

## THE LEGAL REGIME FOR REFUGEE CHILD PROTECTION IN NIGERIA\*

### Abstract

*Refugee crisis being a transboundary movement affecting many countries of the world raises a global concern on proper actions to be taken to protect victims of such crisis particularly the minors. Legal machinery has from time to time been set in motion to achieve this purpose. Unfortunately, there remains an upsurge of refugee children many of whom are unaccompanied. This paper attempted a study of the laws relating to the refugee child within the territorial jurisdiction of Nigeria and discovered that these laws are omnipotent on papers but impotent in practice. It was, therefore, recommended inter alia, that beyond admitting these children into the country proper and practical protection measures should be put in place to integrate them in the system; provide the necessities of life to them; protect them from all forms of exploitation; and grant them assistance in the enforcement of their rights against violators.*

**Keywords:** Refugee Child, Legal protection, Asylum, Accompanied and Unaccompanied Children

### 1. Introduction

It was reported in 2018 that an unprecedented 25.9 million refugees around the world have been forced out of their homes, over half of whom are under the age of 18<sup>1</sup> with negative impacts on their growth and development. Refugee children face far higher risks to their safety and well-being than any average child. So, they need a special protection in order to fully enjoy their human rights and have a healthy development.<sup>2</sup> The law presumes that children are incomplete beings during the whole period of their development who need continuous care by adults.<sup>3</sup> Children's inability to maintain life without extraneous aid justifies their assignment to their biological parents, or, where this natural relationship fails, to parental substitutes designated by court proceedings.<sup>4</sup> Legal protection of refugee children has been fully recognised both globally and domestically. Nigeria like very many nations has ratified the key human rights treaties, including the Universal Declaration of Human Rights (UDHR)<sup>5</sup>, International Covenant on Civil and Political Rights (ICCPR),<sup>6</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>7</sup> and the Convention on the Rights of the Child (CRC).<sup>8</sup> It is also a State party to the 1951 Convention relating to the Status of Refugees, its 1967 Protocol (Refugee Convention)<sup>9</sup> and regional treaties such as the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU, 1969)<sup>10</sup>, African Charter on Human and Peoples Rights<sup>11</sup> and the African Charter on the Rights and Welfare of the Child<sup>12</sup>. There are also domestic laws enacted for this purpose which include the National Commission for Refugees (Establishment, Etc.) Act,<sup>13</sup> Child's Right Act<sup>14</sup> among others. These instruments, in combination, provide an extensive protection regime that becomes operative whenever an individual is within the Nigeria yet many refugee children are in want of

\*By **Linda Amarachi OTI-ONYEMA, LL.M., B.L., LL.B.**, Lecturer Faculty of Law, Nnamdi Azikiwe University, Awka Email: amyonyema1985@gmail.com. 08063560916.

<sup>1</sup>Figures at a glance', <<https://www.unhcr.org/figures-at-a-glance.html>> accessed on 28/10/2019

<sup>2</sup> J A Lawrence, A E Dodds, I Kaplan and M Tucci, 'The Rights of Refugee Children and the UN Convention on the Rights of the Child' <<https://www.mdpi.com/2075-471X/8/3/20/html#B64-laws-08-00020>> accessed on 22/12/2019

<sup>3</sup> J. Goldstein, A. Freud, & A. Solnit, *Beyond The Best Interests Of The Child*, in E J Durkee, 'Special Problems of Custody for Unaccompanied Refugee Children in the United States', 1982, *Michigan Journal of International Law*, Volume 3, issue 1, p. 197

<sup>4</sup> E J Durkee, 'Special Problems of Custody for Unaccompanied Refugee Children in the United States', 1982, *Michigan Journal of International Law*, Volume 3, issue 1, p. 197

<sup>5</sup>Universal Declaration of Human Rights (**UDHR**) 1948, (resolution 217 A), adopted 10 December 1948

<sup>6</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.

<sup>7</sup>Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 3 January 1976.

<sup>8</sup> The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. It entered into force on 2 September 1990.

<sup>9</sup> Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950 Entry into force: 22 April 1954. The Protocol was adopted on 31 January 1967; it entered into force on 4 October 1967.

<sup>10</sup>OAU, Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969, 1001 U.N.T.S. 45

<sup>11</sup>African (BANJUL) Charter on Human and Peoples' Rights 21 I.L.M. 58 (1982), entered into force 21 October 1986 (ACPHR)

<sup>12</sup>African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990)

<sup>13</sup> Cap N21 Laws of the Federation 2004

<sup>14</sup>Act No. 26 of 2003

protection due to abuse, neglect, violence, exploitation, and hunger they face every day<sup>15</sup>hence, necessitating a study of the how well safeguards of refugee children's rights are implemented in Nigeria.

