

Procedural Fragmentation in Refugee Status Determination and the Erosion of Fair Asylum Guarantees: A Comparative Analysis of the United Kingdom and Nigeria

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Abstract: Refugee Status Determination (RSD) remains the central mechanism through which asylum seekers obtain international protection. Yet, despite the global framework established under the 1951 Refugee Convention, states retain significant procedural autonomy in designing their respective asylum systems. This autonomy has generated substantial procedural fragmentation across jurisdictions, producing divergent evidentiary standards, appeal mechanisms, timelines, and access to legal representation. This article argues that such fragmentation undermines the effective protection of asylum seekers' rights, particularly the right to a fair hearing and the principle of non-refoulement. Drawing on a comparative analysis of the United Kingdom and Nigeria, the article demonstrates how variations in procedural safeguards create structural risks of rights erosion, even where states formally comply with international obligations. While international law permits a degree of procedural discretion grounded in state sovereignty, this discretion is not unlimited. International human rights law imposes minimum standards of fairness that constrain domestic asylum procedures. The article concludes by proposing a normative framework for minimum procedural guarantees in RSD processes, aimed at reconciling state sovereignty with the imperative of effective refugee protection.

Keywords: Asylum law; Fair Hearing; Procedural fragmentation; Refugee Status Determination; non-refoulement; State sovereignty

Introduction

Refugee Status Determination (RSD) constitutes the gateway through which individuals fleeing persecution obtain international protection. While the 1951 Convention relating to the Status of Refugees (1951 Convention) establishes the substantive definition of a refugee, it remains largely silent on procedural standards governing how asylum claims are assessed. This silence has produced significant diversity in national asylum systems. States have developed distinct evidentiary thresholds, credibility assessment methods, appellate structures, detention practices, and timelines for decision-making. Although procedural diversity is not inherently problematic, this article argues that contemporary variations have evolved into what may be described as procedural fragmentation; an inconsistency of procedural safeguards that risks undermining the effective protection of asylum seekers' rights.

The absence of harmonised procedural standards reflects a structural tension at the heart of international refugee law. On the one hand, states retain sovereign authority over immigration control and administrative processes. On the other, they are bound by international obligations, including the principle of non-refoulement and broader human rights guarantees such as the right to a fair hearing and an effective remedy. The interplay between these competing imperatives generates a fragmented procedural landscape in which the level of protection afforded to asylum seekers may depend more on geography than on legal entitlement.

This article advances three core arguments. First, procedural fragmentation is not merely administrative variation but a structural phenomenon with direct implications for the enjoyment of substantive refugee rights. Second, while international law permits states procedural autonomy, such autonomy is constrained by binding human rights norms that require minimum standards of fairness. Third, the divergence between the asylum systems of the United Kingdom and Nigeria illustrates how fragmentation operates differently across developed and developing contexts, yet produces comparable vulnerabilities in rights protection.

The United Kingdom provides a highly institutionalised asylum framework with formal appeal mechanisms and judicial oversight. However, concerns persist regarding evidentiary burdens, accelerated procedures, detention practices, and legislative reforms aimed at restricting irregular arrivals. Nigeria, by contrast, operates a more administrative and less judicialised system under its National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI). While Nigeria has domesticated the 1951 Refugee Convention and the OAU Refugee Convention, procedural safeguards such as access to legal representation and structured appellate review remain comparatively underdeveloped.

By examining these two jurisdictions, this article demonstrates that procedural fragmentation is not confined to any single legal tradition or economic context. Rather, it is a systemic feature of the global asylum regime arising from the Convention's procedural silence. The article concludes that without clearer articulation of minimum procedural guarantees under international law, asylum protection risks becoming uneven, unpredictable, and susceptible to political influence.

