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BETWEEN REFUGEE LAW AND HUMAN RIGHTS: ANALYSING THE BRITISH THIRD STATE RESETTLEMENTS TO RWANDA

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Abstract: *In April 2022, the British Government made public its intention to seek durable solutions for refugees in its domain. This policy aims at sending refugees to the East African Republic of Rwanda. The criticism took a legal dimension with the verdict of the European Court of Human Rights (ECHR). Despite all this, the study's position is that the British government's policy is a regular and acceptable standard of practice from the international protection law's perspective and concludes that refugee laws are not human rights laws in spite of their similarities -international protection law protects both the refugee and the state.*

Introduction

In April 2022, the British Government made public its intention to seek durable solution to refugees in its domain. This policy aims at sending refugees to the East African Republic of Rwanda. The policy has sparked reactions from institutions and human right agencies with many claiming that the decision was a wrong move. The choice of words used for reportage raises a certain cross-bias and selective approach. Some media have called this decision 'out-sourcing of refugees', looking at certain economic matrixes and inversions unknown in refugee study. Some have interpreted the move as hostile to the tenets of the refugee conventions and insisted that other countries might be encouraged to do same. Hardly had this concern simmered, the government of Denmark had approached the Rwandan government to seal similar deals. Despite all this, the British government's policy is a regular and acceptable standard of practice from the international protection law's perspective. This study takes into cognizance the provisions of the international protection law to validate its position and concludes that refugee laws are not human rights laws in spite of their similarities. The study's position is that international protection law protects both the refugee and the state.

Often the international protection law is confused with human rights or humanitarian law, but the difference is not semantic and their parameters are essentially different. Both at individual and institutional levels, the assumption is rife that refugee issue is a humanitarian intervention. Although, an individual who renders assistance to refugee may have done so under humanitarian intent, the source of the assistance is actually legal than humanitarian, to the extent that his action follows the legal recognition of that refugee by the state. For a state party, there is really no

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ambiguity as to the legality of refugee issue – someone who has crossed the frontiers of his state to another, seeking protection.

The issue whether refugee treatment is legal or humanitarian act has been sources of debates among international protection law experts. Some clarifications are essential here. Students of International Law, have continued to analyse the general concept of international protection and the interrelationship of international treaties and wonder if there is any legal justification for differentiating between International Protection Convention of refugees and the protection already offered by international human right laws. This observation is made succinct by the fact that the provisions of the 1951 Refugee Convention were inspired by the United Nations Universal Declaration of Fundamental Human Rights of 1948.

International Refugee Law is a set of rules and procedure that aims to protect persons seeking asylum who are recognized as refugees under the relevant refugee instruments. This legal framework provides a distinct set of guarantees for those specific groups of persons. Although inevitably, the legal protection overlaps to a certain extent with international human rights as well as the legal regime applicable to international humanitarian law, the scope of refugee protection law is clearly articulated in Article 1A(2) of the refugee convention.

There is no denial of human right influence on the evolution of refugee law and the UNHCR has also not denied this when it admits that:

> The human rights base of the Convention roots it quite directly in the broader framework of human rights instruments of which it is an integral part, albeit with a very particular focus.

As it is often the case, international conventions emanate specifically from events necessitating them. For instance, the Universal Declaration of Human Rights was declared first to secure conviction against Nazi Germany which advanced during the Nuremburg Tribunal that killing of prisoners of war were permitted by Nazi Germany. By contrast the Refugee Convention was occasioned by the lack of protection of stateless people after the Second World War. When states and international institutions are acting on refugee issues, they should be guided by the principles which established the concept. The idea to designate refugee as customary international law is meant to protect refugees from states likelihood to demur in the face of refugee obligation. But states too can find respite in the provisions when there is need for legal declaration.

The Principle of Non-Refoulement and Third State Resettlement for Refugees

In international protection law or any international law for that matter, many guiding principles find elixir or support in other principles when there is evidence of possibility of abuse of their provisions. The Principle of Non-Refoulement in article 33 of the 1951 Refugee Convention enjoins all state parties to the convention not to send back anyone who seeks asylum in their states. It further enounces some alacrity in response when refugee seeks admission. Application of the non-refoulement is per-emptory at the entrance points, determination of status is secondary from the point of view of the principle of non-refoulement. The principle of non-refoulement is seen as fundamental to refugee law. Since its expression

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in the Refugee Convention in 1951, it has played a key role in how states deal with refugees and asylum seekers. The principle is the idea that no refugee should be returned to any country where he or she is likely to face persecution or torture. Debate surrounds many aspects of this principle, including whether or not a refugee has to be found on the territory of a State or can merely be attempting to enter, and also what standard should be used to judge what danger warrants not returning the refugee.

While it may appear that the principle of non-refoulement is subject to abuses and states appear to be helpless, some succour can be found in the principle of durable solutions. According to the 1951 Refugee Convention, once refugee status has been determined and immediate protection needs are addressed, refugees may need support to find a long-term, durable solution and enjoins the UNHCR to promote three durable solutions for refugees as part of its core mandate:

•voluntary repatriation
•local integration and
• resettlement.