## **2. Refugee Child**

The concepts of 'child' and 'refugee' are not consistently defined across disciplines, although both concepts are critical structural markers for positioning this doubly vulnerable group as children distinct from adults and refugees distinct from citizens. How refugee children's rights are recognized and enacted in legal and immigration systems is largely dependent on how refugee children are defined as being children and refugees.<sup>16</sup>In legal parlance, who a child is, is determined by the age of the person under consideration. Laws both international and domestic have laid down different minimum age of adulthood below which a person is referred to as a child. The definition of a child is, therefore, 'dependent on each respective legal system in order to accommodate the different economic, social, political, cultural and legal systems of the respective state'.<sup>17</sup> Generally, under international law, there appears to be a consensus that a child is a person under the age of 18years.<sup>18</sup>This definition was adopted in Section 277 of the Child's Rights Act of Nigeria. Although there are valid definitions of the child contained in other legislations<sup>19</sup>, for the purpose of this discourse, we would make use of the definition as contained in the CRA.

Refugees on the other hand are persons outside their countries of origin who are in need of international protection because of a serious threat to their life, physical integrity or freedom in their country of origin as a result of persecution, armed conflict, violence or serious public disorder.<sup>20</sup>The 1951 Convention which is the springboard of refugee protection in the world described a person who can be referred to as refugee as any person who is outside his/her country of origin or habitual residence and is unable to return due to a well-founded fear of persecution on the basis of race, religion, nationality, political opinion or membership of a particular social group. The Convention was originally restricted to people fleeing events in Europe before 1951.<sup>21</sup> But the 1967 Protocol removed these temporal and geographical limitations and provided the Convention with a global scope and an unlimited time frame. *The OAU Convention*<sup>22</sup>expands the definition of a refugee by including additional grounds for protection, such as external aggression.

The definition of refugees under the Convention is generally seen as the minimum standard definition for the status of a person as a refugee, albeit, it has been greatly criticised.<sup>23</sup> Refugees can be identified in terms of their status in international and national law or in terms of their embodied, existential experiences. Although the Convention's definition is usually followed,<sup>24</sup>it can change with the interests of the defining party<sup>25</sup>, being broadened when the dominant interests are global and human-centered and narrowed when interests are domestic and bureaucratic.<sup>26</sup>

---

<sup>15</sup><<https://www.unhcr.org/children-49c3646c1e8.htm>> accessed on 22/12/2019

<sup>16</sup> J A Lawrence, A E Dodds, I Kaplan and M MTucci, 'The Rights of Refugee Children and the UN Convention on the Rights of the Child' <<https://www.mdpi.com/2075-471X/8/3/20/htm#B64-laws-08-00020>> accessed on 22/12/2019.

<sup>17</sup> L A Oti-Onyema, 'Right to Life and Defence of Property in Nigeria: The Child's Right Act in Focus', (2019) Vol. 3, No. 2, African Journal of Law and Human Rights, p.49

<sup>18</sup>Article 1 of the Convention on the Rights of the Child, (CRC); African Charter on the Rights and Welfare of the Child, 1990 and Article 3(d) of the 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 2000

<sup>19</sup> For instance, under the Children and Young Persons Act, a child is a person less than 14 years of age.

<sup>20</sup>The refugee concept under international law Global compact for safe, orderly and regular migration (New York, 12-15 March 2018) <<https://www.unhcr.org/5aa290937.pdf>> accessed on 18/9/2019

<sup>21</sup> See Article 1 A(2) of the Convention Relating to the Status of Refugees; International Legal Framework, <<https://www.newsdeeply.com/refugees/background/international-legal-framework>> accessed on 18/9/2019

<sup>22</sup> See Articles 1 and 2 of the Convention

<sup>23</sup> I R Wolfrum, 'The Max Planck Encyclopedia of Public International Law' in A A Khan, 'Can International Law Manage Refugee Crises?' *Oxford University Undergraduate Law Journal*, p.57, <[https://www.law.ox.ac.uk/sites/files/oxlaw/field/field\\_document/4.pdf](https://www.law.ox.ac.uk/sites/files/oxlaw/field/field_document/4.pdf)> accessed on 17/9/2019

<sup>24</sup>J M Pobjoy *The Child in International Refugee Law*, (Cambridge: Cambridge University Press, 2017), p.

<sup>25</sup>W T Worster, 'The Evolving Definition of the Refugee in Contemporary International Law', (2012), *Berkeley Journal of International Law* 30, pp. 94–160

<sup>26</sup> 'Accompanied children' refers to children who find refuge in Nigeria with their parents or family members, whereas an 'unaccompanied child' is a child who seeks refuge in the country on her or his own without any family company. See Anthea van der Burg, 'Legal protection of undocumented foreign migrant children in South Africa: Reality or myth?' <<http://www.saflii.org/za/journals/LDD/2006/12.pdf>> Accessed on 1/12/2019

A refugee child in the Nigerian context is a person below the age of 18 years who qualifies as a refugee under *Article I* of the 1951 United Nations Convention, the 1967 Protocol Relating to the Status of Refugee and the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.<sup>27</sup>

