

UNIVERSITY OF NAIROBI
INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

REPATRIATION IN THE POST COLD WAR PERIOD: A CASE STUDY OF
REPATRIATION OF SOMALI REFUGEES IN DADAAB, KENYA

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R50/81626/2015

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A Research Project Submitted In Partial Fulfilment For The Award Of The
Degree In Masters Of Arts In International Studies To The Institute Of
Diplomacy And International Studies University Of Nairobi

2017

DECLARATION

Declaration by the Student

I hereby declare that this research document is my original work and has not been presented for a degree or other award in any other university.

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DEDICATION

I would like to dedicate this work to my late grandmother Hoyo Muslimo Abdirahman, my parents, Nuria Abdi Affey and Mohamed Nunow, my husband Abdirahim Yussuf, my siblings and my uncle Amb Mohamed Abdi Affey.

ACKNOWLEDGMENT

First and foremost I owe my outmost gratitude to my supervisor Dr Kizito Sabala who has guided me in doing this study by pointing out areas that needed corrections and changes. Through his guidance, I was able to complete my document in the specified time.

I am greatly indebted to my fellow colleagues from University of Nairobi who were helpful in carrying out my study. I was able to understand some aspects which were initially hard as I held discussions with fellow colleagues.

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ABBREVIATION

AU	African Union
COA	Country of Asylum
COMESA	Common Market for Eastern and Southern Africa
COO	Country of Origin
DRA	Department of Refugee Affairs
EAC	East Africa Community
ECOSOC	United Nations Economic and Social Council
GOK	Government of Kenya
ICCPR	International Covenant on Civil and Political Rights
IDPs	Internally Displaced Persons
ILO	International Labour Organization
NGOs	Non Governmental Organizations
OAU	Organization of African Unity
RCT	Rational Choice Theory
RENAMO	<i>Resistência Nacional Moçambicana</i>
SNM	Somali National Movement
SWAPO	South West African People's Organisation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council

ABSTRACT

Repatriation to the country of origin is often times seen as a perfect solution for not only the refugees but also the host countries. Kenya, Somalia and the UNHCR signed a Tripartite Agreement in November 2013 administering the repatriation of Somali refugees from Kenya to 'safe zones' in Southern Somalia. The main aim of this research was to investigate repatriation in the post cold war period: a case of repatriation of Somali refugees in Dadaab, Kenya. The specific objectives were; to review the repatriation process around the world, to examine the normative and institutional framework that supports repatriation process and to examine the repatriation process of Somali refugees from Kenya to Somalia. The data analysis was qualitative in nature thus the study made use of content analysis. Primary data was collected from Somali refugees in Dagahaley, Ifo, Ifo2, Kambios and Hagadera camp in Dadaab camp. Primary data was collected through the use of face-to-face interviews and phone interviews. Purposive sampling was employed in the study to identify respondents.

The sample comprised of 20 refugees, 10 local community representatives' aid workers in the refugee camps, 5 representatives from Ministry of foreign affairs, 5 representatives from department of immigration. Secondary data was collected through reviewing relevant material such as UNHCR statistical data and research findings by scholars in the field. Content analysis help to capture the in-depth opinions of the respondents' decision making aspects of the problem under investigation. Emerging themes from the interviews and from document analysed formed the basis of further collection and summary. The analyzed data was presented qualitatively based on the respondents' in-depth analysis and measurement of their arguments, opinions, and ideas with regard to the problem under investigation.

The study established that the current repatriation programme does not meet international standards for voluntary refugee return. The study concludes that the repatriation process would negatively affect the country of origin as it has no enough social amenities and infrastructures for its citizens. The study further established that the economy of the country of origin is likely to be affected as the number of dependants is increased. The study also established that repatriation is likely to affect the security status of the country since the people repatriating have no jobs or means of income thus desperate and may thus end up joining terrorist groups in the country. The study recommends that the Kenyan government should reconsider the repatriation process of the Somali refugees in Dadaab and deal with the insecurity situation in the country independently. The Kenyan government should extent the repatriation period instead of giving a fixed date when all the refugees should be gone. The government of Somalia should work on its economy by creating better infrastructure such as houses and roads; social amenities such as schools, hospitals.

Chapter One

Introduction to the Study

1.1 Introduction and Background to the Study

The growing number of refugees around the globe is seen as a noteworthy ordeal that faces the entire world.¹ Africa has been one of the noteworthy regions experiencing soaring numbers in refugee increase with its resultant impacts. Africa has the highest number of refugees as 29% of 65.3 million refugee population hail from it.² Additionally, it has the highest number of countries that produce refugees as 9 out of the 20 nations which have refugees are from Africa. Despite the independence of many African countries by 1980s, the refugee menace is still experienced in Africa. The refugee populace in Africa by 2017 was around 18 million.³ African nations bear the significant weight of facilitating the expansive number of refugees.⁴

Repatriation is a preferred durable solution for refugee situations by UNHCR. However before World War II and until 1985, resettlement was the predominant solution.⁵ The Western countries started promoting repatriation after the Cold War when the number of asylum seekers arriving from the global South augmented and the labour supply exceeded the available work as well as change in political motive.⁶ In Africa, the idea of repatriation of refugees started to take root in the late 1980s and the

¹ Pew Research Center, (2016). Key Facts about the World's Refugees. <http://www.pewresearch.org/fact-tank/2016/10/05/key-facts-about-the-worlds-refugees/>

² UNHCR. (2015). Global Trends 201. <http://www.unhcr.org/figures-at-a-glance.html>

³ UNHCR. (2016). Africa. <http://www.unhcr.org/africa.html>

⁴ Tanle, A. (2013). Refugees' Reflections on their Stay in the Buduburam Camp in Ghana. *GeoJournal*, 78(5), 867–883.

⁵ Chimni, B. S. (1999). *From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems*. Centre for Documentation and Research, United Nations High Commissioner for Refugees.

⁶ Ibid

1990s. Repatriation according to Bradley⁷ is a definitive change in the structure of the international refugee system, stirred by the interests of host, states of origin and donor states.

Records show that 3,500,000 Afghanistan refugees in 2004 went back home from Pakistan while 107,000 Iraq refugees were repatriated from Iran after been hosted for about 30 years. More Iraq refugees from Syria, Lebanon were on 2009 repatriated.⁸ In Africa it started in Ethiopia where refugees were repatriated in Djibouti in 1983 and repatriation of the Namibians in 1989 while Mozambique refugees were repatriated in 1994. In the EA community there was the repatriation of Somali refugees in Kenya between 1993 and 1994. In 2008 the Liberian refugees in Ghana were returned home after being hosted for two decades.⁹ As the peace strategy was held in Southern Sudan, around 294,500 refugees and 1.7 million IDPs returned to their country of origin. UNHCR accomplished simultaneousness with the organizations of Tanzania and Burundi on a heap of answers for long-staying refugees in Tanzania. Today, numerous African host expresses no longer bolster nearby combination and rather emphatically support repatriation. African nations have strengthened calls for repatriation particularly because of the cost ramifications of facilitating and incorporating refugees.¹⁰

The Geneva Convention Relating to Status of Refugees of 28th July 1951, and Protocol on Status of Refugees of 31st January 1967 held in New York, a refugee is

⁷ Bradley, M. (2014). Rethinking Refugeehood: Statelessness, Repatriation, and Refugee Agency. *Review of International Studies*, 40(01), 101-123.

⁸ United Nations High Commissioner for Refugees, (2015). *UNHCR statement on the future of Kenya's Dadaab Refugee Camps* [Briefing notes].

⁹ Tanle, A. (2013). Refugees' reflections on their stay in the Buduburam camp in Ghana. *GeoJournal*, 78(5), 867–883.

¹⁰ PM News (2017). 49,376 Somali Refugees Repatriated. <https://www.pmnewsnigeria.com/2017/02/28/49376-somali-refugees-repatriated/>

—a person owing to well-founded fear of persecution for reasons of nationality, religion, race, membership of a particular social group or political opinion, is outside the country of his nationality and unable or, owing to such fear, is unwilling to avail himself the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹¹ The OAU and the 1951 Refugee Geneva Convention commands nations of shelter, nations of inception, international offices and international and inter-governmental organisations to help refugees with the procedure of return, and give specifically that condition of cause utilize the news media. The OAU now AU to welcome evacuees home and give affirmation in connection to winning conditions, while have nations guarantee such data is gotten. Article V gives that upon return, displaced people must not be punished for having fled.

The 1969 tradition was the first and remains the main worldwide legitimate instrument to demand intentionality of displaced person repatriation. It is important that the idea shows up in UNHCR's statute, the consequence of a UN General Assembly determination got 19 years before the 1969 Tradition. Its creativity aside, article V (1) is a 'serious clarification of rule which is hailed as addressing an early verbalization of a decision that proceeded to address an establishment of the overall organization for outcast protection. Shockingly, it has been confused to recommend that repatriation is the essential answer for displaced people on the mainland.¹²

The UNHCR has a duty internationally to ascertain protection of displaced people while contemplating durable elucidations for their plight. Hence, UNHCR outlined

¹¹ UNHCR, Note on Voluntary Repatriation, (27 August 1980). www.unhcr.org

¹² Landau, L. & Jacobsen, K (January 2004). *Refugees in the New Johannesburg*.

three solutions to the problem as follows: Resettlement, Development through community incorporation, and the four R's: reintegration, repatriation, reconstruction, and rehabilitation.¹³ Nonetheless, Scalettaris claims that the refugee management outlined by UNHCR had its preference shifted from resettlement to repatriation after the Cold War.¹⁴ Conversely, the UNHCR delineated indispensable preconditions, which are being met while promoting repatriation of refugees. These factors include the willingness to return, improved conditions assuring the dignity and safety of the returnees, formal agreement between the concerned actors, security assurance by the country of origin, and finally contact of UNHCR to the returnees.¹⁵

The Somalia situation has progressed essentially as from 2011 thus influencing Kenya, which hosts about half a million Somali refugees.¹⁶ With hopes to prosper in Somalia, considerations for repatriating the refugees have come up. This is further backed by the insecurity cases in the camps which have not only affected the refugees but Kenyans in major cities such as Nairobi.¹⁷ Reports indicate that the security condition in the Dadaab region has ended up being high-danger and unsafe, after a movement of events, including the abduction of help authorities and destructive attacks on pariah pioneers and Kenyan security qualities.¹⁸ This incited to more restrictive endeavours to set up wellbeing that lessened sympathetic access to the camps and obliged the Government of Kenya, UNHCR, associates and the uprooted

¹³ UN High Commissioner for Refugees (November 2000). *Evaluation of UNHCR's Policy on Refugees in Urban Areas: A Case Study Review Of New Delhi*. Evaluation and Policy Analysis Unit. 17

¹⁴ Ibid

¹⁵ UN High Commissioner for Refugees (November 2000). *Evaluation of UNHCR's Policy on Refugees in Urban Areas: A Case Study Review Of New Delhi*. Evaluation and Policy Analysis Unit. 17

¹⁶ UNHCR (2013) Global Appeal Update

¹⁷ PM News (2017). 49,376 Somali Refugees Repatriated.

<https://www.pmnewsnigeria.com/2017/02/28/49376-somali-refugees-repatriated/>

¹⁸ Ibid

individual organization to explore better ways to deal with the movement of help and confirmation.¹⁹

The Somali refugees have been time and again been asked by the Kenyan government to consider returning to their country.²⁰ The premise of the choice to repatriate Somali refugees by the Government of Kenya was to guarantee that advantage was presented to Kenyans as few refugees were seen to pose danger to Kenyans. Basically, the Kenyan culture had encountered naughtiness or agony which required the repatriation of Somali refugees.²¹ It is foreseen that once Somali refugees backpedal to their Country of origin, the instability in the nation will diminish. The Kenya government has additionally kept up that it has been, excessively, carrying the immense weight of the Somali refugees with constrained support from the universal group.²² Of concern, in any case, is regardless of whether the present security condition inside Somalia is agreeable to deliberate repatriation and if the Kenyan government will watch the human rights commitments identifying with Somali refugees according to the 1951 Refugee Convention that stresses the guidelines of how the host countries should treat the refugees.

