freedoms, these courts have significant influence on the wider development of international refugee laws.

**Reference**

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