



Political rights of refugees

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Abstract

The extent to which refugees can engage in political activity in the country of asylum is a matter of some controversy. In certain circumstances the presence of refugees may be perceived as a threat to domestic harmony, generating negative attitudes towards their involvement in matters of a political nature. From a legal point of view two distinct perspectives arise. Firstly, the impact of human rights and refugee law, granting particular rights to refugees, whilst taking into account the legitimate security interests of the host community. Secondly, the responsibility of States under international law for injurious activities carried out by aliens, including refugees, within their territory. It transpires that the political rights of refugees rests on a delicate balance between protecting the essential human dignity of such persons and the need for States to respect each other's sovereignty and to protect their own community in general. Moreover, the wide spectrum of activities that may fall under the umbrella of "political" serves to add to the complexity of the legal framework.

Keywords: refugee, political rights, asylum, UNO, international law, customary international law, human rights, aliens, origin country

Introduction

This paper analyses the scope of political rights of refugees in the context of current international law. It also examines contemporary State practice. Finally, it sets out some recommendations for State practice.

Rights of refugees guaranteed in international law

The refugees convention

The 1951 Convention relating to the Status of Refugees ('1951 Convention') has no explicit provision dealing with the political rights of refugees. However, Article 2 makes it clear that refugees have duties to the country of asylum, including respect for its laws and for measures taken for the maintenance of public order. This merely reflects the general rule that aliens fall within the territorial sovereignty of the host State. The reference to 'public order' confirms that the country of asylum is entitled to restrict the activity of refugees (in particular, that of a political nature) ^[1] where this is necessary to protect the vital interests of the State. The 1951 Convention does lay down specific standards for the treatment of refugees in certain areas, but only one of these is relevant to the question of political rights ^[2]. Article 26 requires that refugees lawfully within the territory be granted freedom of movement subject to any regulations generally applicable to aliens. For matters other than freedom of movement Article 7(1) must apply. This states that: Except where this Convention contains more favourable provisions, a Contracting State shall afford to refugees the same treatment as is accorded to aliens generally.

As a consequence, refugees are to be afforded the same political rights as other aliens in the country of asylum ^[3]. Furthermore, the rights covered by Article 7(1) are subject to Article 3 which therefore prohibits any discrimination

between refugees in the enjoyment of political rights solely on the basis of their race, religion or country of origin. Finally, by virtue of Article 7(3), refugees shall continue to enjoy any additional rights to which they were entitled (for example, as a result of domestic laws in the country of asylum) at the date of entry into force of the Convention for the State in question. Thus, subject to any pertinent provisions in regional instruments, reference to international human rights law is necessary in order to flesh out the standards set out in the 1951 Convention.

Regional refugee instruments

The 1969 Organisation of African Unity ('OAU') Convention Governing Specific Aspects of the Refugee Problem in Africa ('OAU Convention'), like the 1951 Convention, specifically states that refugees must respect the laws of the country of asylum (Article III(1)). However it goes further by (a) proclaiming that refugees must not take part in any subversive activities against an OAU member State (Article III(1)) and (b) requiring all States parties to prevent refugees from attacking other OAU States or engaging in activities likely to cause tensions between such States (Article III(2)).

No definition of "subversive", "attacking" or "likely to cause tensions" is given in the OAU Convention. It is, therefore, possible, and arguably desirable, to interpret the limits on political activity set out in Article III in line with the human rights obligations of OAU States. However, there is evidence that some OAU States have adopted a rather sweeping approach to Article III, interpreting it as prohibiting any political activity with respect to the refugee's country of origin, or indeed any political activity whatsoever ^[4].

The 1984 Cartagena Declaration on Refugees does not make any specific recommendations on the political rights of

refugees. It merely states in Conclusion 8 that Central American States should establish a minimum standard of treatment for refugees based on the provisions of the 1951 Convention, its 1967 Protocol and the American Convention on Human Rights. Given that the latter treaty essentially mirrors the International Covenant on Civil and Political Rights with respect to provisions relevant to political activity, the Cartagena Declaration does not seem to have any impact on the question of political rights of refugees in that region.

Customary international law and treatment of aliens

Prior to the emergence of human rights law (and contemporary refugee law), limited protection existed for aliens under international law, reflecting their generally low status in society. However, it has long been recognised that the State of nationality is entitled to demand that the host country treat the former's citizens in a manner compatible with the minimum standard set down in customary international law. This right of the country of origin stems from its retention of personal supremacy over expatriate nationals, even though the host State possesses territorial supremacy^[5].