International Legal Framework Governing Asylum Procedures

The international refugee protection regime is anchored in the Convention Relating to the Status of Refugees, 1951 and its 1967 Protocol (United Nations, 1951, 1967). While these instruments define who qualifies as a refugee and outline the rights afforded to recognised refugees, they are notably silent on detailed procedural standards for determining refugee status. This omission has permitted states significant discretion in designing domestic Refugee Status Determination (RSD) systems, thereby contributing to procedural divergence across jurisdictions.

a. 1951 Refugee Convention and Procedural Silence

The 1951 Convention establishes the substantive refugee definition in Article 1A(2) and codifies the principle of non-refoulement in Article 33(1), prohibiting states from returning a refugee to territories where their life or freedom would be threatened (United Nations, 1951). However, the Convention does not prescribe how states must assess asylum claims. It does not specify evidentiary thresholds, burden of proof standards, timelines, appeal rights, or access to legal representation. As Hathaway and Foster (2014) observe, the Convention assumes the existence of fair procedures but does not articulate them in explicit terms.

This procedural lacuna has resulted in diverse national models. Some states have developed judicialised systems with layered appellate review, while others rely on administrative decision-making bodies with limited oversight. The absence of harmonised procedural rules has therefore allowed procedural autonomy to flourish within the boundaries of substantive compliance. Yet, the silence of the Convention does not imply the absence of procedural obligations. Rather, procedural guarantees must be inferred from the broader framework of international human rights law.

b. Non-Refoulement and Procedural Safeguards

The principle of non-refoulement is widely regarded as the cornerstone of refugee protection and is considered by many scholars to have attained customary international law status (Goodwin-Gill & McAdam, 2021). Crucially, non-refoulement is not merely a substantive prohibition; it carries inherent procedural implications. States must establish

fair and effective procedures to assess whether an individual faces a real risk of persecution or serious harm upon return.

The United Nations High Commissioner for Refugees (UNHCR) has consistently emphasised that fair and efficient asylum procedures are essential to ensuring compliance with non-refoulement obligations (UNHCR, 2019). Without adequate procedural safeguards such as individualised assessment, access to legal advice, and the right to appeal, there is a heightened risk of erroneous decision-making leading to refoulement.

International human rights bodies have reinforced this interpretation. The Human Rights Committee has held that removal decisions must be preceded by an adequate and individualised examination of risk under the International Covenant on Civil and Political Rights (ICCPR) (Human Rights Committee, 2004). Similarly, the Committee Against Torture has required effective procedural mechanisms to evaluate claims under the Convention Against Torture (CAT) (Committee Against Torture, 2017). These developments demonstrate that procedural fairness is embedded within the substantive protection framework.

c. Fair Hearing and Effective Remedy under Human Rights Law

Beyond non-refoulement, asylum procedures are shaped by broader fair trial and due process guarantees. Article 14 of the ICCPR protects the right to a fair hearing in the determination of rights and obligations in a suit at law. While asylum proceedings are administrative rather than criminal in nature, international jurisprudence increasingly recognises that removal decisions affecting fundamental rights engage due process standards.

In addition, Article 2(3) of the ICCPR obliges states to provide an effective remedy for violations of protected rights. In the asylum context, this requires access to meaningful appellate review capable of suspending removal where there is a risk of irreparable harm (Human Rights Committee, 2004). The European Court of Human Rights (ECtHR) has similarly held that effective remedies must be available in expulsion cases where Article 3 risks are raised (*M.S.S. v Belgium and Greece*, 2011).

These provisions collectively suggest that although the Refugee Convention does not prescribe detailed procedural rules, states are constrained by parallel human rights obligations that impose minimum standards of fairness, impartiality, and effectiveness.

d. Regional Frameworks and the African Continent

Regional instruments further illuminate procedural expectations. In Africa, the Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969 expands the refugee definition to include persons fleeing external aggression, occupation, foreign domination, or events seriously disturbing public

order. While the OAU Convention also lacks explicit procedural detail, its broader protective orientation underscores the importance of accessible and fair determination processes.

Nigeria has domesticated both the 1951 Convention and the OAU Convention through national legislation, thereby integrating international refugee norms into its domestic legal order. However, domestication does not automatically ensure procedural harmonisation with international standards. The practical implementation of RSD procedures remains largely within administrative control, demonstrating how formal legal incorporation may coexist with procedural divergence.

e. Procedural Autonomy and Its Limits

The cumulative effect of these legal frameworks reveals a dual structure. On one level, states retain procedural autonomy due to the Refugee Convention's silence. On another, this autonomy is circumscribed by binding human rights norms requiring effective risk assessment and fair process.

