

Comparative Models of Refugee Status Determination: Evaluating Procedural Fragmentation And Rights Protection

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Abstract

Objective

Refugee Status Determination (RSD) systems represent the practical interface between state sovereignty and international protection obligations. Although the 1951 Convention Relating to the Status of Refugees defines refugee status, it does not prescribe uniform procedural mechanisms for determining eligibility. States therefore retain significant autonomy in structuring asylum procedures. This procedural diversity, however, produces varying degrees of fragmentation in institutional design, appellate oversight, evidentiary standards, and access to legal assistance. Such fragmentation may profoundly affect the protection of asylum seekers' rights, particularly the guarantee against refoulement. This article evaluates comparative models of RSD through the lens of procedural fragmentation and its implications for fairness, accountability, and compliance with international law. Using Nigeria and Germany as contrasting case studies, it analyses an executive-centered administrative model alongside a judicially integrated, multi-tiered review system. The article argues that where procedural autonomy operates without structured safeguards (especially independent appellate review and effective remedies), substantive protection risks erosion. Conversely, institutionalized judicial oversight enhances procedural legitimacy and strengthens compliance with international and constitutional norms. The article concludes by identifying minimum procedural guarantees capable of reconciling sovereign discretion with effective refugee protection.

Keywords: Asylum adjudication; Refugee Status determination; Procedural fragmentation; Non-refoulement; Comparative refugee law.

1. Introduction

Refugee Status Determination (RSD) constitutes the primary mechanism through which states give effect to obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. While the Convention defines the term 'refugee' in Article 1A (2), it remains procedurally silent on how the status is to be determined. This omission reflects the drafters' deference to state sovereignty over territorial admission and migration control. Yet procedural autonomy is not unlimited. International refugee law operates within a broader human rights framework imposing both substantive and procedural constraints (Hathaway and Foster, 2014). The principle of non-refoulement under Article 33 prohibits expulsion or return to territories where persecution is feared. As recognized by the House of Lords in *R (Sivakumaran) v Secretary of State for the Home Department* (1988), determination of refugee status necessarily requires a structured evidentiary assessment consistent with fairness and rationality. Similarly, the European Court of Human Rights has held in *Jabari v Turkey* (2000) that asylum procedures must provide 'effective guarantees' against removal contrary to Article 3 ECHR.

Comparative scholarship increasingly demonstrates that procedural architecture influences protection outcomes (Goodwin Gill and McAdam, 2021). Variations in institutional structure, appeal rights, evidentiary standards, legal representation, and transparency may either entrench or undermine compliance with international obligations. This article evaluates procedural fragmentation within RSD systems by examining two contrasting models: Nigeria's executive-administered framework and Germany's judicially integrated, multi-tiered system embedded within constitutional and European Union law.

The central argument advanced is that procedural fragmentation, defined as dispersed authority without coherent safeguards or effective oversight, risks weakening substantive refugee protection. By contrast, structured appellate supervision enhances fairness, accountability, and normative coherence.

2. Procedural Fragmentation and International Legal Constraints

2.1 Defining Procedural Fragmentation

The concept of procedural fragmentation draws on broader debates concerning the fragmentation of international law and the disaggregation of administrative authority. The International Law Commission's Study Group on Fragmentation observed that the proliferation of specialized regimes and institutional actors may generate normative inconsistency and weakened systemic coherence where integrative mechanisms are absent (United Nations, 2006). Although the International Law Commission's analysis focused on substantive norm conflict, its structural insight is equally relevant to refugee status determination systems, where dispersed procedural authority may produce uneven protection outcomes.

In administrative law theory, fragmentation is often associated with the diffusion of regulatory authority across multiple institutions without clear coordination or accountability structures. Sabino Cassese (2011) describes global administrative governance as characterized by dispersed decision-making centers whose legitimacy depends upon procedural safeguards capable of ensuring transparency, reviewability, and rational justification (Cassese, 2011). Similarly, Anne-Marie Slaughter's account of 'disaggregated sovereignty' demonstrates how modern governance frequently operates through networks of executive, judicial, and administrative actors whose authority is functionally separated but normatively interconnected (Slaughter, 2004). Where such interconnectedness lacks structured oversight, accountability gaps may emerge.