The 2015 attack on Garissa University prompted the government of Kenya to fasten the process by declaring the closure of Dadaab camp to be end of November 2016. The Kenyan government requested UNHCR to close Dadaab camps and begin repatriation of Somali refugees in the camp and urban centres. The choice by the Kenyan government represented in view of investigative assertions that attacks were

¹⁹ UNHCR (2012) *The State of the World's Refugees: In Search of Solidarity*, 2012, available at: <http://www.refworld.org/docid/5100fec32.html>-accessed 19 November 2013

²⁰Supra note 53.

²¹ UNHCR (2013) *Global Appeal Update*

²² Bradley, M. (2014). Rethinking refugeehood: statelessness, repatriation, and refugee agency. *Review of International Studies*, 40(01), 101-123.

organized in these camps.²³ The UNHCR however pointed out that the aim of Kenya unexpectedly shutting the camp would prompt crises. Human rights bodies have also come up strongly condemning the Kenyan government for taking such ruthless actions without proper evidence to pinpoint their claims.

The support that the refugees enjoyed from the international as well as the local non-governmental organizations bodies saw the high court extend the closure period from November 2016 to June 2017. Although these bodies have been fighting for further extension, the US politics with Trump as the president and ban on Muslims, have killed the morale of the organizations. The ban affected the movement of dozens of Somali refugees who had been chosen for asylum in the United States and thousands others who had qualified for reintegration. These refugees therefore are left with the option of returning back home as it's seen as the best alternative since it's backed with a \$350 as a send-off package. Despite the lure of repatriation only 11 percent of the total Somali refugees in Kenya have returned back home. The process is thus slow implying that many Somali refugees are reluctant on going home.

1.2 Statement of the Problem

In numerous nations on the planet, there have been expanding occurrences of constrained repatriations of refugees, for example, Syrian refugees from Greece and Turkey.²⁴ In such cases, refugees are not given option choices. Groups have turned out to be progressively antagonistic towards refugees. In South Africa, for instance, exact information demonstrates that South Africans are in fact xenophobic towards

²³ The Daily Nation Kenya, In the wake of Garissa attack, *Kenya frustrated by the Dadaab issue*. Nation Media\

group Nairobi, April 14, 2015, Print

²⁴ Amnesty International, 'Turkey: Illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal', (1 April 2016) available at <https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/> accessed on 6/03/2017. In the past, Rwandese refugees from Tanzania were forcefully repatriated.

refugees.²⁵ Voluntary repatriation happens when conditions in the nation of inception have sufficiently enhanced to empower give back—a benchmark dictated by both the nation of shelter and the original nation.²⁶ It is thought to be a sturdy answer for removal, as refugees recover the rights that they lost inferable from uprooting from their nation of source.

Repatriation to the country of origin is often times seen as a perfect solution for not only the refugees but also the host countries. Following the successful repatriation of South Sudanese refugees, it is seen as the durable solution for refugee crises by both the Kenyan and Somalia governments and the UNHCR. The Somali refugees are seen as a threat not only amongst themselves but also to the whole of Kenya. The Kenyan government did not however just come up with the repatriation process but it was rather a lengthy process considered time and again. Kenya, Somalia and the UNHCR signed a Tripartite Agreement in November 2013 administering the repatriation of Somali refugees from Kenya to 'safe zones' in Southern Somalia.

The Tripartite Agreement by Kenya and Somalia government together with the UNHCR recommended voluntary repatriation of Somali refugees from Kenya to Somalia. Though voluntary repatriation has been given a lot of attention by the UNHCR, it remains doubtful whether it remains relevant as the 'most preferred solution' to the refugee crisis. Tentatively, no refugee can be repatriated against their will. In other words, as long as an individual satisfies the definition of a refugee as outlined in the legal instruments, they cannot be forcefully returned. Nonetheless, in exceptional circumstances a refugee may be legally and forcefully returned to their country of origin. The international community has designed many legal instruments

²⁵ 230Supra note 126 at 18

²⁶Maina A (2017). The Slow Repatriation Process of Somali Refugees in Dadaab. <http://www.worldpolicy.org/blog/2017/01/24/slow-repatriation-process-somali-refugees-dadaab>

aimed at protecting refugees. These instruments fall under various categories namely international human rights instruments, regional legal instruments and soft law instruments.

International human rights instruments recognize the right of individuals to return to their country of origin. The Universal Declaration of Human Rights (UDHR) provides for the right of return under Article 13 (2) as follows, ‘everyone has the right to leave any country, including his own, and to return to his country’. The Organization of Africa Union Convention governing the specific aspects of refugee problems in Africa, the African Charter on People and Human Rights are the regional legal instruments covering the refugees while the 1984 Cartagena Declaration on Refugees is a soft law instruments protecting refugees on voluntary repatriation. Present records by the UN refugee organization indicate that as of March 2017 an aggregate of 55,652 Somali refugees from Dadaab, Kenya had been repatriated. This study investigates the repatriation in the post-cold war period in the case of repatriation of Somali Refugees in Kenya by looking at the institutional and normative framework that supports the process.

1.3 Objectives of the Study

The main aim of this research was to investigate repatriation in the post-cold war period: a case of repatriation of Somali refugees in Dadaab, Kenya. The specific objectives include: -

- 1.3.1 To review the repatriation processes around the world
- 1.3.2 To examine the normative and institutional framework that supports repatriation processes
- 1.3.3 To examine the repatriation processes of Somali refugees from Kenya to Somalia.

1.4 Research Questions

1.4.1 How is the repatriation processes around the world?

1.4.2 What are the normative and institutional frameworks for refugee repatriation?

1.4.3 How are the repatriation processes of Somali refugees from Kenya to Somalia?

1.5 Justification of the Research Problem

1.5.1 Academic Justification

Numerous studies on refugee repatriation and how this can be done to handle the affected have been conducted over the years. The refugee repatriation is currently still stuck at the emergency phase where solid solutions to problems have not been offered and has not yet progressed wholly to finding durable solutions to refugee repatriation.²⁷ Refugee repatriation is still a new term that have not been fully accepted especially in African countries. This study investigates whether the situation on the ground is changing or not.

Several researches have been done to try and find solutions to these repatriation situations and thus there is substantial literature on refugees.²⁸ The realm of refugee repatriation is yet another area that has been widely researched by many scholars,^{29 30} most of who discredit its relevance in repatriating refugees due to economic constrains faced by the hosts. Little has been done on repatriation in post-cold war period which is the focus of this study.

²⁷ Pew research center, (2016). Key facts about the world's refugees. <http://www.pewresearch.org/fact-tank/2016/10/05/key-facts-about-the-worlds-refugees/>

²⁸ Haddad, E. (2008). *The refugee in international society: between sovereigns*, Cambridge, England, Cambridge University Press.

²⁹ Crisp, J. (2010). Forced displacement in Africa: Dimensions, difficulties, and policy directions. *Refugee Survey Quarterly*, 29(3), 1-27.

³⁰ Bradley, M. (2014). Rethinking refugeehood: statelessness, repatriation, and refugee agency. *Review of International Studies*, 40(01), 101-123.

This study may enrich the academic field and especially in refugee repatriation studies which is an issue that has largely been ignored with very little if any focus given to the area up until the recent spike in increased terror threats to the country by the terrorists.

1.5.2 Policy Justification

Repatriation has come to be designated by the international community of states and UNHCR as the ideal solution to the global refugee problem.³¹ The primacy of repatriation is based on the assumption that it permits refugees to return home and become re-established and reintegrate in their own community.³²

Recently UNHCR³³ has raised its involvement in voluntary repatriation operations, and it was felt that UNHCR field staff and their partners should have at their disposal a consolidation of the basic protection principles relating to voluntary repatriation, as well as of the office's operational experience in this field.

The findings of this study may enlighten all the stakeholders concerned with the management of refugee affairs about the short and long term effects of Kenya government policies on the Somali refugees seeking asylum in Kenya.

This study may benefit the government in critically looking and assessing its obligations with regards to protection of refugees under international law as well and establish how it can be proactive in creating a mutually benefiting relationship/situation between hosts and refugees.

³¹ UNHCR (2012a) Displacement: The New 21st Century Challenge. UNHCR Global Trends. UNHCR.

³² UNHCR Global Trends (2011) A Year of Crises. <http://www.unhcr.org/4fd6f87f9.html> accessed on 16/11/2012.

³³ UNHCR. (2016). Africa. <http://www.unhcr.org/africa.html>

1.6 Theoretical Framework

This study will be guided by Rational Choice Theory (RCT). The theory proposes that individuals rationally pursue their self-interests regardless of the context.³⁴ The theory is based on three characteristics mainly; individuals are motivated self-interest or egoism; the decision made have consequences and only an individual and not a group of person is involved. Rational Choice Theory equates what is rational with what promotes one's welfare (attainment of material resources, such as money, food, shelter, and other external goods). Sober et al.³⁵ argues that it is occasionally rational is altruistic. In many disciplines therefore of egoism altruism discussions take place within the framework of evolutionary arguments thus showing the plausibility of the emergence or evolution of altruism in natural settings would serve a long way to show that altruism can be beneficial to the agent in some broad sense.³⁶

As Martinelli³⁷ explains rational choice can describe, analyse and predict individual behaviour in a wide array of different situations and contexts of action. Coleman³⁸ develops a general theory of social action and pushes it so far as to cover all empirical cases. This is one of the most criticized points of his work, along with what his critics consider a double neglect of historical and social differences and the underestimated role of norms and collective identities.³⁹ In his work Coleman⁴⁰ explains slavery

³⁴ Green and Shapiro, 1994, *Pathologies of Rational Choice Theory; a Critique of Applications in Political Science*, Yale University Press: New Haven

³⁵ Sober, Eliot and Wilson, David Sloan. 1998. *Unto Others: The Evolution and Psychology of Unselfish Behavior*, Cambridge, MA: Harvard University Press.

³⁶ Ibid

³⁷ Martinelli, A. (2004). Rational choice and sociology. In J. Alexander, G. Marx, and C. Williams (Eds.), *Self, Social Structure, and Beliefs: Explorations in the Sociological Thought of Neil J. Smelser*. Berkeley: University of California Press.

³⁸ Coleman, J. (1988). Social capital in the creation of human capital. *American Journal of Sociology*, 94 (Supplement), S95-120.

³⁹ Ibid

⁴⁰ Coleman, J. (1988). Social capital in the creation of human capital. *American Journal of Sociology*, 94 (Supplement), S95-120.

within the rational choice paradigm; according to him it is rational to accept slavery, since it is a condition preferable to death. Coleman's account of slavery is based on the assumption that remaining alive is the ultimate goal for an individual and that therefore any condition keeping him/her alive is preferable to death⁴¹

Critics of Rational Choice Theory have frequently argued that its assumptions about self-interest, or egoism, are flawed. These critics claim that we at least sometimes act to benefit others. Rational Choice is criticized as too unilateral and incapable of accounting for the basic sociological questions of social order and social change; and it is judged hardly useful when collectivities instead of individuals, and macro-level structures and institutions instead of micro-level action, are to be analysed."⁴² Himmelweit⁴³ states that it should be recognized "that Rational Choice models are not the best way to analyse 'noneconomic' phenomena".

Boudon⁴⁴ indicates that Rational Choice Theory assumes that individual action is instrumental, namely that it has to be explained by the actors' will to reach certain goals. Boudon⁴⁵ observes that it is not possible to apply Rational Choice Theory in all those cases when "an actor does X because he believes in Z and Z implies his doing X independently of the consequences of X". Even in those instances when action is instrumental, it has to be admitted that it can mobilize beliefs that need to be

⁴¹ Martinelli, A. (2004). Rational choice and sociology. In J. Alexander, G. Marx, and C. Williams (Eds.), *Self, Social Structure, and Beliefs: Explorations in the Sociological Thought of Neil J. Smelser*. Berkeley: University of California Press.

⁴² Martinelli, A. (2004). Rational choice and sociology. In J. Alexander, G. Marx, and C. Williams (Eds.), *Self, Social Structure, and Beliefs: Explorations in the Sociological Thought of Neil J. Smelser*. Berkeley: University of California Press.

⁴³ Himmelweit, S. (1999). The limits of rational choice or why do economists become parents? Accessed may 2017 from <http://www.usyd.edu.au/su/econ/research/wp9911.pdf>.

⁴⁴ Boudon, R. (1998). Limitations of rational choice theory. *American Journal of Sociology* 104(3),817-828.

⁴⁵ Ibid

explained and that normally will not be explained by rational choice theory. This is the case of refugee decision-making processes vis-a-vis the choice of repatriation.