### 3. Factors that Cause Children Migration

The following four factors are usually considered as the major causes of large-scale refugee movements: serious and systematic violations of fundamental human rights, in particular the persecution of persons on grounds of their race, religion, nationality, membership of a particular social group or their political opinion; civil wars or events seriously disturbing public order in either part or the whole of the country of origin; external aggression, occupation or foreign domination in either part or the whole of the country of origin; and, finally, natural and ecological disasters such as drought and famine, the effects of which are often magnified by inadequate economic policies of the governments in place.<sup>28</sup>

### 4. Legal Framework for Refugee Child Protection in Nigeria

Protection aims at ensuring the full and equal respect for the rights of all individuals regardless of age, gender, ethnic, social, religious or other background. It should be provided in accordance with the principle of humanity, neutrality and impartiality. A need for protection arises where such protection is lacking either as a matter of law or of fact with the result that basic human rights are at risk.<sup>29</sup> Refugee children enjoy protection under human rights, humanitarian and refugee laws both at the international and national levels some of which will be discussed hereunder.

#### International Law

Under the law, states are primarily responsible for protecting the rights of their citizens. In customary international law, nationality provides the principal link between the individual and the law of nations. Conversely, a state is under no legal duty to protect a non-national within its territory except with the intervention of the international community through the instrumentality of multilateral treaties entered into by nation states. When governments are unable or unwilling to provide protection to their citizens, people may face such serious threats that they are forced to leave their country and seek safety elsewhere. If this happens, another country has to step in to ensure that the refugees' basic rights are respected. This is known as 'international protection'. As a result of continuous crisis in their countries of nationality, these refugees remain in their host countries without any hope of returning back to their home states. 15.9 million refugees were in protracted situations at the end of 2018.<sup>30</sup> International refugee law is designed only to provide a back-up source of protection to seriously at-risk persons. Its purpose is not to displace the primary rule that individuals should look to their state of nationality for protection, but simply to provide a safety net in the event a state fails to meet its basic protective responsibilities.<sup>31</sup>

The substantive rights set forth in the major human rights treaties apply to all human beings including children. As is true for adults, the enjoyment of the rights envisaged in human rights treaties is not limited to children who are nationals of States Parties to the treaties, but are to be enjoyed by all children irrespective of their citizenship or residence status, for instance, migrant children. The foremost human rights principles are contained in the UDHR which in Articles 13(2) and 14(1) allows a citizen of a country whom out of a well founded fear of persecution leaves his country of origin or nationality the right to do so and to seek and to enjoy in other countries asylum from persecution. A right of ingress and egress is, therefore, given to all persons including the child under international law who are suffering any form of persecution. The Declaration took special notice of the child and emphasized that children are entitled to special care and assistance.<sup>32</sup> In addition to the Declaration, ICCPR provides an array of

<sup>27</sup> See section 20 of the National Commission for Refugees (Establishment, Etc.) Act, 1989.

<sup>28</sup>R Hofmann, 'Refugee Law in the African Context', <[https://www.zaerv.de/52\\_1992/52\\_1992\\_2\\_a\\_318\\_333.pdf](https://www.zaerv.de/52_1992/52_1992_2_a_318_333.pdf)> accessed on 2/1/2020

<sup>29</sup> K Balarabe, 'Refugee Protection and Management in Nigeria', a paper presented at the National Judicial Institute on Wednesday, 23<sup>rd</sup> May, 2012 at FCT, Abuja, Nigeria.<[https://www.academia.edu/11441831/REFUGEE\\_PROTECTION\\_AND\\_MANAGEMENT\\_IN\\_NIGERIA](https://www.academia.edu/11441831/REFUGEE_PROTECTION_AND_MANAGEMENT_IN_NIGERIA)> accessed on 6/1/2020

<sup>30</sup><<https://www.unhcr.org/globaltrends2018/>> accessed on 27/11/2019

<sup>31</sup> J C Hathaway, 'International Refugee Law: The Michigan Guidelines on the Internal Protection Alternative', <<https://www.refworld.org/pdfid/3dca73274.pdf>> accessed on 27/11/2019

<sup>32</sup>Article 25(2)

rights<sup>33</sup> to a refugee who has been granted the status in the host country to be enjoyed in equal measures with the citizens of the country. The Prime of these rights is the right to recognition, equal protection of the law and freedom from discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>34</sup> Article 24 (1) of the Covenant makes specific provision for the protection of the child from all forms of discriminatory acts.<sup>35</sup>

Socio-economic rights of the child refugee are also recognised by the ICESCR. By Article 3 States Parties to the Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant. The States Parties however, reserve the discretionary right to subject these rights to limitations through legislation for the sole purpose of promoting the general welfare in a democratic society.<sup>36</sup> Article 10 enjoins States Parties to accord the widest possible protection and assistance to the family, particularly for its establishment and while it is responsible for the care and education of dependent children. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.<sup>37</sup> The adoption of special measures to protect children both national and non-national children must be non-discriminatory<sup>38</sup>. Thus, children who are asylum-seekers and refugees may invoke this provision when they are deprived of, or denied access to, adequate food, water, housing, clothing, health care, and education.<sup>39</sup>