Applied to refugee law, procedural fragmentation refers not merely to multiplicity of actors, but to institutional and normative disaggregation within asylum determination frameworks. It manifests through decentralized discretion without structured review or effective appellate integration, inconsistent evidentiary standards, limited access to legal representation, absence of transparent reasoning, or restricted suspensive remedies. In this sense, fragmentation is less about diversity per se and more about the absence of integrative safeguards capable of securing coherence and accountability.

International law tolerates procedural diversity but not procedural arbitrariness. As James Hathaway and Michelle Foster (2014) emphasize, refugee protection depends as much upon procedural design as upon substantive definition. Guy Goodwin-Gill and Jane McAdam (2021) similarly observe that flawed procedures may generate wrongful refoulement even where the legal standard is correctly articulated. Procedural fragmentation therefore becomes normatively problematic where institutional dispersion undermines the rule-of-law values of consistency, reasoned justification, and effective remedy, thereby weakening the practical guarantee of non-refoulement.

2.2 Non-Refoulement as a Procedural Obligation

Article 33 of the 1951 Refugee Convention enshrines non-refoulement as the cornerstone of international protection. Although framed substantively, the obligation necessarily entails procedural implications. Determining whether removal would expose an individual to persecution requires fair assessment mechanisms.

Across jurisdictions and courts from European human rights tribunals to national constitutional and administrative courts, there is an emerging trend recognizing that non-refoulement is not just a substantive prohibition on return to harm, but also a procedural obligation requiring; individualized risk assessment before removal, access to asylum procedures or meaningful review of claims of harm, reasoned and timely decisions on protection claims, and procedural fairness safeguards (e.g. notice and right to challenge) (Ramos, 2024).

The European Court of Human Rights (ECtHR) has consistently affirmed this procedural dimension. In *Soering v United Kingdom* (1989), the Court emphasized that states must rigorously assess risks before removal where Article

3 is engaged. In *M.S.S. v Belgium and Greece* (2011), the Court found that systemic deficiencies in Greece's asylum procedure rendered Belgium's transfer decision incompatible with Article 3. The judgment underscored that inadequate procedures may themselves generate Convention violations.

Also relevant is the case of *M.A. and Z.R. v. Cyprus* (2024), where two Syrian cousins attempting to reach Cyprus from Lebanon were intercepted at sea in Cypriot territorial waters and returned to Lebanon without any processing of their asylum claims, interviews or individual assessments, and without being informed of their rights or given an effective remedy. The ECtHR held that Cyprus violated procedural aspects of the non-refoulement obligation under Article 3 of the European Convention on Human Rights (ECHR) by failing to assess: (i) whether the applicants had access to an effective asylum procedure in Lebanon; (ii) the conditions there; and (iii) the real risk of chain-refoulement. The Court also found violations of the prohibition on collective expulsion (Article 4 Protocol No. 4) and the lack of an effective remedy (Article 13). This underscores that states must investigate procedural safeguards before returning individuals to third states.

More recent is the *Zimir Case* (2025), where Mr Zimir, a Turkish national in the Netherlands, challenged the extension of the statutory six-month period (under Article 31(3)(b) of the EU Asylum Procedures Directive) for deciding his asylum application. Dutch authorities had extended the period by nine months due to a high volume of cases, without satisfying the directive's conditions. The Court of Justice of the European Union (CJEU) reaffirmed states' procedural obligations in asylum determination by strictly interpreting the time-limit regime: extensions are permissible only where there is a sudden and significant increase in applications, not as a result of systematic backlog or lack of resources. Although this case is primarily about time limits, it reinforces procedural protections for asylum seekers, as part of the broader duty to ensure timely and effective access to protection, which is intrinsic to avoiding unlawful returns.

In the United States, in *D.V.D. v. Department of Homeland Security* (2025), Cuban plaintiffs challenged U.S. Department of Homeland Security policies that allowed deportation to countries not previously designated in removal proceedings. They argued that defendants must give notice of the destination country and allow a meaningful opportunity to challenge removal based on risk of torture or persecution. The U.S. District Court for the District of Massachusetts issued a preliminary injunction (later stayed) preventing removal without prior procedural safeguards, i.e. notification and opportunity to seek relief under the Convention Against Torture. This supports the argument that procedural protections (such as an opportunity to contest removal based on risk) are part of non-refoulement obligations in domestic law contexts.