The durable solutions are acceptance of the lapses and vulnerability of the non-refoulement principle. By the time the durable solutions are being applied the host state is expected to have settled down to weigh the options before it and then apply the best thought through solution after admission of refugees. A state reserves the right to determine which of these durable solutions is best suited for its peculiarity and the Refugee Convention nor the UNHCR has prescribed any hierarchy of durable solutions. The UNHCR however suggests, an integrated application that combines all three solutions be implemented in close cooperation with countries of origin, host states, humanitarian and development actors, as well as the refugees.

What is resettlement?

The UNHCR defines Resettlement as the transfer of refugees from an asylum country to another state, that has agreed to admit them and ultimately grant them permanent residence. Resettlement is the most difficult part of durable solutions of refugees, the UNHCR reports that there were 20.7 million refugees of concern to UNHCR around the world at the end of 2020, but less than one per cent of refugees are resettled each year. How the British government was able to secure this agreement with the government of Rwanda will be in focus shortly.

The Deal to Transfer Migrants to Rwanda

Since the emergence of the Syrian crisis (2011) and the outpouring of refugees to the outside world, the government of the United Kingdoms have played pivotal role not only accepting these refugees but also in the management of the refugee crisis in Europe. The latter position extends Britain's influence in this regard beyond the frontiers of her country as she became a leading voice in appealing to nations in Europe to take responsibilities. Soon, this will bring some discomfort to her demography and fiscal policy especially when she recorded larger influx of refugees from troubled nations.

The British government satisfied the first layer of refugee convention by offering a per-emptory entrance to asylum seekers. This aspect of durable solutions will definitely pose some challenges as it is usually the case with developed economies which provide protection for asylum seekers. The first two options of voluntary return and local integration are often not attainable as refugees rarely embraced voluntary return even with clear evidence of cessation of refugee status.

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This is largely owing to the prosperity of the host state. Neither is the state willing to offer local integration when that option is likely to spark economic and demographic impairments. The last option of durable solutions is resettlement in a third state; however, this is a more rarity than the first two but nations have been finding a way to achieve this, nonetheless, since the refugee convention foreclosed the idea of return of refugees to where they fear persecution.

The British government sealed the third state resettlement deal with Rwanda on April 14 2022 when the British Interior Minister Priti Patel and Rwandan Foreign Minister Vincent Birutaare signed the agreement. This agreement sends people seeking asylum in the UK to the East African country. Authorities in Rwanda will process the asylum claims and, if successful, refugees will be allowed to stay in that country. The UK will help cover up to $157 million (€144 million) of expenses.

Amidst criticisms that Rwanda lacks the proper credentials to host refugees in whatever capacity, the government officials has been flying its capability and even claims that Mr. Kagame who has been the source of lack of trust for the deal, was once a refugee and therefore has a lot of regard for international protection law. The deal which holds a number of benefits for Rwanda is heavily anticipated by the government of Rwanda and any adverse theory that could lead to its abrogation are heavily counter criticised or denied. The government had shown off its reception centers that could hold asylum-seekers which boast of about 722 beds and other state of the art equipment. This show-casing of readiness did not go without public outcry from Rwandans at home who claimed that the refugees are coming to take over jobs and comfort of the locals. The Rwandan government therefore has a huge of assurances to give, partly to the British government, the locals and international human rights institutions and advocacy groups.

The European Court of Human Rights (ECHR) has issued injunctions to stop the resettlement deal which the court consistently refers to as deportations. The ECHR's ruling came on the hills of failures of British courts to stop the resettlement deal after rights organisations have sought their interventions.

The European Court of Human Rights (ECHR) And International Refugee Law

The European Court of Human Rights (ECHR or ECtHR), also known as the Strasbourg Court, is an international court of the Council of Europe which is saddled with the interpretation of the European Convention on Human Rights. The court hears applications of allegations of states' breaches of the human rights as provided for in the Convention or its optional protocols to which a member state is a party. The court is based in Strasbourg, France. The International Refugee Law refers specifically to the 1951 Geneva Convention Relating to Refugees. It is an international protection instrument usually engaging refugee, asylum and migration issues, but as pointed above, it is not captured under human right law.

The ECHR intervention in a clear British durable solution-based approach of resettlement plan of refugees appears to have attacked the issue from different angle to secure a ground for its intervention. Human Rights organisations have sparked up accusations that the deal amount to human trafficking since the UK government is expected to pay Rwanda for all resettled refugee to the country.

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Another area of concern for the ECHR is the human right records of Rwanda where there is fear that the refugees could be victims of atrocities and may lack adequate care because according to Gardner 'Rwanda is a poor country'. Many other criticisms fueled the intervention of the ECHR, few of them are sighted here for emphasis. Justin Welby, the Archbishop of Canterbury joined in condemnation of the deal and said it raises ethical questions. According to Paul O'Connor, a civil servant with the Public and Commercial Services Union 'What they're doing is unprecedented in so-called Western democracies This is being driven entirely by racism. It's not a rational response to asylum and immigration policy'. In London, on the other hand, activists are concerned that the deal could land refugees in a country that is itself beset by allegations of human rights abuses by President Paul Kagame's administration.