Nonetheless, in this study on refugee repatriation the application of the Rational Choice paradigm to the decision-making process carries all the limitations discussed above and fails in considering all those instances when the individual might choose the less 'beneficial' options simply because of beliefs, fears, emotional factors and other elements that cannot be explained in terms of rational utilitarianism.

1.7 Research Methodology

This section provides the research methodology for this study. The research methodology is presented in following sequence: study design, data collection methods, target population/sampling frame, sampling and sampling size, ethical issues, data analysis and presentation, scope of the study, limitations of research and chapter outline.

1.7.1 Sample Design

The study adopted a qualitative design method. Qualitative studies allow the study to explore behaviours, perspectives, feelings and experiences in depth through a holistic framework.

1.7.2 Data Collection Method

Primary data was collected from Somali refugees in Dagahaley, Ifo and Ifo2, Kambios and Hagadera in Dadaab camp. Primary data was collected through the use of face-to-face interviews and phone interviews. Purposive sampling was employed in the study to identify respondents. The sample comprised of 20 refugees, 10 local community representatives' aid workers in the refugee camps, 5 representatives from Ministry of foreign affairs, 5 representatives from department of immigration.

Secondary data was collected through reviewing relevant material such as UNHCR statistical data and research findings by scholars in the field.

1.7.3 Data Analysis/Presentation

By breaking the content of the material into a meaningful and pertinent unit of information, certain characteristics of the message was analysed and interpreted. Emerging themes from the interviews and from document analysis formed the basis of further collection and summary. The analysed data was presented qualitatively based on the respondents' in-depth analysis and measurement of their arguments, opinions, and ideas with regard to the problem under investigation.

1.8 Chapter Outline

Chapter one is the introduction to the study. It consists of the background of the study, statement of the research problem, objectives, justification, theoretical framework, hypotheses and methodology of study. Chapter two provides an overview of the repatriation process around the world. The chapter looks at various countries across the globe that has had their refugees repatriated. Other than Afghanistan refugees who have been repatriated since the cold war, other countries that have experienced repatriation are in Africa.

Chapter three examines institutional and normative frameworks that support repatriation process. The frameworks by the UNHCR on refugee repatriation will be examined as the first theme. The second theme looks at the Tripartite Agreement made by African countries in conjunction with the United Nations. The last theme under this chapter examines the Tripartite Agreement between Kenya and the United Nation High Commissioner for Refugees on the repatriation of Somali refugees in Dadaab.

Chapter four is a critical analysis of the repatriation process of Somali refugees from Kenya to Somalia. The second theme captures the response by the participants on the institutional and normative frameworks surrounding the Somali refugees repatriation followed by their response on the process of repatriation of Somali refugees from Kenya to Somalia. Chapter five draws conclusion of the study and provides a summary and the key findings. This chapter winds up the study by drawing recommendations and further suggestions for areas of study.

Chapter Two

Repatriation in the Post Cold War Period: Selected Cases

2.1 Introduction

Repatriation infers certain conclusion, an arrival to security and commonality, a rebuilding of request as-seemed to be, harmony.⁴⁶ Malkki⁴⁷ contends that refugees are subsequently dangerous individuals that exist as outsiders who hamper the order of the nation. This problem is rectified by (re)forming refugees as country state subjects through repatriation, and intentional repatriation specifically, which has turned into the favoured arrangement of the global group.⁴⁸ In the 1960s and 70s repatriation was not underlined as a critical sturdy answer for refugees. Until all the more as of late, the dislodging of refugees was for the most part thought to be lasting.⁴⁹ Some early refugee scholars proposed that repatriation was probably not going to have an essential part in the arrangement of refugee movements, especially those in Europe. However in the post-frontier time, the recurrence and size of repatriations in Africa has opposed the hypotheses of these early analysts. Since the mid-1960s, repatriation has been underlined similar to be the best answer for African refugees.

Repatriation as an answer for refugee circumstances without the assent and/or comprehension of the refugees themselves has turned out to be more typical. At times, the whole idea of deliberate repatriation has been controlled to accomplish political

⁴⁶ Haddad, E. (2008). *The refugee in international society: between sovereigns*, Cambridge, England, Cambridge University Press.

⁴⁷ Malkki, L. (1995) *Purity and Exile: Violence, Memory and National Cosmology amongst Hutu refugees in Tanzania*, London, University of Chicago Press.

⁴⁸ Chimni, B.S. (1999) 'From resettlement to involuntary repatriation: towards a critical history of durable solutions to refugee problems,' *New Issues in Refugee Research*, Working Paper No 2., Geneva, UNHCR.

⁴⁹ Bradley, M. (2014). Rethinking refugeehood: Statelessness, repatriation, and refugee agency. *Review of International Studies*, 40(1), 101-123.

plans. Whenever NGOs or the UN turn into a gathering to these less deliberate, notwithstanding when these offices are left with couple of choices, the whole refugee emotionally supportive network can come into notoriety. At last, when the refugees return home, their fruitful reintegration may rely on upon some mind boggling adjustments learned while they were refugees or something as straightforward as the planning of their arrival with respect to the local rural cycle.⁵⁰

After the completion of the Cold War, repatriation turned into the principle center for the United Nations. In the 1990's about 12 million refugees went back to their original nations.⁵¹ The increased rate of repatriation happened on the grounds that UNHCR thought of it as the "ideal and most achievable" answer for refugees. Black and Koser⁵² went ahead to contend that through the governmental issues of repatriation, refugees' needs are disregarded, and this affects whether refugees repatriate "in 'security' and in 'pride'." They infer that two issues should be tended to for refugees: contrasts in what "home" came to mean for refugees and what it intends to arrangement creators, and where return happens, regardless of whether refugees are presented to new vulnerabilities that require checking following repatriation. Home may likewise mirror refugees' relationship with a particular gathering in a specific area, in this manner more ethnic than a place character.⁵³

A considerable lot of the presumptions made in regards to refugee repatriation depend on thoughts that originate from the quick post-provincial period in African history. Dating back to the clashes and wars, numerous refugees who had fled amid the contention with the European power excitedly returned home to their new countries to

⁵⁰ Article 1(C) (4) of the 1951 Refugee Convention.

⁵¹ Black, Richard, and Khalid Koser. 1999. *The End of the Refugee Cycle? Refugee Repatriation and Reconstruction*. Oxford: Berghahn Books.

⁵² Ibid

⁵³ ibid

continue their previous lifestyles.⁵⁴ During this period, some refugee researchers expected that in light of the fact that the dominant part of African refugees do deliberately return home, that repatriation was by one means or another the "characteristic" result to a refugee emergency.⁵⁵

The development in the number and size of refugee population in Africa, and the unpredictability of the circumstances that produce refugees, have postured advocacy for repatriation.⁵⁶ While there is a developing understanding that repatriation is frequently the best answer for refugees, it is in no way, shape or form a simple undertaking. Repatriates experience changes in way of life that can be as, or more, serious than those progressions experienced when they first got to be refugees.⁵⁷ There might be assumptions about home ranges that can't be satisfied in the short to medium-term. While political understandings may flag the official end of a contention, the physical appearances of these assertions, for example, security or improved assistance would not be accessible instantly for returnees.⁵⁸

For the displaced person, the 'home' additionally winds up noticeably hard to characterize when the individual never lived in the nation as, was the circumstance for those sent to Rwanda from their outcast nations of Uganda and Tanzania. Despite the fact that for arrangement creators 'home' may mean the nation of beginning or a particular national character, for refugees thoughts of home and national personality can turn out to be "basically obscured," and the obscuring adds to the trouble of

⁵⁴ Black, R., & Koser, K. (1999). *The end of the refugee cycle? Refugee repatriation and reconstruction*. New York: Berghahn Books.

⁵⁵ Ibid

⁵⁶ Bradley, M. (2013). *Refugee repatriation: Justice, responsibility and redress*. Cambridge, UK: Cambridge University Press.

⁵⁷ Loescher, G. (2001a). The UNHCR and world politics: State interests vs. institutional autonomy. *International Migration Review*. 35(1), 33-56.

⁵⁸ Hathaway, J. (2005). The right of states to repatriate refugees. *University of Michigan Law School*, 20(1), 175-216.

repatriation, and ought to empower checking after repatriation.⁵⁹ The speed of repatriation turns into another part of exile introduction to new vulnerabilities, and the likelihood that they are resettled into a risky district. Accordingly the last helplessness, UNHCR returned refugees to different places in their nations which bring down levels of contention when repatriation to their 'home' stayed hazardous. While this reaction could expand the speed of repatriation, refugees' defencelessness may increase where they are set apart "for segregation by the nearby populace or neighbourhood experts." For speed of repatriation, untimely repatriation can bring about loss of fundamental rights, for example, the privilege to instruction and nourishment security through work procedures. In light of these issues, to enhance the adequacy of return, take the position that approach producers intend to fuse "refugees' own implications of repatriation, and their discernments and desires of 'home'."⁶⁰

2.2 Repatriation from Afghanistan

Afghanistan refugees' repatriation is still hard due to the Soviet attack and the war against the Taliban. The Soviet intrusion started in December 1979, when Soviet troops attacked Afghanistan. A mass migration of refugees took after – the biggest development of refugees happened in the vicinity of 1983 and 1991, toward the finish of which 3.27 million refugees had fled to Pakistan, and 2.9 million had gotten away to Iran.⁶¹ Refugees who went to Pakistan were put in camps on the fringe and furnished with tents and some family hardware, alongside "free access to nourishment, wellbeing focuses and schools in the camps".⁶² While refugees were allowed to look for work in Pakistan, they were confined to particular exchanging

⁵⁹ Black, Richard, and Khalid Koser. 1999. *Op cit*

⁶⁰ Black, Richard, and Khalid Koser. 1999. *The End of the Refugee Cycle? Refugee Repatriation and Reconstruction*. Oxford: Berghahn Books.

⁶¹ Marsden, Peter. 1999. "Repatriation and Reconstruction: The Case of Afghanistan." In *The End of The Refugee Cycle?*, by Richard Black and Khalid Koser, 56-68.

⁶² *ibid*

exercises. Among those that fled to Iran were numerous "particularly the informed, urban working class" people, whose pay levels were "more than 10 times higher" than was ordinary in Afghanistan.⁶³ In any case, these refugees were just "allowed to work in assigned modest occupations". In spite of the fact that they were enabled access to free wellbeing and instruction and privileges to "sustenance and different appropriations on an indistinguishable premise from Iranians," they were in charge of their own housing.⁶⁴

Once the Soviet-sponsored government collapsed in 1992, refugees started to repatriate, and by 1997 an "about 2.61 million refugees had come back to Afghanistan from Pakistan and 1.33 million had come back from Iran".⁶⁵ This left 2.6 million in Pakistan and Iran. Those that came back to Afghanistan were given little arrangements to set up themselves wherever they settled. UNHCR was concerned "that returning refugees ought not be excessively advantaged relative, making it impossible to the individuals who had stayed" amid the control of the Soviets. Maybe as after-effect of this worry, the reproduction programs were for the most part for agribusiness creation, wellbeing and veterinary care, and training. Those refugees that repatriated from urban ranges came without "aptitudes or slant to re-build up themselves in the agriculture sector".⁶⁶ For some refugees the abilities took in Pakistan were from licit and unlawful day work, for example, "working in block ovens, mines, and prostitution or in fortified labour".⁶⁷ In the urban ranges of Afghanistan employments were profoundly tricky.

⁶³ Hugo, Graeme, Mohammad Jalal Abbasi-Shavazi, and Rasoul Sadeghi. 2012. "Refugee Movement and development - Afghan Refugees in Iran." *Migration and Development* 261-279.