In South Africa, in the case of *Osaleye v. Minister of Home Affairs & Another* (2024), an asylum seeker was facing deportation despite indicating an intention to apply for asylum. Domestic courts had to decide whether the obligation of non-refoulement continued until a status determination process was completed. The South African High Court held that the non-refoulement principle includes a procedural obligation: asylum seekers must be allowed to pursue refugee status determination before any removal. Until the claim is finally rejected after a proper procedure, removal would violate non-refoulement.

The Court of Justice of the European Union (CJEU) has similarly stressed procedural guarantees. In *N.S. v Secretary of State for the Home Department* (2011), it held that Member States must refrain from transferring asylum seekers under the Dublin Regulation where systemic flaws in the receiving state create a real risk of inhuman or degrading treatment. Procedural integrity thus becomes integral to substantive compliance.

2.3 Effective Remedy and Independent Review

The right to an effective remedy and an independent review are essential procedural safeguards in asylum protection systems because they ensure that decisions affecting human life, liberty and other fundamental rights receive meaningful scrutiny. The UNHCR guide emphasizes that asylum seekers must have access to a remedy that is competent and independent, capable of examining the legality and substance of adverse decisions (UNHCR, 2023). Specifically, an effective remedy "should be by a court or other independent body and cover both facts and law

based on reliable, accurate and up-to-date information” and allow applicants to present evidence, receive reasoned decisions, and understand appeal procedures (UNHCR, 2023). UNHCR’s Guide on Fair and Efficient Asylum Procedures (2019) similarly stresses that asylum procedures must provide independent review and reasoned decisions. Similarly, Article 13 of the ECHR and Article 47 of the 2012 Charter of Fundamental Rights of the European Union require accessible judicial review. In *I.M. v France* (2012), the ECtHR held that accelerated asylum procedures must still ensure effective suspensive remedies against removal.

The purpose of this dual standard is analogous to a quality assurance system in manufacturing: just as products undergo independent quality checks to prevent defects reaching consumers, asylum decisions require an impartial mechanism to correct errors before they cause irreparable harm to individuals seeking international protection. Without such mechanisms, executive discretion risks insulation from accountability, and procedural errors arising from misapplication of legal standards may permanently foreclose protection possibilities and expose refugees to serious risks. Procedural fragmentation therefore becomes problematic when it compromises non-refoulement, equality of treatment, or access to effective remedy.

Judicial review, on the other hand, is the most common form of independent oversight in a lot of jurisdictions, but it is not the only model. In some European contexts, courts have held that judicial review satisfies the effective remedy requirement when it thoroughly examines administrative decisions, even if internal administrative reviews exist as well. For example, Hogan J in *N. M. v Minister for Justice* (2016) concluded expressly that contemporary judicial review could fulfil the effective remedy requirement under the relevant EU asylum directives, provided the review’s independence is safeguarded and its scope permits substantive scrutiny of negative decisions. This jurisprudence highlights, among other things, the functional quality of the remedy; thus, what truly matters is not the mere existence of the review mechanism but that it genuinely corrects errors.

As promising as the mechanism is, reliance on judicial review is not without challenges. In some systems, judicial review focuses predominantly on legality rather than merits. What this means is that factual errors like erroneous assessments of credibility or country conditions may escape correction unless the review body has a mandate to examine them fully. Comparative studies by the Refugee Survey Quarterly (2024) have shown that where judicial review does not allow for substantive evaluation, refugees experience greatly limited access to effective remedies. For instance, in Brazil, limited review of RSDs has been critiqued for failing to provide adequate transparency and independent oversight, undermining protection standards (Refugee Survey Quarterly, 2024).

Effective remedies are not only found in courts; they may also take the form of specialized tribunals (Thomas, 2018) or appellate bodies that combine legal expertise with procedural independence. Such structures can parallel the role of independent audit agencies in financial systems: they continually review and refine outcomes, ensuring that systemic errors do not persist. Refugee systems without such layered oversight risk fragmentation and inconsistent application of protection norms (European Union Agency for Asylum, 2024).