The United Nations Convention on the Rights of the Child (CRC), is the treaty that guarantees the child specially recognised rights. The CRC clearly identifies refugee children<sup>40</sup> and contains articles which comprehensively detail the rights of all children to ‘full and harmonious development’<sup>41</sup>. These details pertain to refugee children in at least five areas as follows: rights to personal life and development;<sup>42</sup> normal family life;<sup>43</sup> health and well-being;<sup>44</sup> safety and protection;<sup>45</sup> and participation in the community.<sup>46</sup> Articles 3 and 22 of the CRC form the feature as fundamental cornerstones to a child rights-framework to the Refugee Convention. Article 22 is the only provision in an international human rights treaty which explicitly refers to child refugee protection. ‘It provides that special protection shall be granted to a refugee child or to a child seeking refugee status. It is the State’s obligation to cooperate with competent organizations that provide such protection and assistance.’ Article 3 gives the child the right to have his best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him. The principle of the ‘best interest of the child’ codified in Article 3 and further referred to in other provisions of the Convention on the Right of the Child must underpin all measures and decisions taken in relation to refugee and other displaced children. Goodwin-Gill has long argued that the CRC is critical in determining whether a state owes a child international protection.<sup>47</sup> Prior to the CRC, international instruments approached the child as the recipient of care and protection.<sup>48</sup> However, the CRC treats the child as a rights-bearer, rather than just an object of protection. Indeed, children’s rights protected by the CRC cannot be derogated from.<sup>49</sup>

---

<sup>33</sup> Right to life, liberty and security of person provided in Article 3; right to property, Art 17, among others.

<sup>34</sup> Articles 6, 7 and 2 of the Declaration; Articles 2(1), 16 and 26 of the ICCPR

<sup>35</sup> Article 4 (3) of the ICESCR also provides that special measures of protection and assistance should be taken on behalf of all children and young person’s without any discrimination for reasons of parentage or other conditions.

<sup>36</sup> Article 4 of the ICESCR

<sup>37</sup> Human Rights an Refugee Protection’ <<https://www.refworld.org/pdfid/4669434c2.pdf>> accessed on 22/12/2019

<sup>38</sup> See Human Rights Committee, General Comment No. 17

<sup>39</sup> ‘Human Rights an Refugee Protection’ <<https://www.refworld.org/pdfid/4669434c2.pdf>> accessed on 22/12/2019

<sup>40</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 Can LII 699 (SCC).

<sup>41</sup> See the preamble

<sup>42</sup> Articles 6, 7, 8, 14, 16, 27, 29, 37, 39, and 40

<sup>43</sup> See articles 7, 16, 27, 18, 9, 10, 20 and 21.

<sup>44</sup> See articles 24, 26, 27, 39, 28, 31 and 32

<sup>45</sup> See articles 2, 11, 19, 34, 35, , 37, 38 and 40

<sup>46</sup> See articles 12-15, 17

<sup>47</sup> G.S. Goodwin-Gill, ‘Unaccompanied Refugee Minors: The Role and Place of International Law in the Pursuit of Durable Solutions’ (1995) 3 *International Journal of Child Rights*, p. 405

<sup>48</sup> J A Lawrence, *et.al*, *op.cit*.

<sup>49</sup> Unlike many other international instruments, there are no clauses in the CRC that allow for derogation at any time

Certain refugee laws have been put in place to specifically cater for the needs of asylum seekers and refugees, the first of it being the 1951 Convention relating to the Status of Refugees. As several academics have commented<sup>50</sup>, the 1951 Refugee Convention provides no special protection measures for children<sup>51</sup> and there is no reference to their best interests. This omission is particularly problematic because it ignores the specific needs of children and exposes vulnerable children to the risk of child-specific forms of persecution.<sup>52</sup> Despite the fact that the Refugee Convention was undoubtedly a product of its time and values<sup>53</sup>, the omission is surprising given that the need for special care and protection for children was first recognized by the League of Nations as far back as 1924 in the Geneva Declaration of the Rights of the Child, which provided that the child must be ‘the first to receive relief in times of distress’.<sup>54</sup> Article 3 of the Convention is centred on non-discriminatory application of the protection granted under the Convention and guarantees equal treatment of refugees with nationals, the minimum standard of which is national treatment.<sup>55</sup> Article 33 contains the cardinal principle of non-*refoulement* in refugee protection. By this principle, except on certain grounds (such as national security) and in accordance with due process, expulsion or return of a lawful refugee child to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion is prohibited. Similar protection is extended to unlawful refugee children subject to necessary restrictions<sup>56</sup> in so far as they present themselves without delay to the authorities and show good cause for their illegal entry or presence in the country of residence.<sup>57</sup> A refugee child shall also have free access to the courts of law on the territory of all Contracting States.