⁶⁴ Marsden, Peter. 1999. Op cit

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ Ibid

The UN did not effectively evaluate the employment procedures of those that lived in the exile camps and different zones of return, which made challenges for refugees in their repatriation.⁶⁸ As a result of these troubles urban regions were not enhanced and much more noteworthy was the consistent change in experts that brought about "the flight of experts".⁶⁹ Be that as it may, the reproduction of the Afghan economy proved unable "accommodate the rest of the refugees in Pakistan and Iran". With the war against the Taliban that began in 2001, Afghanistan turned into the "wellspring of one out of four refugees".⁷⁰ It was still "one of the world's minimum created countries by 2011".⁷¹ This is reflected in the training levels, with 1.7 as the normal years of tutoring for grown-ups in 2000 with an education rate of 28.1% for the aggregate population.⁷²

Afghanistan's source of income in 2004 comprised of ten percent service, another ten percent industry and the highest percentage (80%) being agriculture.⁷³ The Afghan joblessness rate in 2008 was 35%, and 36% of the populace lived underneath the destitution line in 2009.⁷⁴ Of the Afghan refugees that fled to Iran, Hugo *et al.*⁷⁵ contends that there was "critical upward portability among the refugees particularly between the first and second ages" regardless of confined occupations. Their exploration concentrates on the instruction for Afghan refugees alongside inclusion in the Iranian work drive amid the 30 year time span which shelter was broadened.

⁶⁸ Marsden, Peter. 1999. Op cit 56-68.

⁶⁹ Harrell-Bond, Barbara E. 2002. "Can Humanitarian Work with Refugees be Humane?" *Human Rights Quarterly* 51-85.

⁷⁰ Hugo, op cit 261-279

⁷¹ Ibid

⁷² NationMaster. 2012. *Afghanistan Stats*. Accessed March 17, 2017. <http://www.nationmaster.com>.

⁷³ Hugo, op cit 261-279.

⁷⁴ Nation Master. Op cit

⁷⁵ Hugo, op cit 261-279.

Iranian locals had the most noteworthy proficiency rates and original Afghan vagrants having the least with the second era involving a middle of the road position.⁷⁶

Afghan's inclusion in the Iranian workforce, albeit restricted by the administration "to specific territories of business," demonstrates a "more noteworthy engagement with the workforce than local Iranians". The degree to which refugees take part in the economy of the goal nation is pertinent to their own prosperity as well as far as their commitment to improvement in the starting point and goal nations.⁷⁷ In an International Labor Organization (ILO) ponder in 2006 the limitations are reflected in the accompanying work segments which indicate 80% Afghans versus 26% Iranians work: producing, development, exchange, and business.⁷⁸ Hugo et al⁷⁹ keeps on arguing that by taking care of the demand for "ease, incompetent work in parts like development and agribusiness" these ranges will be debilitated if work isn't there when refugees repatriate. In the vicinity of 2002 and 2011 UNHCR assessed the 5.7 million Afghan refugees repatriated with a populace increment of 25%.

2.3 Djibouti Repatriation

Amid the underlying time frame before 1982, most refugees settled in and around the main city, Djibouti. The refugees were given little help by the administration, while in the meantime they were not allowed to work lawfully.⁸⁰ The intricacy of the connection amongst Ethiopia and its neighbours directly affected the way in which the Ogaden refugees in Djibouti were dealt with. In 1975s and the mid-1980s, Ethiopia's

⁷⁶ Ibid

⁷⁷ Hugo, op cit 261-279.

⁷⁸ Wickramasekara, P., J. Sehgal, F. Mehran, L. Noroozi, and S. Eisazade. 2006. *Afghan Households in Iran: Profile and Impact*. Report, Geneva: International Migration Program, International Labour Office.

⁷⁹ Hugo, op cit 261-279.

⁸⁰ Phillips, Alan. 1983a. *Djibouti- A Voluntary Repatriation Programme?* London: British Refugee Council.

legislature, the Dergue had turned out to be infamous all through Africa. The administration's rough and problematic inside approaches had estranged and scared a vast extent of the Ethiopian populace. By 1980, one out of each two refugees in Africa had fled from Ethiopia. The extensive number of refugees had turned into a critical shame to the Ethiopian government. The refugees were a wellspring of data about the weakening conditions inside the nation; and a few refugees utilized their shelter states as bases for assaults against the Ethiopian administration.⁸¹

In mid-1983, the legislatures of Djibouti and Ethiopia and the UNHCR went into a Tripartite consent to encourage the voluntary repatriation of refugees.⁸² The assertion accommodated the sheltered, methodical and voluntary return of refugees to Ethiopia. While the legislature of Djibouti was planning to execute the voluntary repatriation program, in the meantime it was starting a progression of extraditions of refugees. Refugees were gathered together and constrained into railroad train units for the trip home to Ethiopia.⁸³ In spite of these irritating occasions, UNHCR was resolved to proceed with the repatriation work out. The Djibouti outcast circumstance had turned into an experiment for UNHCR. According to UNHCR, repatriation was rising as the most imperative answer for displaced person emergencies. The fruitful execution of this repatriation would turn into a worldview for other outcast circumstances in Africa.⁸⁴ The organization had upheld the repatriation program and had much to lose on the off chance that it fizzled.

⁸¹ Aitchison, Roberta. 1983. "Djibouti- A Model for Repatriation?" *Cultural Survival Quarterly* 7(2): 48-51.

⁸² Phillips, op cit

⁸³ Crisp, Jeff. 1984b. "The Politics of Repatriation: Ethiopian Refugees in Djibouti, 1977-83." *Review of African Political Economy* 30: 73-83.

⁸⁴ Harrell-Bond, Barbara. 1985. "Humanitarianism in a Straightjacket." *African Affairs* 84(344): 3-13.

In the underlying phase of the Ogaden outcast movement, there were a few examples of refugees being coercively come back to Ethiopia from Djibouti. While this was going on, couple of refugees considered enrolling for repatriation or returning home freely. However by mid-1983, some restricted repatriation to Ethiopia had begun. Before the finish of 1983, up to 7,000 refugees had left their camps inside Djibouti and came back to their homes in the Ogaden in an UNHCR supported repatriation work out. At this point, a portion of the more over the top misuse of the refugees had finished and a few refugees had gone up against examination voyages through their home zones to decide the conditions there.⁸⁵ While conditions at home in the Ogaden may have marginally enhanced, unmistakably the program of badgering of the refugees by the Djibouti specialists had inflicted significant damage. Following four years of irregular badgering and terrorizing, the refugees' confidence was low, and the upsides of staying in Djibouti were hard to see."⁸⁶ While the repatriation was touted by governments and UNHCR alike as being voluntary, genuine inquiries stay about the realities encompassing the case.⁸⁷ Plainly the refugees were not given sufficient help supplies in Djibouti and were made to feel greatly unwelcomed by the administration.

2.4 Namibian Repatriation

Beginning in the mid-1970s, Namibians who were related with SWAPO and to a lesser degree other freedom fronts were compelled to escape their homes. The greater part of the refugees settled at first in southern Angola and Zambia.⁸⁸ While a couple of refugees intermittently came back to Namibia and others kept on escaping when they felt shaky, by 1980 the quantity of refugees in Angola and Zambia had balanced

⁸⁵ Crisp, Jeff. Op cit 73-83.

⁸⁶ ibid

⁸⁷ Harrell-Bond, Barbara. 1987a. "Report on the Djibouti Refugee Situation." *Refuge* 6(4): 8-10.

⁸⁸ IDAF. 1989. *Namibia: The Facts*. London: International Defence and Aid Fund for Southern Africa.

out at around 36,000 and 5,500 individually. The lion's share of these refugees were settled in rustic regions in the Angolan areas of Malange and Kwanza Sul, where they were progressed toward becoming ranchers and some of the time PLAN warriors. A moment set of refugees had proceeded onward from their first nation of outcast and had settled somewhere else in Africa and all through the world. While the quantity of refugees that were living outside Angola and Zambia is more hard to decide, SWAPO evaluated that an aggregate of 80,000 Namibians were dislodged, of which around one half were living in Angola and Zambia.⁸⁹ The staying 40,000 Namibians were living in forty-four different nations all through the world.⁹⁰

The long clash in Namibia included on-screen characters from numerous nations on a few mainlands. While the freedom battle fundamentally included SWAPO and South Africa, 83 different countries, for example, Angola and Zambia were straightforwardly included, while the United States, the Union of Soviet Socialist Republics and Cuba were incidentally included.⁹¹ While a total study of the key and political circumstances and end results of the thirty-year Namibian clash is past the extent of this proposition, the way in which the refugees were influenced by political occasions is critical. Since the mid-1970s, PLAN troopers, had kept up a low-force common war in Namibia, especially along the Angolan outskirts and in the Caprivi Strip. The contention increased in the mid-1970s after the Portuguese withdrawal from Angola and again in the mid-1980s, after the breakdown of talks amongst SWAPO and the South African government in 1981. However by 1988 the military

⁸⁹ Betts, Tristram. 1981. "Documentary Note: Rural Refugees in Africa." *International Migration Review* 15(1): 213-218.

⁹⁰ Baloro, John. 1992. "The Law and Pattern of the Repatriation of Namibian and South African Refugees: Possible Lessons for a Programme of Repatriation of Mozambican Refugees." Paper Presented at the First Country of Asylum and Development Conference. Harare: Zimbabwe. (June)

⁹¹ Cliffe, Lionel *et al.* 1994. *The Transition to Independence in Namibia*. Boulder, Colorado: Lynne Rienner.

circumstance had achieved a stalemate and the South African government, exhausted of the military misfortunes it was managing in the contention consented to execute the states of UNSC Resolution 435.⁹²

Among different issues, UNSC Resolution 435 particularly tended to the issue of exile repatriation to a recently autonomous Namibia. Two segments of the determination managed voluntary repatriation; Paragraph 7(c) given to repatriation ahead of time of races: "Every single Namibian evacuee or Namibians kept or generally outside the region of Namibia will be allowed to return calmly and take an interest completely and openly in the discretionary procedure without danger of capture, detainment, terrorizing or detainment." Paragraph 7(d) ensured that the repatriation would be voluntary: "The Special Representative of the Secretary-General with the help of the United Nations High Commission for Refugees and other suitable global bodies will guarantee that Namibians staying outside of Namibia are given a free and voluntary decision whether to return. Arrangement will be made to authenticate the voluntary idea of the choices of Namibians who choose not to come back to Namibia." all together for Namibian refugees to have the capacity to return home without dread of abuse, it was first essential for the frontier government to institute a reprieve for returnees, this happened on June 6 1989.⁹³ What's more it was essential for the 84 government to nullify all prejudicial enactment. This mind

⁹² Cliffe, Lionel *et al.* 1994. *The Transition to Independence in Namibia*. Boulder, Colorado: Lynne Rienner.

⁹³ Baloro, John. 1992. "The Law and Pattern of the Repatriation of Namibian and South African Refugees: Possible Lessons for a Programme of Repatriation of Mozambican Refugees." Paper Presented at the First Country of Asylum and Development Conference. Harare: Zimbabwe. (June)

boggling process included the adjustment or end of somewhere in the range of sixty laws and was not finished in time for the proposed begin of the repatriation exercise.⁹⁴

By the beginning of the sorted out return in any case, adequate advance in authoritative change had been made to persuade most refugees that the procedure would proceed. Keeping in mind the end goal to encourage repatriation, Zambia and Angola separately, went into Tripartite concurrences with UNHCR and SWAPO. These assertions set out the arrangement for the enlistment, transport gathering and resettlement of returning refugees. Challenges were experienced with the frontier administration of Namibia, which was unfriendly to the potential returnees, who were for the most part SWAPO individuals or sympathizers. At first, the administration declined to acknowledge UNHCR archives as legitimate recognizable proof. What's more, refugees were to be thoroughly medicinally screened and have their fingerprints taken.⁹⁵ Cautious transactions with the legislature expelled the greater part of these managerial barriers, yet the pioneer executives remained transparently threatening to the returnees.

The Namibian repatriation practice started in mid-June 1989. In light of UNSC Resolution 435, the repatriation must be finished ahead of time of national races planned for late 1989. To encourage the repatriation, all returnees touched base via air to one of just three passage focuses. From that point, the refugees proceeded onward to one of five gathering focuses where they stayed for up to one week. In these gathering focuses, the returnees were encouraged, restoratively screened, inoculated

⁹⁴ Gasarasi, Charles. 1990. "UN Resolution 435 and the Repatriation of Namibian Exiles." *Journal of Refugee Studies* 3(4): 341-364.