The tension between these levels creates space for what may be termed procedural fragmentation. While no universal procedural code exists, international law clearly demands that domestic asylum systems be capable of identifying protection needs accurately and preventing wrongful return. Where procedural arrangements undermine this objective through excessive evidentiary burdens, truncated appeal processes, or inadequate access to representation, they risk violating not only human rights obligations but also the foundational purpose of refugee law.

f. Conceptualising Procedural Fragmentation in Refugee Status Determination

The diversity of asylum procedures across jurisdictions is frequently described as an inevitable consequence of state sovereignty. However, not all diversity amounts to fragmentation. This section develops a conceptual distinction between legitimate procedural variation and procedural fragmentation, arguing that fragmentation arises where divergences in asylum processes generate structural inconsistencies that undermine the effective protection of rights.

g. Procedural Diversity versus Procedural Fragmentation

International refugee law does not prescribe a single institutional model for Refugee Status Determination (RSD). States may choose administrative, quasi-judicial, or judicial systems; they may allocate decision-making authority to ministries, independent tribunals, or specialised refugee commissions. Such diversity reflects differences in legal traditions, institutional capacity, and constitutional arrangements.

Procedural diversity, in itself, is not incompatible with international law. Indeed, Hathaway and Foster (2014) acknowledge that the Refugee Convention leaves procedural design largely to domestic authorities. The problem arises, however, when procedural differences are so pronounced that they affect the reliability, accessibility, and fairness of protection outcomes.

Procedural fragmentation, as used in this article, refers to systemic disparities in asylum procedures that create uneven levels of rights protection across jurisdictions, thereby exposing asylum seekers to materially different risks depending on where their claims are assessed. Fragmentation is not merely institutional variety; it is divergence that carries substantive consequences for the enjoyment of internationally protected rights.

h. Dimensions of Procedural Fragmentation

Procedural fragmentation in RSD systems may manifest along several dimensions to wit:

i. Evidentiary Standards and Burden of Proof

Asylum claims frequently involve limited documentary evidence. International guidance recognises that asylum seekers may face difficulty substantiating persecution claims and that decision-makers should apply a “benefit of the doubt” approach where appropriate (UNHCR, 2019). Nevertheless, national systems vary considerably in how evidentiary burdens are interpreted and applied.

In highly legalised systems such as the United Kingdom, decision-makers assess claims against structured country-of-origin information and apply detailed credibility analysis frameworks. Yet critics argue that stringent credibility assessments and elevated evidentiary expectations may disadvantage vulnerable applicants (Thomas, 2022). In contrast, systems with limited institutional capacity may rely more heavily on administrative discretion, potentially resulting in inconsistent reasoning or insufficiently reasoned decisions.

Where evidentiary thresholds are applied inconsistently or excessively restrictively, the risk of erroneous refusal increases. Such errors carry potentially irreversible consequences where removal follows.

ii. Appeal and Review Mechanisms

An effective asylum system requires mechanisms for reviewing initial decisions. The availability, independence, and suspensive effect of appeals are critical to safeguarding against wrongful refoulement. The United Kingdom provides structured appellate review through specialised immigration tribunals, with further recourse to higher courts on points of law (Senioret al, 2020, UK Government, 2022). However, legislative reforms and accelerated procedures have, at times, restricted appeal rights for certain categories of applicants (Peris, 2022).

Nigeria's system, by contrast, relies primarily on administrative review within executive structures (Adepoju, 2019). While judicial review may be theoretically available, the absence of a specialised asylum appellate framework limits systematic oversight (UNHCR, 2022).

These divergent models illustrate how fragmentation can arise not simply from different institutional arrangements, but from disparities in the robustness and accessibility of remedial safeguards.

iii. Detention and Accelerated Procedures

Detention policies and fast-track procedures represent another dimension of fragmentation. Accelerated asylum processes may prioritise administrative efficiency over thorough examination. International standards require that procedural safeguards remain intact even in expedited contexts (UNHCR, 2019).

In the United Kingdom, detention has been used in certain immigration contexts, though subject to judicial oversight. Concerns have been raised regarding the impact of detention on applicants' ability to prepare their cases effectively. Nigeria, while not operating large-scale immigration detention systems in the same manner, faces resource constraints that may affect the timeliness and depth of individualised assessments.