At the regional levels, treaties have been negotiated and adopted by Nigeria which in addition to the multilateral instruments, provide an avalanche of rights to be enjoyed by persons within the regions. Of specific importance here are the 1969 OAU Convention African Charter on Human and Peoples Rights and the African Charter on the Rights and Welfare of the Child. The OAU Convention and African Charter on Human and Peoples Rights like the multilateral treaties, guarantee every individual the right to leave any country including his own, and to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions. The principle of *non refoulement* is recognised by the Convention and Charter. Thus, mass expulsion of non-nationals on grounds of nationality, racism, ethnicity and religion is prohibited. A non-national legally admitted in a territory of a State Party to the Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.<sup>58</sup> Refugees’ right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind is also guaranteed.<sup>59</sup> The African Charter on the Rights and Welfare of the Child (ACRWC) which central focus is on child rights, obliges States Parties to take specific protective measures for refugees. By Article 23, states shall ensure that refugee Children receive appropriate protection and humanitarian assistance. Children who are separated from their parents should get special protection and should be provided with alternative family care. States should also take all possible steps to trace and re-unite children with parents.<sup>60</sup> No child should be separated from his or her parents against his or her will, except when authorities believe this would be in the child’s best interest.<sup>61</sup> Parents or other persons responsible for the child

<sup>50</sup> E.g. G.S. Goodwin-Gill, ‘Unaccompanied Refugee Minors: The Role and Place of International Law in the Pursuit of Durable Solutions’ (1995) 3 *International Journal of Child Rights* 405

<sup>51</sup> 1 Except in respect of the right of parents to choose the religious education of their children, under art 4 and education, under art 17

<sup>52</sup> A Edwards, ‘Age and gender dimensions in international law, in Anthea van der Burg, Legal protection of undocumented foreign migrant children in South Africa: Reality or myth?’, <<http://www.saflii.org/za/journals/LDD/2006/12.pdf>> accessed on 29/11/2019

<sup>53</sup> J C Hathaway, ‘The Evolution of Refugee Status in International Law: 1920–1950,’ (1984), 33 *International and Comparative Law Quarterly*, 348

<sup>54</sup> E D Pask, ‘Unaccompanied Refugee and Displaced Children: Jurisdiction, Decision-Making and Representation’ (1989), *International Journal of Refugee Law*, 1(2), 199

<sup>55</sup> Article 16(2) & (3)

<sup>56</sup> Such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

<sup>57</sup> Article 31

<sup>58</sup> See Article 12 of the ACHPR

<sup>59</sup> See Article 22 of the ACHPR

<sup>60</sup> See Article 25 of the ACRWC

<sup>61</sup> See Article 19 of the ACRWC

should always act in the best interest of the child.<sup>62</sup> Enjoyment of the rights under this Charter shall be to all children regardless of his or her race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.<sup>63</sup> One of the greatest challenges with the international legal framework for refugee child protection is their non-binding nature on state parties. Consequently, domestic laws become indispensable.

### **Domestic Legislation**

In addition to adoption of the international instruments on refugee protection, Nigeria as a nation has enacted laws to cater for the needs of the refugee child. The first of these laws is the National Commission for Refugees (Establishment, Etc.)<sup>64</sup> Act. No specific mention of the child was made nor specific rights allocated to him under this Act. However, like adults, the child is entitled to the protection provided under the Act. The Act defines a refugee and states criteria for disqualification from the grant and cessation of refugee status.<sup>65</sup> The non-*refoulement* principle was duly recognised under the Act.<sup>66</sup> The Act also encourages the unification of family members by allowing members of the family of a refugee child benefit from the same treatment with the refugee child, particularly, with the right to enter and reside in the country.<sup>67</sup> By implication too, where a child asylum-seeker has any of his family members resident in the country as a refugee, he would be, by virtue of that relationship be admitted into the country and protected accordingly. The Act incorporated rights and duties of refugees enshrined in the 1951 Convention, its 1967 Protocol, the 1969 OAU Convention and any other law in force in Nigeria.<sup>68</sup> It is submitted that the phrase any other law in force in Nigeria is too generic to be implemented. Whatever laws envisaged by the Act ought to have been specifically listed out as it is applicable in South Africa. Section 27(b) and (c) of the South African Refugee Act<sup>69</sup> provides inter alia that ‘a refugee enjoys full legal protection, which includes the rights set out in Chapter 2 of the Constitution and the right to remain in the Republic in accordance with the provisions of this Act; (c) is entitled to apply for an immigration permit in terms of the Aliens Control Act, 1991’.

The National Commission for Refugees was established to adopt procedures for the purposes of facilitating entry and residence in Nigeria of refugee children and members of their families; seek co-operation with non-governmental organisations on matters relating to refugees; give relief assistance to refugees while they are awaiting the final decision on their application; and assist in seeking employment or education for refugees and members of their families.<sup>70</sup> Unlike the NCRE Act, the South African Refugee Act makes special provisions for assisting an unaccompanied refugee child to be granted asylum.<sup>71</sup>

The Child’s Right Act<sup>72</sup> is of utmost importance in determining the fate of a refugee child in Nigeria. The CRA did not *per se*, recognise the refugee child as a right bearer. In contradistinction to the CRC, the South African and UK laws which adopt a rights-based approach to the protection of children, the CRA adopts a welfare-based approach. The refugee child was only recognised in Part XV of the CRA as a child in need of State Government support.<sup>73</sup> By *section 171* of the Act, State Governments in collaboration with the private sector<sup>74</sup> are under a duty to provide services for children in need within their states by safeguarding and promoting the welfare and upbringing of those children through the provision of a range and level of services appropriate to the needs of the children.<sup>75</sup>