⁹⁵ Gasarasi, op cit 341-364.

and their relatives were followed if essential.⁹⁶ Most of the refugees had returned before the end of September. The repatriation practice itself ran off with couple of issues, notwithstanding the way that the provincial government that was still in control was straightforwardly unfriendly to a significant number of the returnees and their association with SWAPO.⁹⁷ While the genuine return and gathering program was effective, for some returnees the following two years were extremely troublesome. Joblessness among returnees following one year held at fifty-seven percent, while following two years just 30% of returnees had acquired all day business. A further forty-six percent were occupied with easy going work or little holder farming.⁹⁸

The explanation behind the absence of chances for returnees was two-overlap. The UNHCR had seen repatriation as an exclusively specialized exercise, not as a financial progress period for the returnees. For instance, it was accepted by UNHCR that returnees would be suited by their families upon landing in Namibia.⁹⁹ No designs were made to help returnees' mix into the Namibian economy, or give improvement ventures. This happened to a limited extent as a result of a moment imperative; while SWAPO controlled the administration arrive base of Namibia, it didn't control or have huge contribution to the financial base of Namibia, that was as yet controlled by white Namibians and South Africans. Also, in its progress from a

⁹⁶ Simon, David and Rosemary Preston. 1993. "Return to the Promised Land: The Repatriation and Resettlement of Namibian Refugees, 1989-1990." Pp. 47-63 in *Geography and Refugees: Patterns and Processes of Change*, edited by Richard Black and Vaughn Robinson. London: Belhaven Press.

⁹⁷ Gasarasi, Charles. 1990. "UN Resolution 435 and the Repatriation of Namibian Exiles." *Journal of Refugee Studies* 3(4): 341-364.

⁹⁸ Preston, Rosemary. 1994. "Returning Exiles in Namibia Since Independence." Pp. 260-267 in *When Refugees Go Home*, edited by Tim Allen and Hubert Morsink. Geneva: UNRISD.

⁹⁹ Tapscott, Chris. 1994. "A Tale of Two Homecomings: Influences on the Economy and State on the Reintegration of Repatriated Namibian Exiles 1989-1991. Pp. 251-259 in *When Refugees Go Home*, edited by Tim Allen and Hubert Morsink. Geneva: UNRISD.

freedom front to a political gathering and government, SWAPO must be mindful so as not to support returnees over others for monetary advancement.¹⁰⁰

2.5 Repatriation to Mozambique

In the same way as other different clashes in Africa, the underlying foundations of the Mozambican common war can be followed back to the frontier time. Mozambique had been a Portuguese settlement since the late 1800s and there seemed, by all accounts, to be minimal possibility of Portugal offering autonomy to its state. Be that as it may, because of sudden political changes in Portugal in 1974, another administration chose to strip itself of the vast majority of its frontier belonging. Nearly when Mozambique ended up noticeably free in 1975, the nation was occupied with its own common war. Beginning in 1976, rebels known from the Resistência Nacional Moçambicana (RENAMO) endeavored to pick up control of the state. The historical backdrop of RENAMO's long and ruthless rebellion is established in the strategies of white-controlled Rhodesia and South Africa.

After Mozambican autonomy, white Rhodesians ended up plainly careful about the expanding quantities of governments controlled by dark Africans in the district. The Rhodesian Government, trying to de-balance out the new Marxist province of Mozambique, prepared, supported radical RENAMO powers.¹⁰¹ The viciousness of the common war likewise uprooted a vast extent of the Mozambican populace. By 1992 almost 2million Mozambicans had fled their homes and had settled as refugees. Malawi endured the worst part of the evacuee movement, while Zimbabwe and South Africa additionally got considerable quantities of refugees. In 1992 over one million

¹⁰⁰ *ibid*

¹⁰¹ Huffman, Robert. 1992. "Repatriation of Refugees from Malawi to Mozambique." *Africa Today* 39(1-2): 114-122.

Mozambicans were settled in Malawi, while Zimbabwe and South Africa each had around quarter a million refugees.

It was in 1992 in Rome when the long clash amongst RENAMO and the Mozambican government authoritatively ended. The settlement did not happen until there had been twelve rounds of peace transactions more than quite a while.¹⁰² Two huge occasions had conveyed the two sides to the arranging table. Beginning in 1986, after the passing of President Samora Machel, the new Mozambican Government headed by Joaquim Chissano, started to move far from its Marxist belief system and towards a market economy.¹⁰³ While RENAMO's correct political program had dependably been somewhat dark, it had constantly kept up a hostile to Marxist front. In the meantime, the dry season that was grasping southern Africa started to influence RENAMO's operational limit. Since it was extremely subject to the horticultural sources of info that it appropriated from its vanquished an area, the dry season and the resulting deficiencies it delivered detrimentally affected RENAMO. There were two noteworthy outer worries for potential Mozambican returnees, both needed to do with security. The first of these was arrive residency security. Since a large number of Mozambicans had been uprooted, both inside and outside the nation, the state's property residency framework was in a condition of transition. Many inside uprooted individuals settled wherever they could discover arable land in a sheltered region. Furthermore, the Mozambican Government's past approach of settling individuals in sorted out towns additionally confounded the circumstance.

¹⁰² Hill, Heather. 1993. "Going Home." *Africa Report* July/ August: 44-48.

¹⁰³ McCormick, Shawn. 1993. "Mozambique's Cautious Steps Towards Lasting Peace." *Current History* 92(574): 224-228.

Numerous refugees were indeterminate how the land they had functioned already would be dispensed after a peace settlement.¹⁰⁴ Likewise, following the peace assentation, the Mozambican government went into a progression of mystery manages privately owned businesses that planned to begin business cultivates on huge tracts of the best land.¹⁰⁵ Refugees hearing bits of gossip about the land bargains felt progressively shaky staying in a state of banishment. The other kind of security in the outer setting was the physical security of potential returnees. In a few territories of the nation, for example, in Tete region, the military nearness of RENAMO retreated quickly following the finish of the peace accord. Somewhere else be that as it may, for example, around the port of Beira, reports of RENAMO banditry proceeded for quite a while subsequently.¹⁰⁶ The peace concurs marked in Rome incorporated the sending of UN peace-keeping powers to help guarantee security in Mozambique. In any case, maybe the greatest security issue was that of land-mines. As noted in Chapter Four, mines are a standout amongst the most guileful issues following many clashes. It has been differently assessed that up to two-million mines were planted in Mozambique since the late 1960s.¹⁰⁷ While UNHCR repatriation designs included land-mine freedom programs, numerous refugees started returning home before the projects was initiated.¹⁰⁸

Following the peace accord, and ahead of time of a formal concurrence on repatriation, refugees started coming back to a few sections of Mozambique. These returnees originated from Malawi and by and large needed to travel just a short

¹⁰⁴ Lawyers' Committee for Human Rights. 1992. *General Principles Relating to the Promotion of Refugee Repatriation*. New York: Lawyers' Committee for Human Rights.

¹⁰⁵ Drumtra, Jeff. 1994. *No Place Like Home: Mozambican Refugees Begin Africa's Largest Repatriation*. Washington D. C.: US Committee for Refugees.

¹⁰⁶ Hill, Heather. 1993. "Going Home." *Africa Report* July/ August: 44-48.

¹⁰⁷ Meldrum, Andrew. 1994. "Repatriating the Refugees." *Africa Report* March-April: 47-49.

¹⁰⁸ Lawyers' Committee for Human Rights. 1992. *General Principles Relating to the Promotion of Refugee Repatriation*. New York: Lawyers' Committee for Human Rights.

separation to return home. Some of these early returns frightened UNHCR authorities in Malawi. The period following the marking of the peace accord was an equivocal time in the repatriation and restoration process. While UNHCR was happy that the refugees were anxious to return home, it needed to evade the kind of failure that had happened as of late in Angola.¹⁰⁹ All things considered, refugees had returned after the peace assertion was marked, yet before dependability had come back to the nation and before repatriation help could be given to the refugees. At the point when struggle ejected once more, numerous new returnees were compelled to escape a moment time. Unique UNHCR designs accepted that the colossal larger part of the refugees would return unexpectedly to Mozambique. The supposition was right, as up to ninety-five percent of the refugees got no particular repatriation help.¹¹⁰

The vast majority of the refugees were so anxious to return home that they returned home well ahead of time of UNHCR's most idealistic repatriation plan. The UNHCR got some feedback that it was not well arranged for sorting out the biggest repatriation in African history. A portion of the actualities would seem to help these reactions. Eight months after the peace accord, just ten expert UNHCR officers were positioned in Mozambique.¹¹¹ What's more, from the start UNHCR progressed toward becoming made up for lost time in the calculated issues of the repatriation practice and did not give adequate security screens amid the early periods of repatriation, when they were generally required.¹¹² Before the finish of 1994, up to 750,000 refugees had returned home to Mozambique. A further 1.5 million inside uprooted individuals resettled

¹⁰⁹ Lawyers' Committee for Human Rights. 1992. *General Principles Relating to the Promotion of Refugee Repatriation*. New York: Lawyers' Committee for Human Rights.

¹¹⁰ Makanya, Stella. 1991.

¹¹¹ Drumtra, Jeff. 1994. *No Place Like Home: Mozambican Refugees Begin Africa's Largest Repatriation*. Washington D. C.: US Committee for Refugees.

¹¹² Wilson, Ken. 1993. *Assisting Repatriation: Recent Lessons from Self-Repatriation in Mozambique*. Helsinki: Finnish Refugee Council.

themselves. The recently resettled individuals set strains on the global help program for Mozambique. Baffling profits for global help claims by UNHCR and NGOs implied that numerous returnees did not access clean drinking water or rural improvement programs. Moreover, a portion of the normal land residency issues happened as returnees were again compelled to migrate.

Chapter Three

Normative and Institutional Frameworks on Repatriation

3.1 Introduction

This chapter discusses the normative and institutional frameworks on repatriation globally, regionally and national level. The global normative and institutional frameworks are used to represent all the refugees across the world. The number of refugees has greatly increased with the recent number puffed up by the Syrian refugees in the year 2016. The regional normative and institutional frameworks cover the African countries. Africa has for the longest time had the highest number of refugees at any given time.¹¹³ The national normative and institutional frameworks are made for refugees and internally displaced persons within Kenya. They include the Kenyan constitution, Refugee Act¹¹⁴ and Tripartite Agreement¹¹⁵ among others.

3.2 Normative Frameworks

This section discusses the selected norms on repatriation ranging from international norms, regional norms and the local norms.

3.2.1 The Universal Declaration on Human Rights (UDHR)

The UDHR was received and announced by the General Assembly Resolution 217 A (III) of 10 December 1948.¹¹⁶ It turned into the primary non-restricting instrument to present the idea of the privilege to shelter.¹¹⁷ In its preface, the UDHR accommodates the assurance of human rights, "in the pride and worth of the human individual and in

¹¹³ United Nations High Commissioner for Refugees, (2016). *UNHCR statement on the future of Kenya's Dadaab Refugee Camps* [Briefing notes].

¹¹⁴ Protecting Refugee Rights in Kenya, 10 (K) 1998 ,47

¹¹⁵ Tripartite Agreement between UNHCR, Government of Kenya and the Government of Somalia

¹¹⁶ Goodwin-Gill "Forced Migration: Refugees, Rights and Security" (2008) 3.

¹¹⁷ D'Orsi "The AU Convention on Refugees and the concept of asylum" (2012) 3 *Pace Int'l L.Rev*226.

the equivalent privileges of men and ladies".¹¹⁸ The UDHR subsists as the chief human rights insurance instruments and the vast majority of its arrangements have additionally been perceived by some as having achieved the level of standard international law.¹¹⁹ Article 5 of the UDHR gives that "nobody might be liable to torment or to merciless, brutal or debasing treatment or discipline." Article 14(1) of a similar assertion,¹²⁰ handles the privilege to haven as takes after: "everybody has the privilege to look for and to appreciate in different nations refugee from oppression."

Asylum right by the UDHR does not force the lawful commitment on states to give refuge. This is because of the way that the UDHR does not host a coupling impact on states parties.¹²¹ The privilege to haven in the UDHR reflects "all the more precisely the privilege of the state to give refuge as opposed to the state's obligation to respect a person's demand for asylum".¹²² The UDHR additionally accommodates the privilege to leave and come back to one's nation and this privilege is connected to the rule of voluntary repatriation.¹²³ UDHR article 13(2) gives that "everybody has the privilege to leave any nation, including his own, and to come back to his nation." Under UDHR everybody has the privilege to leave any nation, including his own, and to come back to his nation. This suggests a nation of cause has a commitment to concede a displaced person when he/she chooses to backpedal to his nation and whether they practice this privilege or not involves singular choice.

¹¹⁸ preamble of the UDHR.