Fragmentation thus emerges not only through overt legal divergence but also through differential institutional capacity and policy orientation.

iv. Vertical and Horizontal Fragmentation

Procedural fragmentation operates at both vertical and horizontal levels.

Vertical fragmentation refers to inconsistencies between international norms and domestic implementation. Even where states formally incorporate the Refugee Convention and related human rights treaties, domestic procedures may fall short of fully operationalising procedural guarantees.

Horizontal fragmentation refers to disparities between states. An asylum seeker's procedural safeguards may differ dramatically depending on whether their claim is assessed in London or Abuja. While refugee status is grounded in universal criteria, access to protection becomes mediated by national procedural architectures.

The combined effect of vertical and horizontal fragmentation is the production of a geographically contingent protection regime. In such a system, international refugee law risks becoming uneven in application, despite its universalist aspirations.

vi. Fragmentation and the Erosion of Substantive Rights

Procedural fragmentation has direct implications for substantive refugee protection. The determination of refugee status is an evidentiary and credibility-based exercise. Minor

procedural variations can produce significantly different outcomes in similar factual scenarios.

If an applicant is denied access to legal advice, subjected to truncated timelines, or assessed under restrictive evidentiary standards, the likelihood of erroneous rejection increases. Since refugee status is declaratory rather than constitutive, wrongful refusal does not negate an individual's refugee status in fact, but it may result in removal to persecution. In this sense, procedural fragmentation indirectly erodes the principle of non-refoulement. The protection afforded by international law becomes contingent upon procedural robustness. Where procedures are weakened, the risk of refoulement intensifies.

Comparative Analysis: The United Kingdom and Nigeria

This section applies the conceptual framework of procedural fragmentation to two jurisdictions: the United Kingdom and Nigeria. By examining institutional structures, evidentiary and credibility standards, access to legal representation, appeals mechanisms, and detention policies, this analysis illustrates how procedural fragmentation operates both in developed and developing contexts, producing comparable risks to asylum seekers' rights.

a. Institutional Structures

In the United Kingdom, decision-making authority is primarily vested in the Home Office, with administrative appeals handled by the First-tier Tribunal (Immigration and Asylum Chamber), and further judicial review available in higher courts (UK Government, 2022). The system benefits from a clear chain of accountability, procedural rules codified in secondary legislation, and access to publicly funded legal support for eligible applicants.

Nigeria's asylum system is administered by the NCFRMI under the National Commission for Refugees Act (NCRA), 2016. Decision-making is largely administrative, with limited formalised appeals mechanisms. While Nigeria has ratified both the 1951 Refugee Convention and the 1969 OAU Convention, the domestic RSD framework lacks comprehensive procedural rules, structured tribunals, or dedicated judicial oversight (Adepoju, 2019). Institutional capacity constraints also affect the timeliness and thoroughness of claim adjudication.

The divergence in institutional arrangements illustrates how procedural fragmentation arises from differences in legal tradition, governance capacity, and institutional design. While the UK system prioritises formalised oversight, Nigeria's administrative model relies more heavily on discretionary decision-making.

b. Evidentiary and Credibility Assessment

Evidentiary standards and credibility assessment practices are central to RSD. In the UK, claimants must provide coherent, detailed narratives supported by country-of-origin information, expert reports, and documentary evidence where possible (Thomas, 2022). Decision-makers apply structured credibility frameworks and may reject claims if inconsistencies are deemed significant. Critics argue that stringent evidentiary requirements and accelerated processing can disadvantage applicants lacking access to documentation or legal advice.

In Nigeria, the RSD process emphasises administrative discretion, with officials assessing claims primarily through oral interviews and limited documentary evidence. While the approach is flexible, the absence of formalised procedures and detailed guidance can produce inconsistent outcomes across different offices or cases (Adepoju, 2019). Applicants may receive substantially different treatment depending on the adjudicating officer, creating horizontal fragmentation even within the same national system.

c. Access to Legal Representation

Legal representation is a key determinant of fair process. International human rights law, particularly the right to an effective remedy under the ICCPR, implies that individuals must have a meaningful opportunity to present their claims (Human Rights Committee, 2004). In the UK, publicly funded legal aid is available to asylum seekers meeting eligibility criteria, but funding cuts and geographic limitations can restrict access (Echwald, 2024; Refugee Council, 2021). Where legal advice is inaccessible, claimants face a higher risk of procedural error, particularly in complex credibility assessments or appeal preparation.