The human rights records also are getting a sweep from the agits who want the deal to be nullified. Although the British Prime Minister has been defending the deal, a la the human rights records of Rwanda, no cognizance has been paid to the reforms in the country as many in opposition insist that Rwanda's courts are powerless in the face of executive ruthlessness and cruelty. Mr. Johnson has brushed off such worries, calling Rwanda 'one of the safest countries in the world.' In spite, no less criticism is coming from the Prime Minister's cabinet when the British ambassador for human rights, Rita French, regretted at the U.N. Human Rights Council that its government had refused to carry out 'credible and independent investigations into allegations of human rights violations including deaths in custody and torture.'

The Rwandan President may also have played into the fangs of advocates of democracy in the west when he is accused of brutally suppressing dissenting voices in Rwanda. He has also been accused of becoming increasingly authoritarian including ordering assassinations of his political opponents. Further, instances have been given when those who contested the presidency with him had been tortured and one was even killed and beheaded. How a country under a regime with such allegation of abuses can be trusted to resettle refugees remains a great aperture in the discourse.

The ECHR hinges its competence in this matter on the human rights allegations that have been raised here and there. To the extent that human right issues have been raised to such a level of concern about the deal, the ECHR assumes the matter is within its jurisdiction.

The ECHR derives its competence again from the allegation of deportation – of a person who is under the risk of being tortured in the receiving state. The ECHR here regionalises a well-established principle of human rights law. The court usually deals with violations that happen on the territory of the member state, but with exceptions. Deportation is one such exception – the court can prevent deportation of a person who is under the risk of being tortured in the receiving country. This is a well-established principle of human rights law. Major ground of intervening is that removing a person from a state that adheres to the European convention on human rights to one that does not, makes it very difficult to ensure that their rights will be properly protected. In this case, the court cited concerns raised by the UN high commissioner for refugees that asylum seekers moved to Rwanda as part of the plan will not be able to access 'fair

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and efficient procedures' related to their refugee status claims. There was no guarantee that they would be able to return to the UK from Rwanda to take part in future judicial proceedings relating to their case.

Substantive Analysis

The choice of calling the deal 'a deportation deal' was exactly that of the ECHR for its jurisdictional convenience. And for many advocacy groups who call it human trafficking, it is a shibboleth to re-engage with the claims already established. However, deportation is a unit of language in migration practice reserved for migrants who are to be returned and who either have entered a country legally or through irregular means but deportation is not applicable to refugees. The British government seems not to have driven the point that refugee resettlement is a third level durable solution in refugee management.

With regard to third state resettlement of refugee, only the receiving state (in this case, Rwanda) can establish infractions especially when the details of the resettlement deal are not been followed by the sending state. The UNHCR also has a fundamental responsibility here to study the details of the resettlement plan and point out areas that can encumber the deal. The UNHCR may supplant a deal if certain potential infringements are noticed. Such observations are often related to tendencies of difficulty for refugee to access refugee claims in the receiving state. If the UNHCR is concerned at all about the resettlement of refugees to Rwanda, it will be at this level.

It will be frowzy if the UNHCR opposes the resettlement deal if not that it raises legitimate concern for details because such deals have provided millions of people with protection and opportunity to re-build again. The resettlement deal is also capable of making important contributions to Rwanda as the resettled refugees are capable of turning around the fortune of Rwanda – a nation which is presently undergoing major reforms and being assisted by foreigners. Rwanda stands to gain so much from the deal, apart from boosting of the economy, her international relations will take a fillip essentially because it is taking up responsivity of burden sharing, and this is novel, coming from a developing African nation. The UNHCR should take strong position to protect the integrity of Rwanda and that could only encourage other first asylum countries in future, when they know a nation can share responsibility.

Conclusion

According to the guiding principle of the UNHCR, resettlement can only thrive when governments and non-governmental agencies partners with it and the supervision of resettlement is a fundamental mandate of the UNHCR. The UNHCR has responsibility to assist states taking up resettlement responsivity by providing budgets and other logistics. For Rwanda, this will encourage the country to take more and other nations will have reason to take the plunge of sharing responsivity. In any case fewer states take up this responsibility now and in fact appear to see nations who are close to troubled states as unlucky and unfortunate.

The ECHR is encouraged to understand the perimetric lines between refugee law and human right law. If this fits its model, refugee laws would have been developed in a single file with human right law. But understanding the difference lies in appreciating that the two bodies of protection are, although not in counter-pointer arrangement, addressing different concepts. Human rights protect individual but refugee

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law protects both the individual and the state.

Since 1951 when the Geneva Convention on refugee started to regulate refugee administration globally, the resettlement of refugees to a third state has become a dynamic and flexible tool of immediate assistance to refugee as it brings hope of sharing of responsibilities amongst states. While it is possible to discover some abuses in the process, such should be treated as part of the normative to make the system work more properly to have direct impact on the person resettled.

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