---

<sup>62</sup> See Article 20 of the ACRWC

<sup>63</sup> See Article 3 of ACRWC

<sup>64</sup> Herein referred to as NCRE Act

<sup>65</sup> Section 20 of the NCRE Act

<sup>66</sup> Section 1 of the NCRE Act

<sup>67</sup> Section 14 of the NCRE Act

<sup>68</sup> Section 15 of the NCRE Act

<sup>69</sup> Act No. 130 of 1998

<sup>70</sup> Section 18 of the NCRE Act

<sup>71</sup> See Section 32 of the South African Refugee Act

<sup>72</sup> herein referred to as CRA

<sup>73</sup> Section 171(10)

<sup>74</sup> Section 171(2) & (6) of the CRA.

<sup>75</sup> See also sections 176 and 177 of the CRA. By section 178, a State Government provides accommodation and maintenance for a child by (a) placing him, with- (i) a family (ii) a relative of the child (iii) any other suitable person, on such terms as to payment by the State Government and otherwise as the State Government may determine; or (b) maintaining the child in- (i) a community home, or (ii) a voluntary home, or (iii) a registered children home, or (iv) a home provided by the Minister; or (c) making such other arrangements which - (i) may seem appropriate to it, and . (ii) comply with regulations made by the Minister.

The services expected from the State Government to the refugee child include: provision of accommodation and maintenance of the child<sup>76</sup>; provision of day care for pre-school children and care outside school hours and during school holidays of the refugee child in any other school.<sup>77</sup> In some cases where certain services are provided by the state government, it is entitled to recoup cost of providing the services.<sup>78</sup> The best interest of the a refugee child shall be paramount in all actions undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority.<sup>79</sup> A refugee child shall be given such protection and care as is necessary for his well-being.<sup>80</sup>

It appears that a child in need is merely a beneficiary of humanitarian services offered to him by the state government and cannot lay an enforceable claim of right to such services. There is no sanction on the state where it fails to discharge its duties under this Part of the Act. This accounts for lack of judicial precedents in this regard. Worst still, not all the states of the federation have domesticated the CRA. Consequently, they are not bound by the provisions of the CRA to protect the refugee child. The rights embodied in the Act, seem to relate only to the Nigerian child. By restricting the protection granted a child in need which includes a refugee child to provisions of Part XV of the CRA, it implies that the other parts of the statutes are not applicable to him. More so, the preamble of the Act sturdily suggests that the rights sections of the Act apply only to the Nigerian child. The preamble states: ‘the An Act to provide and protect the rights of a Nigerian child; and other related matters’. Part II of the Act contains the rights of the child while the other parts contain other matters related to the protection of the child. It is submitted from the language of the preamble that the separation of the rights of the Nigerian child from the other related matters is a deliberate legislative act to limit rights under the Act to children who are Nigerians. If the Act envisaged the rights to apply to all children both nationals and non-nationals, it would have used wordings like ‘child in Nigeria’ as contained in the Constitution<sup>81</sup> or just a ‘child’ rather than a ‘Nigerian child’ in the preamble. The importance of preambles in interpretation of statutes cannot be over-emphasized. The courts have been enjoined to take cognizance of the preamble of the statute and the objects and purpose of the provisions sought to be interpreted.<sup>82</sup> To further show that the refugee child is not within the contemplation of Part II of the Act, *section 172* obliges government to provide Day Care for pre-school children in need but in *section 15* free and compulsory education is provided for the child to Junior Secondary. There is need, therefore, to extend protection of the refugee child to other parts of the Act particularly, Part II as any protection without an enforceable right is a facade.

Comparatively, United Kingdom in addition to the international laws relating to refugee protection operates Human Rights Act 1998 which adopted the European Convention on Human Rights<sup>83</sup>, and other national legislations in treatment of the refugee child. However, the most effective principle in the protection of refugee children in the UK is best interests of the child rule which has been entrenched into the common law and applied in the recent decision in JA (child - risk of persecution) Nigeria.<sup>84</sup> Local Authorities in England like the States in Nigeria<sup>85</sup>, have a duty to protect a child in need (including a refugee) under sections 17 and 20 of the Children Act, 1989.<sup>86</sup>

<sup>76</sup>Section 174 of the CRA. This mainly applies to a child with no parental responsibility; who is lost or has been abandoned or runs away from home; or where the person who has care for the child is prevented, for any reason whatsoever, from providing the child with accommodation or care. This applies to an unaccompanied refugee child.