Nigeria's asylum system lacks comprehensive state-funded legal support. Legal assistance is often provided through NGOs, UNHCR programmes, or pro bono arrangements (Ekpeowoh & Okon, 2024). Access depends on geographic proximity to service providers and the capacity of civil society actors, leading to uneven procedural outcomes. In practice, many asylum seekers navigate the RSD process without formal legal representation, increasing the likelihood of misjudged claims.

Variations in access to legal assistance can significantly affect the quality of claims presented and the ability to challenge adverse decisions. Where representation is absent or structurally inaccessible, procedural fragmentation deepens.

d. Appeals and Review Mechanisms

The UK provides structured appeals with suspensive effect, meaning claimants are not removed during the appeal process unless expedited procedures apply (UK Government, 2022). Judicial oversight ensures that legal errors or procedural irregularities can be challenged, strengthening procedural fairness. However, accelerated procedures, such as

the “fast-track” system, may reduce effective access to appeal in certain cases, demonstrating that even institutionalised systems are not immune to fragmentation.

Nigeria relies primarily on administrative review within NCFRMI and judicial review through the ordinary court system. Courts may review decisions for legality, but there is no specialised appellate tribunal for asylum cases. The absence of a structured review process increases the risk of arbitrary or inconsistent decision-making and reduces the ability of claimants to challenge errors effectively.

e. Detention and Accelerated Procedures

Detention and procedural expediency constitute another dimension of fragmentation. In the UK, immigration detention may be applied for administrative purposes, including pending removal or fast-track processing. While subject to legal safeguards, detention may limit claimants’ ability to prepare their cases and access legal advice (Refugee Council, 2021).

Nigeria does not operate large-scale asylum detention systems, but resource limitations often lead to administrative delays and informal procedural shortcuts. These may functionally resemble accelerated procedures, reducing the thoroughness of individual assessments. Consequently, even in the absence of formal detention, the practical effect may be a diminished opportunity for claimants to present their cases fully.

f. Comparative Observations

The comparative analysis demonstrates that procedural fragmentation is a systemic feature of both the UK and Nigerian asylum systems. In the UK, fragmentation arises from policy choices, procedural reforms, and resource constraints, despite formal institutionalisation. In Nigeria, fragmentation results primarily from underdeveloped institutional structures, reliance on administrative discretion, and limited legal infrastructure.

Across both jurisdictions, the practical effect is that asylum seekers’ protection is contingent upon the procedural architecture in which their claims are assessed. The divergence between institutional models, evidentiary standards, access to legal representation, appeals, and detention practices illustrates horizontal and vertical fragmentation, with clear implications for the fair and consistent protection of refugee rights.

Impact of Procedural Fragmentation on Asylum Seekers’ Rights

Procedural fragmentation is not merely a technical administrative concern: it materially affects the enjoyment of asylum seekers’ internationally protected rights. Although refugee protection is grounded in universal substantive standards, the lived experience of asylum seekers demonstrates that procedural design shapes outcomes in ways that can either

protect or undermine those rights. Procedural fragmentation produces differential access to justice, increases the risk of wrongful refusal, and compounds vulnerabilities among marginalised claimants.

a. Fair Hearing and Procedural Equality

The right to a fair hearing is embedded in international human rights law and arises in multiple instruments, including Article 14 of the ICCPR (United Nations, 1966). A fair hearing requires that asylum seekers have a meaningful opportunity to present their claims, challenge adverse findings, and have decisions made by an impartial decision-maker (Hathaway & Foster, 2014).

Procedural fragmentation can undermine these conditions. In the UK, for example, cuts to legal aid and accelerated procedures have been criticised for diminishing claimants' ability to prepare coherent submissions. Bonner and Hart (2020) note that legal aid restriction has disproportionately affected vulnerable groups, including women subjected to gender-based persecution. Similarly, the introduction of designated "priority removal zones" has generated concerns about limited timeframes for preparing evidence, particularly for people with complex protection needs (Sales, 2021).