¹¹⁹ *Vand. J. Transnat'l L* 7 fn 13. D'Orsi *Specific Characteristics and Challenges of Refugee and Asylum-Seeker Protection in Sub-Saharan Africa: Lesson Learnt in Search of a Better Future* (2013) 3.

¹²⁰ Zieck (1997) 26.

¹²¹ *Ibid*

¹²² Bledsoe and Boczek *The International Law Dictionary* 89 as quoted in Naldi G J and D'Orsi (2014) 3 *Loy. L.A. Int'l and Comp. L. Rev* fn 36.

¹²³ D'Orsi (2013) 409.

A comparable arrangement was received by the 1966 International Covenant on Civil and Political Rights (ICCPR) under Article 12 (4), which gives that, 'nobody might be self-assertively denied of the privilege to enter his own nation'.¹²⁴ The International Convention on the Elimination of all Forms of Racial Discrimination under Article 5(d) (ii) accommodates 'the privilege to leave any nation, including one's own, and to come back to one's nation'. The United Nations Convention on the Rights of the Child gives that, 'States Parties might regard the privilege of the youngster and his or her folks to leave any nation, including their own, and to enter their own particular nation'. There are additionally delicate laws that have accommodated voluntary repatriation, for example, the 1984 Cartagena Declaration on Refugees. Conclusion 12 'repeats the voluntary and individual character of repatriation of refugees and the requirement for it to be directed in states of outright security'

3.2.2 The 1951 UN Convention

The 1951 UN Convention was at first recommended at the UN Conference of Plenipotentiaries which met in Geneva in 1951.¹²⁵ Amid this Conference of Plenipotentiaries it was talked about that a draft tradition ought to be influenced which will merge every past exertion towards the insurance of refugees into one combined instrument for the security of refugees.¹²⁶ This prompted the selection of the 1951 UN Convention on 28 July 1951.¹²⁷ In 1951 Conference of Plenipotentiaries, states accentuated that there is no privilege to haven. The Conference additionally did not ensure the guideline of non-refoulement.¹²⁸ The 1951 UN Convention was likewise impacted by the 1948 UDHR. The UDHR is the main instrument to present

¹²⁴ UNHCR, Note on International Protection, UN Doc. A/AC.96/830 (7 Sept. 1994).

¹²⁵ McAdam (2007) 29.

¹²⁶ *Ibid*

¹²⁷ Stenberg (1989) 59.

¹²⁸ *Ibid*

the idea of the privilege to look for and appreciate shelter. Despite the last mentioned, it can't be viewed as lawfully official to member states.¹²⁹ Despite the fact that the idea of the privilege to and the delight in refuge are not given by the 1951 UN Convention, it has affected standards i.e. non-refoulement found in the 1951 UN Convention. The outcast administration under the support of the 1951 UN Convention focused more on particular privileges of the refugees that are not completely secured by the human rights regime.¹³⁰ The 1951 UN Convention is the important universal arrangement which gives security to refugees.¹³¹

After the foundation of UNHCR, the General Assembly approached the office to take an interest in the elaboration of the 1951 Convention, started by ECOSOC compliant with Article 62 of the UN Charter in 1949¹³² and concluded by a Conference of Plenipotentiaries gathered by General Assembly determination 429 (V).¹³³ The 1951 Convention sets out a list of commitments for nations of haven with the standard of non-refoulement at its middle. It was received just a large portion of a year after the UNHCR Statute, which it supplements and reaches out by explaining on the regulating measurement of the above-depicted institutional system. From one perspective, Article 1 of the 1951 Convention receives a meaning of an evacuee with wording that is fundamentally the same as the UNHCR Statute, and it likewise incorporates an extra ground for oppression, to be specific enrolment of a specific social gathering. Then again, the displaced person definition contained in the Convention is more prohibitive than the definition in the UNHCR Statute as the Convention is just appropriate to refugees of occasions happening in Europe before 1

¹²⁹D'Orsi (2013) 4-5.

¹³⁰Hathaway (2014) 75.

¹³¹D'Orsi (2013) 17.

¹³² UN Doc. E/RES/248 (IX)B (8 Aug. 1949).

¹³³ UN Doc. A/RES/429 (V) (14 Dec. 1950), paras. 1 and 5.

January 1951, an impediment that was just expelled in 1967 by the Protocol Relating to the Status of Refugees.

3.2.3 The 1969 OAU Refugee Convention

According to the 1969 OAU Convention, 'deliberate repatriation ought to be a definitive answer for African refugees'¹³⁴ before the contention finished. The presumption was that African refugees would probably need to backpedal to their nations taking after national autonomy.¹³⁵ Article 33 (1) of the 1951 Refugee Convention recommends that refugees have a decision of repatriating when they choose to do as such.¹³⁶ This is on account of; the article shields refugees from coming back to zones where their life or opportunity would be at hazard. No reservations are allowed on the non-refoulement guideline. African states had difficulties of contentions which in the end prompted the relocation of individuals and the development of refugees.¹³⁷ The wasteful aspects of evacuee insurance by the 1951 UN Convention in Africa provoked the need to receive an instrument which was planned to address the disputes confronting the African refugees.¹³⁸ Countries in Africa saw a dire requirement for displaced person security and drafted and received the 1969 OAU Convention, which turned into the main local restricting instrument, which accommodates refugee protection.¹³⁹

Prior to the drafting and appropriation of the 1969 OAU Convention, a commission was set up to explore viewpoints concerning the refugees in Africa. The aftereffect of this commission, with the contribution of the UNHCR, was a draft Convention which

¹³⁴ Supra note 93 at 24. See, article 5 of the 1969 OAU Convention.

¹³⁵ Ibid

¹³⁶ This article provides for the right of non-refoulement. Also, supra note 93 at 21.

¹³⁷ The UNHCR (2001) 13. See also, Collins (1996) 22.

¹³⁸ D'Orsi (2013) 57-8.

¹³⁹ The UNHCR (2001) 13.

was later arranged as a last draft and accordingly received by the Assembly of Heads of States and Governments.¹⁴⁰ Nations which did not yet sanction the 1951 UN Convention and its 1967 Protocol were encouraged to do as such during this period. These instruments remained the fundamental global arrangements which secure refugees. Thus, the acknowledgment of The 1969 OAU Convention supplements the last tools.¹⁴¹ The 1969 OAU Convention was finished up on 10 September 1969, amid the Sixth Ordinary Session in Addis Ababa to manage displaced person matters in Africa. The 1969 OAU Convention digs in the standard of non-refoulement and bindingly affects member states.¹⁴²

The 1969 OAU Convention in this way went into constrain on 20 June 1974. The 1969 OAU Convention likewise expands the meaning of the outcast, other than the one gave by the 1951 UN Convention and the UNHCR Charter, so as to accommodate the security of refugees in the African setting.¹⁴³ The 1969 OAU Convention has been lauded as the main displaced person arrangement to systematize the rule of voluntary repatriation.¹⁴⁴ It has additionally been praised as the instrument which offers the best answer for African refugee issues.¹⁴⁵ The Resolution on Voluntary Repatriation supplements the 1969 OAU Convention by making arrangements for "lawful and functional" matters which are critical for repatriation however not shrouded in the 1969 OAU Convention.¹⁴⁶ The Resolution on voluntary repatriation was to come in 1975 at the Twenty Fourth Ordinary Session after the

¹⁴⁰*Ibid*

¹⁴¹*Ibid*

¹⁴²Van Selmet *al* (2003) 18.

¹⁴³Okoth-Obbo (2000) 8 *Afri. Y.B. Int'l 2*.

¹⁴⁴*Ibid*

¹⁴⁵*Ibid*

¹⁴⁶Articles 5 and 6 of the 1951 UN Convention.

advance that was made in decolonizing the African States and considering the requirement for refugees to return and remake their nations of cause.

3.2.4 Kenya Refugee Act

The Refugees Act perceives two classes of refugees: statutory and at first sight refugees.¹⁴⁷ The previous classification applies to a man who has "a very much established dread of being mistreated for reasons of race, religion, sex, nationality, participation of a specific social gathering or political supposition."¹⁴⁸ The last identifies with a man who, "attributable to outer hostility, occupation, outside mastery or occasions genuinely exasperating open request in any part or entire of his nation of inception or nationality is constrained to leave his place of routine living arrangement."¹⁴⁹ Under the Act, haven is "safe house and insurance allowed by the Government to people fitting the bill for evacuee status," while a shelter searcher is "a man looking for displaced person status."¹⁵⁰

The Minister of Interior and Coordination of National Government is engaged to announce a class of people at first sight refugees and to alter or repudiate such presentation.¹⁵¹ The latest case of an exhibit of this specialist came in June 2014 when, following up on helpful grounds, Interior Minister Joseph Ole Lenku proclaimed as by all appearances refugees South Sudanese people escaping the common war in their nation.¹⁵² Kenya is said to have conceded a similar assurance to people from South and Central Somalia.¹⁵³

¹⁴⁷ Refugees Act § 3.

¹⁴⁸ Ibid

¹⁴⁹ Ibid

¹⁵⁰ Ibid

¹⁵¹ Ibid

¹⁵² Declaration of Prima Facie Refugees, Gazette Notice [GN] No. 5274, 116(91)

¹⁵³ Garlick et al., *supra* note 14, 258.

A man who has been conceded exile status may lose that status through a voluntary or involuntary change in conditions. For example, if a man "intentionally re-benefits himself of the assurance of his nationality," deliberately reacquires a lost citizenship or gets another citizenship, or wilfully restores himself in the nation where he dreaded mistreatment, he would lose his refugee status.¹⁵⁴ A man may likewise lose his displaced person status because of changes to his conditions autonomous of his own doing—for instance, where the conditions that shaped the reason for the giving of status have "stopped to exist."¹⁵⁵

3.2.5 Kenyan Constitution

The Constitution of Kenya 2010 likewise offers insurances to refugees concerning Chapter IV which ensures the crucial rights and flexibility of the person. Refugees confront various troubles and their human rights are frequently broken. Most refugees in Kenya live in shocking conditions in outcast camps where nourishment, water, sanitation and safe house are not satisfactorily given. The Refugees Act 2006 was consented to on 30th December 2006,¹⁵⁶ an Act of Parliament to make arrangement for the acknowledgment, security and administration of refugees and associated purposes.¹⁵⁷ The Act sets out the institutional and lawful system for the acknowledgment, insurance and administration of refugees. The Act set up different workplaces and organizations which incorporate a DRA, the Refugee Appeal Board and the Refugees Affairs Committee¹⁵⁸ and the Office of Commissioner for Refugee Affairs in section 7(I).¹⁵⁹ The Act sets down arrangements identifying with acknowledgment of refugees, affirms the guideline of non-refoulement and

¹⁵⁴ *ibid*

¹⁵⁵ *Ibid*

¹⁵⁶ Refugees Act no. 13 of 2006.

¹⁵⁷ Preamble- Refugees Act (Act No. 13 of 2006)

¹⁵⁸ *Ibid*

¹⁵⁹ *Op cit*

systematizes the rights and obligations of refugees in Kenya and it is ordered to facilitate exercises and projects concerning with refugees.¹⁶⁰

Segment II makes arrangement for refugees entering Kenya whether legally or something else. On the off chance that they wish to stay in Kenya as refugees they are to make their aims known by showing up before the Commissioner by and by quickly upon passage into Kenya.¹⁶¹ The insignificant unlawful passage should not make a man be pronounced a precluded foreigner confined or punished in any capacity with the exception of in situations where he neglects to answer to the Commissioner as gave in segment II (I). This segment will in the essayist's view spare refugees from the trial they experience in the hands of Kenya police and the criminal integrity framework.¹⁶²

3.2.6 Tripartite Agreement

The Tripartite explanation was created in November 2016 by the government of Kenya, Somalia and the United Nations High Commissioner for Refugees in an effort to encourage voluntary repatriation.¹⁶³ In any case, the system of repatriation is so far going on. The Kenyan government announced 2016 May that it would shut down the Dadaab camp by November 2016, yet this due date was later extended by a half year to contemplate strategies, for instance, the deregistration of Kenyan nationals that had selected as refugees with UNHCR to get to food help and the relocation of non-Somali refugees from Dadaab to Kakuma refugee camp.¹⁶⁴ Despite the government of Kenya's deliberate due date to close Dadaab, records express that solitary 33,213

¹⁶⁰Section 11, Refugees Act (Act No. 13 of 2006)

¹⁶¹Ibid

¹⁶²Protecting Refugee Rights in Kenya, 10 (K) 1998 ,47

¹⁶³ UNHCR (2016). Voluntary repatriation of Somali refugees from Kenya: operations strategy 2015-2019

¹⁶⁴ Maina A (2017). The Slow Repatriation Process of Somali Refugees in Dadaab.