<sup>77</sup>Section 172 of the CRA

<sup>78</sup>Section 184 of the CRA

<sup>79</sup>Section 1 of the CRA

<sup>80</sup>Section 2 of the CRA

<sup>81</sup>Third paragraph of the Constitution states: ‘AND TO PROVIDE for a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of freedom, equality and justice and for the purpose of consolidating the unity of our people’

<sup>82</sup>*Ogun State v Federation* (1982) 1 – 2 SC 13; *Bronik Motors V Wema Bank* (1983) I SCNLR 296; *Bendel State v The Federation* (1981) 10 S.C. 1; *AG Ondo v A.G Ekiti State* (2001) 1 LRCN 3065

<sup>83</sup>Herein referred to as (ECHR)

<sup>84</sup>[2016] UKUT 560

<sup>85</sup>Section 171 of the CRA

<sup>86</sup>Similar duties are placed on local authorities in Scotland under sections 22 and 25 of the Children (Scotland) Act 1995. The equivalent duties of Welsh local authorities are set out in parts 3, 4 and 6 of the Social Services and Well-being (Wales) Act 2014. In Northern Ireland the duties of Health and Social Care Trusts in Northern Ireland are set out in articles 18 and 21 of the Children (Northern Ireland) Order 1995.

## **5. Treatment of the Refugee Child in Nigeria**

Nigeria has played host to refugees from Chad, Niger, Liberia, South Africa, Sierra Leone, Congo, Mali, Côte d'Ivoire, Sudan and Cameroon.<sup>87</sup> Nigerians unlike South Africans are by tradition, very hospitable and welcoming of foreigners in their midst. This is evidenced by the UNCHR report on the total number of refugees registered in Nigeria in 2019. Refugees in Nigeria were 52,518 while asylum seekers were 1,287 in 2019.<sup>88</sup> The official figures are based on those who apply for asylum; there is no overall data base that holds statistics on the accompanied and unaccompanied children in Nigeria. With the formation of ECOWAS in 1975, it is agreed that there should be an unhindered movement among member states. This has encouraged both regular and irregular migration into Nigeria.<sup>89</sup> To show commitment in discharging its legal obligations towards refugees, the Nigeria Immigration Service issued the first set of Convention Travel Document (CTD) (also known as Refugee Passport) and handed them over to the National Commission for Refugee Migrants and Internally Displaced Persons (NCFRMI) on the 15<sup>th</sup> May, 2019 for onward delivery to Refugees under 'Protection' in Nigeria. The CTD is a *bona fide* Travel Document valid for International travels.<sup>90</sup> While it is easier for accompanied children<sup>91</sup> to be offered refugee status either as an applicant or a dependent, most unaccompanied children are ignorant of the procedure for obtainment of the status thereby making their stay in the country illegal.

Beyond admission of refugee children into its territorial jurisdiction, there is a duty under international law on Nigeria to afford such children in need protection from violations of their human rights. This duty seems to be discharged more in breach than in compliance with the law. Children in refugee camps are constantly being sexually exploited, trafficked, and tortured through labour, recruitment in armed forces and in commission of crimes of terrorism amongst others. Dishearteningly, these violations are spearheaded by government officials in charge of protection of the camps and the inmates therein with little or no efforts in prosecuting offenders. It has been reported that despite significant efforts<sup>92</sup> being made by the Government of Nigeria, it does not fully meet the minimum standards for the elimination of trafficking.<sup>93</sup>

The protection of the socio-economic rights of the refugee child is an obligation too far from being discharged. Nigeria lacks the economic capacity to provide for its overwhelming populace let alone migrants. In fact there has been a rapid increase in emigration of Nigerians out of the country in the last decade in search for a better life.<sup>94</sup> This is not unconnected to the hardships Nigerians have faced as a result of bad governance, corruption of political and public office holders, unemployment, insecurity, economic downturn etc. The poverty level in Nigeria keeps increasing by the day. In June, 2019, Nigeria was ranked as one of the countries with the largest number of people living in extreme poverty, with an estimated 91.8 million Nigerians<sup>95</sup> thought to be living on less than \$1.90 a day. With this situation, Nigeria, find the integration of the economic, social, political and cultural rights of the refugee child and all its attendant obligations too much to cope with. The impracticability in realisation of the child refugee's rights has compelled them to resort to self-help in providing for themselves having lost hope of achieving the most common reason for migration, which is the need to have improved living conditions generally. It has been reported that refugee children resident at camps have had to do menial jobs, hawking and begging on the streets to assist their

---

<sup>87</sup>[https://publications.iom.int/system/files/pdf/national\\_migration\\_policy\\_2015.pdf](https://publications.iom.int/system/files/pdf/national_migration_policy_2015.pdf) accessed on 6/1/2020

<sup>88</sup>UNCHR, AT-A-GLANCE NIGERIA SITUATION | NOVEMBER 2019 <https://data2.unhcr.org/en/documents/download/73201>; However, opposite prevails in foreign countries where Nigerians have chosen to reside. Nigerians in many destination countries are experiencing rising racism, discrimination, xenophobia and intolerant behaviour towards migrants. This creates social tension, prevents local integration of migrants within their host community and denies migrants their rights. See [https://publications.iom.int/system/files/pdf/national\\_migration\\_policy\\_2015.pdf](https://publications.iom.int/system/files/pdf/national_migration_policy_2015.pdf) accessed on 6/1/2020

<sup>89</sup>G Ozuru and P O Nwajah, 'Towards A Human Rights Approach For The Treatment Of Migrants In Nigeria', (2019) *NAUJILJ* 10 (1), p.4, <https://www.ajol.info/index.php/naujilj/article/viewFile/183721/173078> accessed on 7/1/2020

<sup>90</sup>Convention Travel Document, <https://immigration.gov.ng/convention-travel-document-refugee-passport/> accessed on 6/1/2020

<sup>91</sup> Accompanied asylum seeking and refugee children are seen as being in the care of parents and carers.