In Nigeria, fragmented procedures exacerbate challenges in establishing coherent case narratives. The absence of structured country-of-origin guidance and inconsistencies in interview techniques can result in unpredictable decision outcomes. According to Adepoju (2019), Nigeria's administrative RSD process often relies on ad hoc judgement calls, with limited procedural safeguards to ensure equal treatment among applicants. The combined effect in both settings is the erosion of procedural equality and fair hearing guarantees.

b. Effective Remedy and Appeal Rights

An effective remedy is a fundamental component of the right to a fair process. Article 2(3) of the ICCPR and Article 13 of the European Convention on Human Rights (ECHR) confirm that domestic law must provide accessible, independent remedies for violations of protected rights (UN Human Rights Committee, 2004; Council of Europe, 2010). In the asylum context, effective remedies include meaningful appeals, suspensive effect on removal, and judicial oversight of substantive and procedural errors.

Procedural fragmentation disrupts this safeguard in multiple ways. In the UK, successive legislative reforms have aimed to expedite asylum processing; the ZAT cases (2020) upheld aspects of accelerated procedures but raised concerns about procedural fairness where claimants had limited time to prepare complex evidence (UK Supreme Court, 2020). These fast-track procedures and restrictive appeal modalities for certain categories (e.g., inadmissible claims) have been criticised in academic and media commentary for limiting access to review (Spijkerboer, 2018; The Guardian, 2023). Critics observed that such

expedited timelines often disadvantaged individuals from conflict-affected regions such as Eritrea, Sudan, and Afghanistan, where documentation is scarce and trauma common (Refugee Legal Support, 2021). Also, an analysis by Peiris (2022) demonstrated that cases expedited under accelerated processes had significantly higher refusal rates compared to those subjected to full appellate scrutiny, suggesting that fragmented appeal structures can produce materially different outcomes.

The case of *R (on the application of ZAT and Others) v. Secretary of State for the Home Department (UK)* exemplifies how legal reforms driven by state policy objectives can produce procedural gaps, inadvertently weakening substantive guarantees for protection seekers.

In Nigeria, specialist appellate mechanisms are absent. Judicial review in ordinary courts is slow, resource-intensive, and often inaccessible for asylum seekers without legal counsel (Amnesty International, 2020). As a result, many negative decisions lodge effectively without realistic opportunities for review, compromising the right to an effective remedy. Although Nigeria lacks specialised asylum appellate courts, ordinary courts have occasionally addressed procedural irregularities. In *Okafor v. FRN (2018)*, the Federal High Court considered administrative flaws in a non-refoulement assessment, emphasising that procedural fairness is inherent in administrative actions affecting fundamental rights. However, the absence of a developed appellate culture on asylum issues limits the systemic impact of such decisions (Adepoju, 2019).

c. Non-Refoulement and Risk of Wrongful Return

Procedural fragmentation can increase the risk of wrongful return by undermining procedural safeguards that ensure thorough and accurate status determination. Research suggests that fragmented procedures, particularly where evidentiary standards are strict or access to representation is limited, correlate with higher rates of erroneous rejection. In the UK context, Crawley and Lester (2021) found that credibility-based refusals often rest on minor inconsistencies in testimony rather than substantive risk evidence, raising concerns about procedural rigidity leading to inaccurate outcomes. Furthermore, media reporting and legal analyses have highlighted cases where individuals were returned before claims of significant risk were fully examined, prompting public outcry and legal scrutiny (BBC News, 2022).

In Nigeria, limited procedural safeguards and reliance on standardised interviews without robust appeal systems heighten the risk that individuals with legitimate protection needs may be returned or left in precarious conditions. While formal removal to persecution is rarer given Nigeria's geographic position, the lack of systematic procedural protection can leave individuals in protracted uncertainty, infringing their dignity and security.

d. Vulnerability and Structural Inequality

Beyond formal legal protections, procedural fragmentation intersects with social vulnerability. Women, children, survivors of trauma, and LGBTQ+ individuals often face particular difficulties in navigating asylum systems (Schuster & Majidi, 2013). Where procedural safeguards are fragmented, these groups are disproportionately affected.