Suffice this to say that to be effective, a remedy must be timely, accessible and independent so that asylum seekers are not left in legal limbo or at risk of deportation before their claims are fully reviewed. This requires procedures that allow appeals on both factual and legal grounds, with safeguards similar to those outlined in UNHCR guidance (2023), which calls for suspensive effects of appeals and clear information on appeal rights.

3. Nigeria: Executive Administration and Limited Appellate Infrastructure

3.1 Institutional Structure

In accordance with Nigeria’s dualist constitutional structure, international treaties require domestication before acquiring direct enforceability. The Supreme Court of Nigeria in *Abacha v Fawehinmi* clarified that while ratified treaties do not automatically form part of domestic law, once enacted by the National Assembly, they are binding and enforceable in Nigerian Courts. The Principle of Domestication is significant for the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, which was recognised as judicially enforceable in Nigeria

(Ogugu v State 1994). The Charter provides for dignity, liberty and fair trial thus providing normative reinforcement of refugee protection claims. Nigeria acceded to the Refugee Convention in 1967 and domesticated aspects of refugee protection through the National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI), Act 2022.

Unlike jurisdictions with specialized asylum tribunals, Nigeria lacks a dedicated appellate body for refugee claims. Judicial review is available through the Federal High Court pursuant to constitutional supervisory jurisdiction as provided for in Section 251 of the 1999 Constitution. However, such review is not specialized, and procedural barriers; costs, delays, and limited legal awareness, may restrict practical accessibility.

3.2 Legal Framework and Judicial Oversight

Although refugee-specific jurisprudence remains limited, Nigerian courts exercise supervisory jurisdiction through constitutional fair hearing guarantees and judicial review. The country's refugee protection regime is grounded in a combination of constitutional guarantees, domestic legislation, and international obligations. Topping this legal hierarchy is Nigeria's 1999 Constitution, which guarantees fair hearing and enforcement of fundamental rights under section 36 and section 46, respectively; it also provides for judicial powers in Section 6. Although not asylum-specific, these provisions apply to administrative decisions affecting rights and form the foundation for judicial oversight of administrative decisions affecting asylum seekers. Section 46 further empowers individuals to approach the High Court for the enforcement of fundamental rights, thereby providing an avenue through which refugees and asylum seekers may challenge unlawful detention, deportation, or procedural unfairness.

Judicial oversight of refugee status determination operates primarily through general administrative law principles rather than specialised asylum tribunals. Nigerian courts retain supervisory jurisdiction over administrative bodies and may review decisions for illegality, irrationality, or procedural impropriety. In *Garba v University of Maiduguri* (1986), the Supreme Court affirmed that administrative bodies must observe procedural fairness where rights are implicated. Similarly, *Legal Practitioners Disciplinary Committee v Fawehinmi* (1985) confirmed that statutory bodies exercising quasi-judicial powers remain subject to judicial review. Although refugee litigation remains sparse, these precedents establish that decisions of the Eligibility Committee and related authorities are not immune from judicial scrutiny.

In principle, refugee applicants may invoke constitutional safeguards against arbitrary executive action. In practice, however, judicial oversight faces structural constraints. The absence of a specialized appellate asylum tribunal limits doctrinal development in refugee jurisprudence. Structural dependence on executive agencies limits the development of specialized jurisprudence clarifying evidentiary standards or burden of proof in asylum cases. Also, procedural delays and resource limitations affect access to remedies. Nonetheless, constitutional guarantees, domesticated human rights instruments, and established administrative law principles collectively provide a legal basis for reviewing refugee decisions. The challenge remains not the absence of legal authority, but the operationalisation of effective and timely judicial protection within Nigeria's broader administrative justice system.