<http://www.worldpolicy.org/blog/2017/01/24/slow-repatriation-process-somali-refugees-dadaab>

Somali refugees returned to Somalia as of December 2016 which is only 11% of the aggregate population of Somali refugees.¹⁶⁵

Despite the likelihood that they return home in the midst of a more altogether controlled expert repatriation work out, the refugees can at display practice some control over particular parts of their landing movement, for instance, the arranging of their entry and their objective in home zones.¹⁶⁶ The decision to repatriate is a puzzling technique for refugees and incorporates the relationship of the impression of the interest of returning home, with a couple of various decisions, fusing remaining in a condition of expulsion as refugees. The repatriation rules obliges refugees to profit sparing preferred standpoint examination, in perspective of the information open to them, in the matter of whether went before with pariah is a prevalent option at that point going back to their country of origin.¹⁶⁷ The decision must incorporate a generous number of factors, from both the home range and the settlement locale.

A blend of a couple of segments added to the need to repatriate Somali refugees from Kenya. These join; national security concerns, supplier depletion and nonattendance of advantages for help the proximity of Somali refugees, the game plan of the Federal Government of Somalia and receptiveness to new regions already controlled by the Al Shabaab.¹⁶⁸ In November 2013, UNHCR together with the Kenyan government and Somalia consented to a tripartite arrangement for the repatriation of Somali refugees. Refugees were excluded in the fundamental authority handle. UNHCR announced

¹⁶⁵ Ibid

¹⁶⁶ Hathaway, J. (2005). The right of states to repatriate refugees.

¹⁶⁷ Loescher, G. (2001a). The UNHCR and world politics

¹⁶⁸ Crisp, J. (2000). A state of insecurity

that the repatriation would happen from Kenya to Somalia over a period of four and half years, from July 2015 to end 2019.¹⁶⁹

3.3 Institutional Frameworks

3.3.1 United Nations High Commissioner for Refugees (UNHCR)

The UNHCR is was set up on 14 December 1950 by the UN General Assembly Resolution 428 (V) for humanitarian purposes and accordingly turned into the main organization in giving help and assurance to refugees.¹⁷⁰ The UNHCR has been granted the Nobel Peace Prize on two events, in 1954 and in 1981, for its sterling work on refugees. The UNHCR supplanted the International Refugee Organization (IRO).¹⁷¹ It turned into the office which gives "worldwide assurance" and looks for "perpetual answers for the issue of refugees".¹⁷² The UNHCR Statute gives security to refugees before arrangements and additionally those refugees because of "occasions happening before January first 1951".¹⁷³ The UNHCR also aids the supervision and usage of the refugee assurance tools.¹⁷⁴

Article 6 An (ii) (e) and (f) of the UNHCR Statute accommodates the end of outcast status and gives that the fitness of the High Commissioner should stop to apply to any individual characterized in segment and above if:

"(e) He cannot any more, in light of the fact that the conditions regarding which has been perceived as an evacuee have stopped to exist, guarantee grounds other than those of individual accommodation for proceeding to decline to benefit himself of the

¹⁶⁹ UNHCR, 'Operations Strategy for the Voluntary Repatriation of Somali Refugees from Kenya to Somalia'

¹⁷⁰ Venzke *How interpretation makes international law: on semantic change and normativetwist* (2012) 87.

¹⁷¹ Goodwin-Gill and McAdam (2007) 20.

¹⁷² *Ibid*

¹⁷³ *Ibid*

¹⁷⁴ Wouters (2009) 39.

assurance of the nation of his nationality. Reasons of a simply financial character may not be summoned; or

(f) Being a man who has no nationality, he cannot any more, in light of the fact that the conditions regarding which he has been perceived as an exile have stopped to exist and he can come back to the nation of his previous ongoing home, assert grounds other than those of individual comfort for proceeding to decline to come back to that nation." The Statute of the UNHCR contributed colossally to the change of the legitimate administration proposed to refugee protection.¹⁷⁵ This eventually, at that point additionally made ready for the foundation of the 1951 UN Convention.¹⁷⁶

3.3.2 The UN General Assembly

The General Assembly has given "regularizing value"¹⁷⁷ to rising security norms, specifically by adding to the development of standard worldwide law.¹⁷⁸ As passage 9 of the UNHCR Statute explicitly offers specialist to the General Assembly to incorporate "extra exercises" in UNHCR's command, the General Assembly has made utilization of its regulating forces to create global displaced person security through its resolutions and in consistent connection with the act of its auxiliary organ on the ground, UNHCR.¹⁷⁹ The General Assembly has altered the legitimate premise of the office and has approved its on-going exercises. As the advancement of UNHCR's order outlines, most States have plainly needed the United Nations to accept

¹⁷⁵Goodwin-Gill and McAdam (2007) 19.

¹⁷⁶*Ibid.*

¹⁷⁷*Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 Jul. 1996, [1996] ICJ Rep. 226, at 254, para. 70.

¹⁷⁸M.D. Öberg, 'The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ', (2006) 16 *EJIL* 879

¹⁷⁹C. Lewis, 'UNHCR's Contribution to the Development of International Refugee Law: Its Foundation and Evolution', (2005) 17 *International Journal of Refugee Law* 67.

obligations with respect to a general class of people obliged to escape their nations for an assortment of reasons.

The General Assembly has embraced UNHCR's exercises for helpful reasons, yet in addition to utilize the methods for global law keeping in mind the end goal to fill the "legitimate vacuum" made through the absence of national assurance.¹⁸⁰ Subsequently, the United Nations has now accepted accountability for both the outcast escaping from oppression and the displaced person escaping from the savagery of a "man-made debacle", in spite of the way that the present arrangement of obligation and collaboration neglects to request sturdy arrangements from sovereign States, for example, as new settlement commitments past the 1951 Convention.¹⁸¹

In spite of the fact that the General Assembly could obviously not alter the 1951 Convention similarly as the UNHCR Statute, it has created – in collaboration with the UNHCR Executive Committee – the regulating substance of the Convention by methods for a dynamic translation of its arrangements in the light of new assurance challenges. Its resolutions have reliably underlined "the significance of the 1951 Convention and the 1967 Protocol identifying with the Status of Refugees as the foundation of the international framework for the insurance of refugees", and advanced its execution at the national level.¹⁸² Notwithstanding asking States to sanction the 1951 Convention, the General Assembly has similarly perceived the supplementary idea of local assertions and required their approval.¹⁸³ Though both the Cartagena Declaration and the OAU Convention give for participation UNHCR¹⁸⁴ the refugee organization has thusly made utilization of these provincial instruments.

¹⁸⁰ Goodwin-Gill and McAdam, *supra* note 15, at 427.

¹⁸¹ *Ibid*

¹⁸² UNHCR, Note on International Protection, UN Doc. A/AC.96/830 (7 Sept. 1994), para. 15

¹⁸³ N Doc. A/RES/63/149 (27 Jan. 2009), preamble.

¹⁸⁴ Article 8 of the OAU Convention; Cartagena Declaration, preamble (e), (f), (g).

In this manner, it has connected the expression "evacuee" in the more extensive feeling of these provincial definitions to signify people needing universal assurance because of a genuine risk to their life, freedom or security of individual in their nation of inception, for example, mistreatment or equipped clash, or genuine open issue.¹⁸⁵ To embrace the expressions of the ICJ as its would like to think on the Genocide Convention, the General Assembly has subsequently shown that the 1951 Convention keeps on being "a lasting enthusiasm of direct worry to the United Nations which has not vanished with the section into power of the Convention" and that its arrangements "connect the General Assembly with the life of the Convention",¹⁸⁶ specifically through its backup organ UNHCR.

Despite the fact that the standardizing impacts of General Assembly resolutions are restricted outside the UN lawful request, its resolutions unmistakably have normatively affected global exile assurance. The twin instruments – the 1951 Convention and the UNHCR Statute – and their provincial supplements have offered legitimate specialist on the General Assembly and in addition a regulating quality on its choices, including the attribution of lawful noteworthiness to its training as to understanding and lawful improvement.¹⁸⁷ Subsequently, the improvement of global evacuee assurance through the act of the General Assembly indicates how the activities of a political organ turn out to be a piece of a legitimate structure through the presence of lawful systems, that is through their operation, their formal and substantive substance, and the more extensive lawful condition.¹⁸⁸

¹⁸⁵ UNHCR, Note on International Protection, UN Doc. A/AC.96/830 (7 Sept. 1994), at 16, para. 32.

¹⁸⁶ *Reservations to the Convention on Genocide*, Advisory Opinion of 28 May 1951, [1951] ICJ Rep. 15, at 19

¹⁸⁷ V. Gowlland-Debbas, 'The Functions of the United Nations Security Council in the International Legal System'

¹⁸⁸ *ibid*

3.3.2.1 Governmental Experts on International Cooperation

Started in 1981 by General Assembly determination 36/148 it focuses on the continuing huge streams of refugees in many parts of the world and the human enduring influencing a huge number of displaced person men, ladies and kids.¹⁸⁹ It also focused on "that monstrous streams of refugees may not just influence the residential request and soundness of accepting States yet in addition risk the political and social dependability and the monetary improvement of whole areas and therefore imperil global peace and security".¹⁹⁰ The Security Council had already alluded to various parts of global displaced person assurance, for example, by accentuating the privilege to return of Cypriot refugees.¹⁹¹ Nonetheless, when the General Assembly embraced the Report of the Expert Group, it encouraged "the fundamental organs of the United Nations to make more full utilization of their separate skills under the Charter of the United Nations for the aversion of new gigantic streams of refugees, as imagined in section 68 of the report".¹⁹²

This call was replied by the Security Council without precedent for 1991, with an acknowledgment in determination concerning Iraq that the restraint of the non military personnel, specifically Kurdish, populace by its own legislature was not essentially inside the local purview of Iraq. With a specific end goal to legitimize this finding, the Council expressed that a gigantic stream of refugees caused by the activities of the Iraqi government added to the danger to the peace and security in the area under Article 39 of the UN Charter.¹⁹³ This assurance – reminiscent of the dialect of the previously mentioned General Assembly determination – was just the start of an entire arrangement of comparable Security Council resolutions, frequently took

¹⁸⁹ UN Doc. A/RES/36/148 (16 Dec. 1981), preamble.

¹⁹⁰ *Ibid.*

¹⁹¹ UN Doc. S/RES/361 (30 Aug. 1974), para. 4.

¹⁹² *Ibid.*

¹⁹³ UN Doc. S/RES/688 (5 Apr. 1991), preamble.

after by measures embraced under Chapter VII of the UN Charter. By connecting displaced person streams to dangers to peace and security, the Security Council in this manner step by step turned out to be a piece of the institutional assurance structure.

This true consideration was presumably most unmistakably demonstrated by the expanding association between the Security Council and UNHCR. From 1993 onwards the then High Commissioner Sadako Ogata tended to the Council on various nation circumstances, specifically the approaching removal emergency in the previous Federal Republic of Yugoslavia.¹⁹⁴ Ogata supported this developing practice with the accompanying clarification: "Our current encounters in ensuring and helping refugees have demonstrated the basic connections between peace-making, peacekeeping and philanthropic activity."¹⁹⁵ Following Ogata's illustration, the consequent High Commissioners for Refugees have similarly raised circumstance related and substantive perspectives with the Council on different formal and casual events.¹⁹⁶ Additionally, these issues have regularly come to be reflected in the Security Council's resolutions, either with the immediate help of the UNHCR Office in New York or in a roundabout way through the UN Secretariat.¹⁹⁷

3.3.3 The UN Security Council

Security Council's power with respect to worldwide evacuee insurance is contained within the UN Charter.¹⁹⁸ The Charter encompasses the Council's essential capacity and powers in Article twenty four which gives the Council the essential duty regarding the "support of worldwide peace and security". The particular forces of the

¹⁹⁴ UN Doc. S/PV.4219 (10 Nov. 2000).

¹⁹⁵ Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, to the United Nations Security Council, New York (11 Mar. 1993).