For example, specialised interview techniques that account for trauma and gender-sensitive questioning are more likely to be institutionalised in structured systems with robust procedural frameworks. Fragmented systems that treat all claimants under the same rigid procedural conditions are less equipped to recognise and accommodate diversity in claim presentation (UNHCR, 2020). As a result, procedural fragmentation can exacerbate inequality, undermining the substantive fairness of the asylum process.

e. Procedural Fragmentation and Administrative Justice

The literature on administrative justice highlights the importance of consistency, transparency, and accountability in decision-making (Craig, 2012). Fragmented asylum procedures, by contrast, can foster opacity and unpredictability. Asylum seekers may be subject to different evidentiary expectations, varying standards of review, and divergent institutional practices without clear, objective benchmarks.

This systemic inconsistency not only affects individual outcomes but also erodes public confidence in asylum systems. Jardine and El-Enany (2021) observe that unpredictable procedural practices fuel perceptions of arbitrariness, which can, in turn, justify harsher policy measures under the guise of “deterrence.” Thus, procedural fragmentation does not merely affect legal rights, it also shapes political narratives about asylum and protection.

Reconciling Sovereignty and Minimum Procedural Standards

Procedural fragmentation in Refugee Status Determination (RSD) reflects a structural tension between state sovereignty and international protection obligations. States legitimately determine their own administrative procedures, yet sovereignty is not absolute when domestic processes impact fundamental rights protected by international law. This section argues that procedural autonomy must be tempered by minimum normative standards derived from human rights principles, and illustrates this with caselaw, policy reforms, and country-of-origin scenarios.

a. Sovereignty and Its Limits in Asylum Procedure

State sovereignty is a core principle of international law. It encompasses the power to control borders, regulate entry, and design administrative processes (Goodwin-Gill & McAdam, 2021). However, sovereignty does not permit states to act in ways that defeat the object and purpose of their treaty obligations. The Vienna Convention on the Law of

Treaties holds that treaties must be interpreted in good faith and applied in a manner consistent with their purposes (United Nations, 1969).

In the asylum context, this principle means that states cannot adopt procedural mechanisms that effectively nullify substantive protection obligations such as non-refoulement. In *Demandare v. Sweden* (Communication No. 1620/2007, Human Rights Committee, 2010), the Human Rights Committee stressed that procedural rules must allow a proper examination of protection claims, and dismissals on procedural grounds alone risk breaching international obligations.

Similarly, the European Court of Human Rights (ECtHR) in *M.S.S. v. Belgium and Greece* (2011) highlighted that systemic deficiencies in asylum procedures, not merely individual errors, can constitute violations of the European Convention when they produce risks of ill-treatment upon return.

b. Country-of-Origin Scenarios and Procedural Risk

Afghanistan and Credibility Assessments

- I. Afghan asylum seekers often face credibility challenges due to traumatic experiences, disrupted documentation, and gender-based violence. Research shows that UK decision-makers frequently rely on rigid credibility frameworks that discount corroborative testimony in the absence of formal documents; particularly for women with sexual violence claims (Spijkerboer, 2018). This has resulted in higher refusal rates and reported unlawful removals, prompting legal challenges and public criticism.

Nigeria within West African Displacement Dynamics

- II. Nigeria's position as a host state for refugees from the Lake Chad Basin, Cameroon, and the Sahel exposes procedural weaknesses. Many asylum seekers arrive with limited formal evidence, and overstretched administrative processes can delay decisions for years (UNHCR, 2022). Fragmented procedural systems have resulted in protracted refugee situations where individuals remain in legal limbo, unable to access basic rights such as education or work, even when protection needs are clear.

c. Policy Reforms and Institutional Responses

Several jurisdictions have recognised fragmentation and taken steps toward procedural reform.

i. UK Nationality and Borders Act 2022

The Act introduced controversial reforms including differentiated procedures for individuals arriving irregularly (UK Parliament, 2022). While the government justified these changes as deterrence measures, human rights advocates have raised concerns that

bifurcated procedures create two classes of asylum seekers with unequal procedural protections (Human Rights Watch, 2023). This legislative context reinforces the article's thesis that procedural sovereignty, when unchecked, can produce substantive rights risks.

ii. Nigeria's Asylum System Reform

Nigeria's adoption of the NCRA, 2016 marked progress in formalising RSD procedures (Federal Republic of Nigeria, 2016). However, implementation challenges including limited training in international refugee law and inconsistent interview protocols, have perpetuated procedural fragmentation. Civil society groups have called for specialised adjudication units and enhanced legal aid to mitigate these gaps (Amnesty International, 2020).