3.3 Procedural Characteristics and Fragmentation

Nigeria's RSD process is primarily administrative in character and is structured around executive discretion rather than specialised adjudicatory bodies. It operates in cooperation with UNHCR, particularly in capacity-building and training (UNHCR, 2022). Under the NCFRMI Act, an Eligibility Committee established by the Federal Government is responsible for determining refugee status. Drawing from the 1951 Refugee Convention and the OAU Convention, the Act provides the definitional framework for refugee recognition. Yet the Act does not comprehensively codify evidentiary standards, timelines for decision-making, appeal mechanisms, or procedural safeguards comparable to those found in specialised asylum systems in other jurisdictions. The absence of codified timelines, publicly accessible jurisprudence, and structured appellate chambers generates fragmentation.

With regard to institutional frameworks, the operational responsibility lies with the National Commission for

Refugees, Migrants and Internally Displaced Persons (NCFRMI) established under section 1 of the NCFRMI Act 2022. While the Commission coordinates refugee protection and camp management, the procedural relationship between the Commission and the Eligibility Committee is not elaborately defined in legislation. This translates to a diffusion of responsibilities between policy coordination, humanitarian management, and legal status determination.

A notable characteristic of Nigeria's RSD procedure is its limited formalization. Unlike jurisdictions with codified asylum procedure regulations, Nigeria relies heavily on administrative practice and cooperation with the UNHCR. In practice, UNHCR often plays a significant advisory or technical role in registration and documentation processes. Although such cooperation enhances capacity, it may also blur lines of accountability, particularly where the division between international agency support and sovereign decision-making is not clearly articulated (UNHCR 2011). Also, access to legal representation is uneven. Many applicants rely on NGOs or UNHCR-supported programs. Unlike systems where legal aid is institutionalized, representation may depend on external support. This creates variability in case preparation and evidentiary presentation.

Fragmentation is further evident in the relationship between refugee protection law and broader immigration control regimes. Nigeria's immigration framework operates parallel to, rather than fully integrated with, refugee protection procedures. This structural separation may create uncertainty in areas such as detention pending status determination, documentation, and protection against refoulement. While the constitutional guarantee of fair hearing under the Constitution provides a general safeguard, there is no tribunal dedicated to asylum matters. Consequently, challenges to RSD decisions must proceed through general judicial review before the High Courts, potentially limiting doctrinal coherence and procedural accessibility.

Another dimension of fragmentation lies in the multi-layered normative framework. Nigeria is bound by both global and regional refugee instruments, yet the domestic Refugees Act does not comprehensively harmonise the expanded African refugee definition with detailed procedural criteria. The broader definition under the 1969 OAU Convention covering persons fleeing events seriously disturbing public order may require distinct evidentiary approaches. The lack of detailed statutory guidance may result in inconsistent application across cases.

Furthermore, the absence of specialized appellate oversight risks inconsistent decision-making. Although Nigeria's NCFRMI Act provides for a Refugee Appeals Board, Section 15(4) provides that the Board shall sit at the instance of the Federal Commissioner or the Minister. Administrative concentration of authority, without systematic publication of reasoned decisions, limits normative coherence and transparency.

While Nigeria's framework reflects sovereign discretion, constitutional guarantees and international standards provide normative direction, the limited institutionalization of review mechanisms renders procedural safeguards contingent rather than guaranteed, and the absence of a specialised appellate structure and comprehensive procedural regulations contributes to systemic fragmentation. The risk is not deliberate non-compliance, but structural vulnerability. Thus, the challenge for reform lies in consolidating these dispersed elements into a coherent, transparent, and reviewable asylum procedure consistent with international protection standards.

4. Germany: Judicial Integration and Multi-Tiered Review

4.1 Administrative Foundation

Germany's asylum system is grounded in a highly structured administrative framework that reflects a constitutional design and statutory codification. At its core is the Federal Office for Migration and Refugees (BAMF), responsible for first-instance determinations under the Asylum Act (Asylgesetz) of Germany. Applicants undergo personal interviews, with interpretation provided where necessary. Decisions must be reasoned in writing.

4.2 Constitutional and Judicial Embedding

Article 16a of the Basic Law for the Federal Republic of Germany guarantees a constitutional right to asylum, subject to limitations. Crucially, negative BAMF decisions are appealable before Administrative Courts

(Verwaltungsgerichte). Further appeals may proceed to Higher Administrative Courts and, where admissible, to the Federal Administrative Court (Bundesverwaltungsgericht).