The debate continues as to what exactly constitutes the "international minimum standard". It would appear to at least require that an alien receive equal treatment before the law and in respect of protection of his person and property. However, there is no obligation to accord aliens political rights equal to those enjoyed by citizens. Moreover, those duties that do exist are owed to the country of origin and not to the individual alien. The relationship between refugees and the government of their country of origin is complicated. It is therefore unclear how the principle of diplomatic protection could be applied in their case^[6]. For these reasons, in so far as the political rights of refugees are concerned, customary international law on the treatment of aliens appears to be of little relevance.

Human rights law

The emergence of human rights law over the last fifty years has had a tremendous impact on the position of aliens, and therefore refugees, in international law. In general, human rights law does not distinguish between aliens and citizens. The notable exception is with regard to the right to participation in an electoral process.

Right to vote and stand for election

In country of asylum

Art. 25 of the 1966 International Covenant on Civil and Political Rights ('ICCPR') only guarantees the right to vote and to stand for public office for citizens of a country. No such right is given to aliens residing in that territory. This is consistent with the general view that participation in elections is an expression of one's intimate relationship with the State, evidenced by citizenship.

Although States are not obliged to give aliens the right to vote, they do have discretion to allow them to participate in elections. In some cases States may undertake to provide voting rights to resident aliens pursuant to a particular treaty arrangement. For example, the 1992 European Convention on Participation of Foreigners in Public Life at Local Level⁹

requires State parties to allow foreigners who have lawfully been resident in their territory for five years the right to vote in local elections. Article 8b of the Treaty on the European Community (EC Treaty) provides that EU citizens are entitled to vote and stand as candidates in municipal elections in EU States of which they are not nationals, so long as they are resident there.

In country of origin

As for the participation of refugees in elections in their country of origin, Article 25 of the ICCPR states that citizens have the right to vote and stand for election 'without unreasonable restrictions'. Accordingly, Article 25 recognises that States should be allowed to set certain conditions, such as age limits, on the voting rights of citizens. The Human Rights Committee in its General Comment 25 (1996), while noting that Article 25 prohibited arbitrary discrimination between citizens, considered that a registration requirement, itself dependent on residence, would be justifiable. In general terms a linkage between the right to vote and residence makes sense in terms of logistical practicalities and the fact that those no longer living in the State tend to have less of an immediate stake in its political future.

However, the particular situation of refugees needs to be taken into account when determining what is a reasonable restriction^[7]. Unlike other expatriate citizens, refugees have not left their country of origin voluntarily. Moreover, they will often be keen to return in the near future and their chances of doing so may be heavily dependent on political changes in their country of origin. Accordingly, it does not seem reasonable to exclude refugees from voting in their country of origin, particularly if this rewards persecutory activities on the part of the authorities there.

Thus, although it appears that States do have the right to limit voting in general to those citizens habitually resident in their territory, there is arguably a case to be made for special provision in relation to refugees. Residency requirements could be waived in their case and facilities for voting from abroad provided. Of course, there may be refugees who will be reluctant to exercise their opportunity to vote because of concerns about contact with the authorities in the country of origin. However, this is unlikely to be the case where, following a mass exodus as a result of internal strife, elections are taking place as part of a peace process. In any case, the mere fact that a refugee has voted in elections in the country of origin should not, in itself, constitute grounds for invoking the cessation clauses in the 1951 Convention.

Freedom of conscience

The holding of a political opinion is naturally the precursor to any political activity, but does not constitute external conduct in itself. Therefore, this right is not relevant in the current discussion.

Freedom of expression

This is the external manifestation of the right to freedom of thought/conscience and is central to the ability of individuals to carry out any meaningful political activity. The guarantee of freedom of expression in Article 19(1) of the ICCPR is universal in coverage – aliens, including refugees, fall within

its scope. However, this right is not without limitations. As with many other provisions of the ICCPR, Article 19 explicitly acknowledges that the interests of the wider community need to be balanced against the interests of any one individual. Article 19(3) states that freedom of expression may be subject to restrictions necessary for respect of the rights and reputations of others or for the protection of national security, public order, public health or public morals. In essence, these restrictions are not concerned with the effect of any political statements on a third State, but rather the interests of the host State^[8].

Therefore, the right of aliens to express their political opinions, whether these be on matters pertaining to their country of origin or to the host country, is not absolute. However any restrictions would appear to be the same as that for citizens given Article 2(1) which prohibits any discrimination in the enjoyment of ICCPR rights on the grounds, *inter alia*, of national origin or race. Any imposition of greater restrictions on aliens rather than on citizens would appear to constitute unlawful discrimination in the absence of any reasonable, objective justification.