Normative Framework for Minimum Procedural Standards

To reconcile state sovereignty with international obligations, the article proposes a normative framework grounded in human rights and administrative justice principles. Minimum procedural standards should include:

- i. **Meaningful access to legal representation:** Providing legal aid where needed to ensure applicants can articulate risks and evidence (UNHCR, 2019).
- ii. **Adequate timeframes for case preparation:** Avoiding arbitrary deadlines that disadvantage vulnerable claimants.
- iii. **Independent appellate mechanisms:** Institutionalising review bodies with suspensive effect to correct procedural and substantive errors.
- iv. **Trauma-informed interviewing practices:** Especially for survivors of gender-based and conflict-related violence.
- v. **Standardised evidentiary guidance:** Harmonising approaches to credibility and corroborative evidence (Goodwin-Gill & McAdam, 2021).
- vi. **Transparency and accountability in decision-making:** Publishing reasoned decisions and procedural guidelines to reduce inconsistency.

Such standards would not eliminate all procedural diversity (nor should they) but would ensure that diversity does not translate into fragmentation that undermines core rights protections.

Reconciling Sovereignty and Human Rights

State sovereignty must be understood as responsible autonomy, freedom of choice constrained by international norms that protect fundamental rights. As the UNHCR Executive Committee has emphasised, procedures must be "just, fair and efficient" (UNHCR, 2019). Where domestic procedures fall short of these benchmarks, international law enjoins states to adjust their systems accordingly.

Embedding minimum procedural standards within domestic asylum law would provide a coherent normative boundary on procedural sovereignty while preserving legitimate state discretion over administrative design. This approach aligns with broader trends in human rights law, which balance state autonomy with indivisible rights protections.

Conclusion

Procedural fragmentation in RSD poses a significant challenge to the effective protection of asylum seekers' rights. Through a comparative analysis of the UK and Nigeria, this article has demonstrated that procedural divergence in evidentiary standards, access to legal representation, appeals mechanisms, and administrative capacity, can materially affect substantive outcomes, even when states formally comply with international obligations. Both jurisdictions illustrate that procedural fragmentation is not confined to legal tradition or economic context; rather, it is a systemic feature of the global refugee protection regime arising from the procedural silence of the 1951 Refugee Convention.

From a policy perspective, the findings underscore the urgent need for minimum procedural standards to safeguard fair hearing, effective remedy, and non-refoulement protections. The normative framework proposed encompassing access to legal representation, adequate preparation time, independent appellate mechanisms, trauma-informed interviews, and transparent decision-making provides actionable guidance for states seeking to reconcile procedural autonomy with human rights obligations. Implementing these standards would mitigate the risks posed by fragmentation, promote consistency, and enhance the legitimacy and fairness of domestic asylum systems.

Theoretically, this study contributes to the emerging literature on procedural fragmentation as a structural phenomenon in international refugee law. By distinguishing between legitimate procedural diversity and fragmentation that undermines rights, the article offers a conceptual lens for analysing systemic vulnerabilities in asylum procedures. This framework is transferable to other jurisdictions and comparative studies, providing a foundation for assessing procedural fairness in varied legal contexts.

Finally, the study identifies avenues for future research. Empirical analyses of asylum decisions across multiple jurisdictions could quantify the impact of procedural fragmentation on approval rates, appeals outcomes, and protection efficacy. Additionally, research could examine the interaction between procedural fragmentation and social vulnerability, particularly for women, children, and survivors of trauma. Such research would further inform policy reforms and contribute to building more equitable and predictable asylum systems globally.

In conclusion, procedural fragmentation is not an inevitable feature of state sovereignty; it is a manageable risk. By adopting minimum procedural standards informed by human rights norms and administrative justice principles, states can exercise their sovereign

discretion responsibly while ensuring that the protection of refugees remains consistent, fair, and effective.

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