Judicial review is substantive, not merely procedural. Courts reassess factual findings and credibility determinations. Removal is typically suspended pending resolution of appeals, ensuring compliance with non-refoulement obligations.

The Federal Constitutional Court (Bundesverfassungsgericht) has reinforced procedural safeguards. In its jurisprudence on expedited procedures, the Court has insisted that even accelerated processes must preserve effective legal protection under Article 19(4) of the Basic Law.

4.3 European Legal Context

Germany's asylum framework operates within EU law, particularly the Asylum Procedures Directive (2013/32/EU) and Qualification Directive (2011/95/EU). The CJEU has shaped evidentiary standards, notably in *M.M. v Minister for Justice* (2021), [Case C-277/11 *M.M. v Minister for Justice* EU:C:2012:744.] emphasizing the right to be heard in asylum proceedings.

In *Hamed and Omar*, the CJEU reiterated that transfers under Dublin must respect fundamental rights where systemic deficiencies exist.

The integration of constitutional, administrative, and European review layers produces institutional coherence. While backlog pressures and accelerated procedures have drawn criticism, the availability of independent judicial scrutiny mitigates risks of arbitrary removal.

5. Comparative Evaluation: Fragmentation and Protection Outcomes

5.1 Institutional Independence

Germany's system embeds RSD within an independent judicial hierarchy. Nigeria's framework concentrates authority within executive administration, with general judicial review rather than specialized appellate oversight. Independent review enhances legitimacy and accountability. The ECtHR's reasoning in *M.S.S.* demonstrates how absence of effective procedural guarantees can generate systemic rights violations.

5.2 Access to Effective Remedy

Germany guarantees suspensive appeals. Nigeria provides theoretical judicial review but without specialized asylum chambers or guaranteed suspensive effect. Practical accessibility differs substantially. Effective remedy requires more than formal availability; it demands accessibility, timeliness, and independence.

5.3 Legal Representation and Transparency

Germany institutionalizes legal pathways and publishes jurisprudence, promoting doctrinal consistency. Nigeria's reliance on NGO support and limited publication of decisions contributes to fragmentation. Transparency fosters predictability and equality before the law. Without it, similarly situated applicants may experience divergent outcomes.

5.4 Evidentiary Standards and Credibility

Credibility assessment remains central to RSD. In *Sivakumaran*, the House of Lords articulated the 'reasonable degree of likelihood' standard. German courts consistently apply a probability-based assessment aligned with EU directives. Nigeria lacks developed judicial articulation of refugee-specific standards, increasing discretionary variability. Procedural fragmentation thus directly influences substantive protection.

6. Sovereignty, Diversity, and Minimum Procedural Safeguards

International law does not mandate uniform procedural models. Diversity reflects differing constitutional traditions and administrative capacities. However, comparative analysis suggests that certain minimum safeguards are indispensable:

1. Independent and impartial decision-makers
2. Access to legal representation
3. Reasoned written decisions
4. Effective and suspensive appeal mechanisms
5. Transparent evidentiary standards
6. Reasonable procedural timelines

These safeguards do not undermine sovereignty; they operationalize treaty obligations. As Hathaway and Foster argue, refugee protection is not discretionary charity but binding legal duty. Procedural autonomy must therefore function within rights-based parameters. Fragmentation becomes unacceptable when it obstructs effective protection.

7. Conclusion

Comparative analysis of Nigeria and Germany reveals that procedural design significantly shapes refugee protection outcomes. While both states exercise sovereign discretion, the degree of institutional oversight differs markedly. Nigeria's executive-centered model illustrates structural vulnerabilities arising from limited specialized appellate review and uneven legal representation. Germany's judicially integrated framework demonstrates how structured oversight can coexist with sovereign authority while strengthening compliance with international and constitutional norms.

Procedural fragmentation poses risks where it weakens accountability, transparency, or effective remedy. Conversely, multi-tiered judicial supervision enhances fairness and legitimacy.

The integrity of refugee protection regimes depends not solely on definitional standards but on the coherence and robustness of procedures that give those standards effect. Ensuring minimum procedural guarantees remains essential to reconciling state sovereignty with international protection obligations.

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