Freedom of assembly

The coming together of individuals is often an important prerequisite for political activity. Aliens, like citizens, benefit from the right of assembly under Article 21 of the ICCPR subject to restrictions necessary in the interests of “national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”.

As mentioned above, Article 16 of the ECHR places a specific limitation on the right of assembly guaranteed under Article 11 of the ECHR in the case of aliens. However, as noted above, in the absence of substantial jurisprudence on Article 16, perhaps the better view is that Article 16 should be read very narrowly and therefore its impact on Article 11 seems to be limited, given the restrictions built into freedom of assembly in general. As for the State’s duties under Article 11, the European Court of Human Rights has noted that this consists of an obligation to take reasonable and appropriate measures to ensure that lawful demonstrations can proceed peacefully. The imposition of unreasonable and arbitrary restrictions is prohibited.

Freedom of association

The guarantee of freedom of association in Article 22 of the ICCPR applies equally to aliens and citizens alike. This, in principle, accords refugees the right to form political organisations. However the formation or operation of such organisations may be restricted on the same grounds as Article 21. Thus, it is lawful to ban a refugee organisation that incites hatred against a particular political group in the host country where this demonstrates a risk to public order. On the other hand, the right of refugees to belong to an organisation that merely campaigns for a peaceful change of government in their country of origin would seem to be protected by Article 22. The approach to freedom of association in respect of aliens under Article 11 of the ECHR is the same as that regarding freedom of assembly. With respect to the State’s ability to restrict such freedom on national security grounds, in the case

of *Ozdep v Turkey*,^[9] the European Court of Human Rights held that such action was not justified in the case of political parties that do not advocate the use of violence.

It can be seen from the above analysis that each form of political activity carried out by a refugee probably falls into one of the following three categories:

- a. activities that the host State is obliged to allow;
- b. activities that the host State is permitted to allow within its sovereign discretion;
- c. activities that the host State is obliged to prevent.

Category (a) includes those activities guaranteed by human rights law. Category (b) covers activities which, whilst not the subject of human rights protection, are equally not prohibited in international law. This may include activities that the host State is entitled, but not obliged, to restrict under specific exceptions to its human rights commitments. Category (c) mainly covers activities prohibited in international law in order to ensure respect for the sovereignty of other States. Such prohibitions are consistent with respect for human rights guarantees. This complex interaction of various fields of international law means that different forms of political activity deserve individual consideration.

Conclusion

The exercise of certain political rights is fundamental to the human dignity of refugees. Although they have no right to vote in their country of asylum, their refugee status does not preclude them from being able to express political opinions and engaging in a meaningful political life. Indeed, refugees, like other aliens, are entitled to the same freedom of expression, association and assembly as citizens. The granting of political rights is, however, often seen as a threat to the national cohesion of the country of asylum or to its relations with the country of origin. This need not be the case. International law also makes provision for protecting the legitimate security concerns of the country of origin and respecting the sovereignty of other States. In doing so, it does not discriminate between refugees and any other person in the country of asylum.

It is important that refugees are made aware of their responsibilities to their country of asylum and the legitimate limits that may be placed on politically-motivated behaviour. Yet many of the risks associated with political activity of refugees should be acknowledged as primarily a problem caused by a small minority of persons, in many cases of dubious eligibility to refugee status. The behaviour of a few does not justify excessive restrictions placed on the innocent majority.

References

1. See Robinson, *Convention relating to the Status of Refugees: Its History, Contents and Interpretation* (1953) at page 60.
2. Article 15 about the right of association is only concerned with non-political organisations and is thus not relevant in this context.
3. The exception being freedom of movement where, as discussed above, equality with treatment of aliens depends on the refugee in question lawfully being in the

territory.

4. See paragraph 73 below. UNHCR in its 'Note on International Protection' (13 September 2001, AC.96/951) refers to the Article III prohibition on subversion without comment as to its scope.
5. See Oppenheim's *International Law* (1992), Volume 1, Parts 2-4, page 903.
6. The issue of what State, if any, is able to assert a complaint under customary international law regarding treatment of refugees incompatible with the international minimum standard is currently under consideration by the International Law Commission in its study of the law governing diplomatic protection.
7. The Human Rights Committee does not appear to have done so when formulating General Comment 25 (1996).
8. The Human Rights Committee in General Comment 15 (1986) stressed that States must ensure that aliens enjoy freedom of expression to the same extent as citizens.
9. Judgment dated 8 December 1999.