<sup>92</sup>The government demonstrated overall increasing efforts compared to the previous reporting period; therefore Nigeria was upgraded to Tier 2. These efforts included supporting implementation of a 2017 action plan between Civilian Joint Task Force (CJTF), a government-supported nongovernmental armed group, and an international organization to end its recruitment and use of child soldiers.

<sup>93</sup>'2019 Trafficking in Persons Report: Nigeria', <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/nigeria/> accessed on 7/1/2019.

<sup>94</sup>G Ozuru and P O Nwajah, *op. cit.*

<sup>95</sup>'91.8 Million Nigerians Are Extremely Poor, Says World Poverty Clock'

<http://saharareporters.com/2019/06/05/918-million-nigerians-are-extremely-poor-says-world-poverty-clock/> accessed on 8/1/2020



parents in catering for their families.<sup>96</sup> In 2016, it was reported that more than 1200 persons including children died in the Camps due to starvation.<sup>97</sup> Most of these children are undocumented refugees without any legal protection available to them in the country. The laws relating to refugee protection in Nigeria, particularly, apply to the documented migrants while the undocumented migrants who characterise the larger group of Nigerian aliens are not adequately covered.<sup>98</sup>

The refugee children are not also afforded healthy environment where they can live, survive and develop themselves. The refugee camps are shanties with inadequate facilities like water, electricity, temporarily built to accommodate asylum seeker. Unfortunately, the refugee children are abandoned in the camp with the adults without any alternative care services arranged for them, thus exposing them to exploitation.

## 6. Conclusion and Recommendations

The willingness of the Nigerian government to fulfil obligations contained in the various international treaties towards refugee child protection by admission of the refugees into its territory is commendable. Nigeria has gone a step further in incorporating these laws into its domestic legislations. However, there is need to improve on the implementation of these laws by adopting the following measures: While not refusing entry of children seeking asylum in Nigeria, the Nigerian Government like the UK<sup>99</sup> should place a limit on the number of refugee children they can grant status based on the available resources and make timeous efforts in returning the excess to any other country where they can be offered refuge and protection. This will reduce the number of undocumented child migrants exposed to the danger of abuse and invariably reducing the security risks resulting from having such illegal migrants who settle for anything including crime to survive. The rights contained in the CRA which comprehensively deal with child protection in Nigeria must be extended to the refugee children and effectively implemented to ensure their proper integration into the system and protection from all forms of exploitation on equal basis with a child citizen. In practice in the UK, once a child has been recognised as a refugee, he is entitled to the same rights with the citizens. From the language of the CRA, it is evident that the responsibility of taking care of the refugee child lies on state governments. Unfortunately, many of the state governments particularly from the northern region are yet to adopt the CRA as a state law, thus they cannot be bound by its provisions. States of the federation are therefore, as a matter of urgency, encouraged to domesticate the CRA in their states to reduce the burden of other states that have so done in catering for the refugee child. Until then, these states should be made to implement the provisions of other legal instruments.<sup>100</sup> To reduce the plight of the refugee child in Nigeria, there should be a concerted effort by all tiers of government in the responsibility of refugee child protection and volunteers should be encouraged to adopt or foster these children under the supervision of the government in accordance with Article 171(2) of the CRA and the NCRE Act. Like in the United Kingdom, the best interest of the child rule provided in Article 3 of the CRA should be effectively applied in issues concerning the refugee child in Nigeria. The home countries of these refugee children should be made more responsible (through issuance of sanctions by the international community) to them for being the progenitors of the crisis leading to their exit into other countries.

<sup>96</sup> C Emefor, 'Nigeria: Women, Children Become Bread Winners in Maiduguri IDP Camps' <<https://allafrica.com/stories/201905030050.html>> accessed on 7/1/2020

<sup>97</sup> 'More than 1,200 die of starvation and illness at Nigeria refugee camp' <<https://www.theguardian.com/world/2016/jun/23/refugees-die-starvation-illness-nigeria-camp-bama-boko-haram/>> accessed on 8/1/2020

<sup>98</sup> G Ozuru and P O Nwajah, *op. cit.*

<sup>99</sup> In 2018, the Court of Appeal upheld the government's decision to cap the number of unaccompanied child refugees who can be brought into the UK at 480. See <<https://www.independent.co.uk/news/uk/home-news/dubs-child-refugees-home-office-immigration-home-office-supreme-court-a8566191.html>>, accessed on 22/12/2019

<sup>100</sup> See *Abacha v. Fawehinmi*