¹⁹⁶ UN Doc. S/PV. 6062 (8 Jan. 2009).

¹⁹⁷ UNHC, Note on International Protection 2004, UN Doc. A/AC.96/989 (7 Jul. 2004), at 12, para. 43

¹⁹⁸ A. El-Erian, 'The Legal Organization of International Society', in M. Sorensen (ed.), *Manual of Public International Law* (1968), 55 at 75.

Security Council are additionally set down in Chapters VI (Pacific Settlement of Disputes), VII (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression), VIII (Regional Arrangements) and XII (International Trusteeship System). The Council's forces are just explicitly constrained by Article twenty four part two, obliging it to act as per the reasons and standards of the United Nations. As needs be the UN Charter sets out an extremely expansive extent of activity for the Security Council. To the degree that parts of global displaced person assurance are identified with the support of peace and security, they fall inside the extent of Security Council's fitness.

The Security Council has wide tact in building up its fitness as delineated by its judgments of a danger to the peace, a rupture of the peace or a demonstration of animosity in a specific circumstance as per Article thirty nine of the UN Charter.¹⁹⁹ Among the three components that may trigger Security Council resolutions with requirement character under Chapter VII, it is particularly the idea of a danger to the peace that has been ceaselessly augmented in the Security Council's practice.²⁰⁰ In 1992, the Council accentuated that "the non-military wellsprings of insecurity in the financial, social, helpful and natural fields have moved toward becoming dangers to peace and security".²⁰¹ While it may not be surprising for outcast streams to fall into this order, the Council has even considered HIV/AIDS as a danger to universal peace and security.²⁰² Following an assurance compatible Article thirty nine of the UN Charter, the Security Council's wide optional powers under the UN Charter likewise reach out to the selection of measures in accordance with Articles forty to forty two.

¹⁹⁹ J.A. Frowein and N. Krisch, 'Article 39', in B. Simma (ed.), *The United Nations Charter: A Commentary* (2002), 717.

²⁰⁰ K. Wellens, 'The UN Security Council and New Threats to the Peace: Back to the Future', (2003) 8 *Journal of Conflict and Security Law* 15.

²⁰¹ UN Doc. S/23500 (31 Jan. 1992), at 3.

²⁰² UN Doc. S/RES/1308 (17 Jul. 2000)

The UN Charter does not expressly endorse a specific request in which these measures must be taken, extending from inaction through proposals, calls for temporary measures, compulsory non-coercive measures, to military power. Given the necessities of the upkeep of worldwide peace and security, the reference to a particular regularizing expert of the Council for taking these measures is frequently quieted, as in its choices must be brought with some direness.²⁰³ In this optional structure of the UN Charter, it is along these lines hard to set up the particular regularizing expert of the Security Council's activities and their impacts on global displaced person insurance.

Customarily, the coercive idea of the Security Council's requirement powers is considered as the essential wellspring of the Council's standardizing specialist and commence for the impacts of its activities on general universal law. The coupling power of Security Council choices depends on Article twenty five of the UN Charter, by excellence of which the Council may force commitments on UN Member States. The Security Council's coercive forces are additionally fortified by Article 103 of the UN Charter stipulating that in the event of contention such commitments might beat some other worldwide understandings. With regards to its authorization activities, the Security Council's resolutions much of the time contain articulations about the apropos lawful standards regarding its political contemplations of a specific case or matter. Be that as it may, given the circumstance particular approach of Article 39 of the UN Charter, the regularizing impacts of these announcements rely upon an assortment of components.²⁰⁴

²⁰³ Higgins, *supra* note 36, at 5.

²⁰⁴ Öberg, *supra* note 36.

The advancement of standard universal law through the act of the Security Council clearly offers numerous procedural conversation starters concerning the Council's synthesis, its tendency as a political organ and the intelligibility of its specially appointed activities. However a more critical take a gander at the act of States uncovers that a large number of these inquiries are similarly significant to standard law-production through the conventional subjects of universal law.²⁰⁵ A more risky wonder is fairly introduced by the Council's current semi authoritative exercises, particularly in the field of counterterrorism. Though the Security Council's impact on standard global law comes from references to existing or developing guidelines of law, its semi authoritative resolutions stipulate conceptual standards of general application that go past existing principles of worldwide law in clear negligence of the consensual idea of arrangement commitments. In spite of the fact that this advancement was to some degree foreshadowed by Higgins' before perceptions, its conceivable outcomes for the worldwide legitimate framework are not yet predictable.²⁰⁶

3.3.4 Department for Refugee Affairs (DRA)

The DRA may pull back the outcast status of any individual in the event that it has "sensible justification for trusting" that the individual has stopped to be an evacuee or ought not have been perceived all things considered in any case.²⁰⁷ This may happen if the individual was ineligible for the status or the status was allowed "incorrectly because of deception or covering of actualities that were material to the determination of refugee status."²⁰⁸ The Act also approves the DRA to pull back the outcast status

²⁰⁵ Higgins, *supra* note 36, at 5.

²⁰⁶ On the Security Council quasi-legislative activities see *supra* note 9.

²⁰⁷ Garlick et al., *supra* note 14, 258.

²⁰⁸ Refugees Regulations § 37

of any individual in the event that it has sensible grounds to trust that the individual is a risk to national security or to any group in the nation.

The withdrawal of the displaced person status of a man additionally brings about the withdrawal of every single subordinate right. At the point when a man is allowed exile status, individuals from his family (counting a companion, subordinate youngster, or kin younger than eighteen, or ward parent, grandparent, grandchild, or ward living in the evacuee's family unit) are likewise agreed similar rights.²⁰⁹ In the event that the individual loses his outcast status, his relatives additionally lose their status.²¹⁰ Nonetheless, any relative who loses his subordinate status is qualified for appeal to for assurance freely.²¹¹

The DRA may likewise oust any outcast or an individual from his family on the off chance that it considers it essential "on the grounds of national security or open request."²¹² The Act builds up an Appeal Board led by an accomplished legitimate proficient, including as its individuals people with information of or involvement in issues identifying with movement, evacuee law, and remote issues, and requires that the Board work autonomously in the activity of its capacities.²¹³ Under the Act, haven searchers and refugees are qualified for request any troublesome choice of the DRA to the Board.²¹⁴ The Refugees Act denies refoulement, expressing that if doing as such would bring about the mistreatment of the individual or jeopardize his life, physical honesty, or freedom.²¹⁵

²⁰⁹ Ibid

²¹⁰ Refugees Act §§ 2 & 20; Refugees Regulations § 41.

²¹¹ Ibid

²¹² Refugees Regulations § 47.

²¹³ Refugees Act § 9.

²¹⁴ Refugees Regulations §§ 4, 28 & 46.

²¹⁵ Refugees Act § 18.

Chapter Four

Repatriation of Somali Refugees from Kenya: A Critical Analysis

4.1 Introduction

Kenya hosts a large asylum-seeking and refugee population. This is largely due to the country's location in a conflict-prone area. According to the UNHCR, there were a total of 825,250 refugees and asylum seekers in the country in 2016.²¹⁶ The majority of these people (close to 70%) were Somali citizens, while persons from South Sudan made up around 20% of the asylum-seeking and refugee population.²¹⁷ Though the process of repatriation has been ongoing, the 2015 attack²¹⁸ on Garissa University prompted the government of Kenya to fasten the process by declaring the closure of Dadaab camp to be end of November 2016. The Kenyan government requested UNHCR to close Dadaab camps and begin repatriation of Somali refugees in the camp and urban centres. The choice by the Kenyan government represented in view of investigative assertions that attacks were organized in these camps.²¹⁹ The UNHCR however pointed out that the aim of Kenya unexpectedly shutting the camp would prompt crises.²²⁰ Human rights bodies have also come up strongly condemning the Kenyan government for taking such ruthless actions without proper evidence to pinpoint their claims.

The support that the refugees enjoyed from the international as well as the local non-governmental organizations bodies saw the high court extend the closure period from

²¹⁶ United Nations High Commissioner for Refugees (UNHCR), Global Appeal 2015–2016: Kenya <http://www.unhcr.org/528a0a244.html>

²¹⁷ Ibid

²¹⁸ The Daily Nation Kenya, In the wake of Garissa attack, *Kenya frustrated by the Dadaab issue*. Nation Media Group Nairobi, April 14, 2015, Print

²¹⁹ Ibid

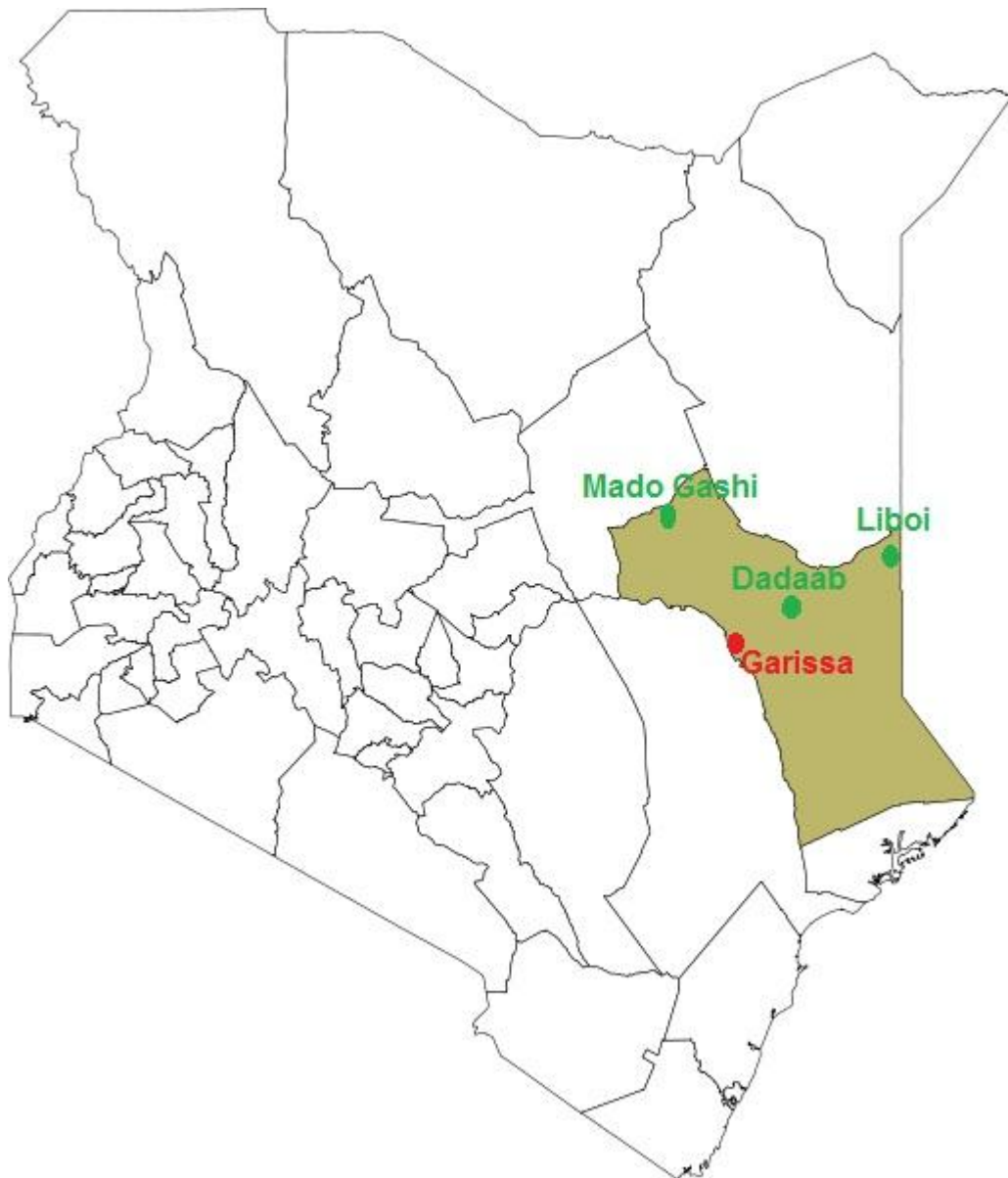
²²⁰ Op cit

November 2016 to June 2017. Although these bodies have been fighting for further extension, the US politics with Trump as the president and ban on Muslims, have killed the morale of the organizations. The ban affected the movement of dozens of Somali refugees who had been chosen for asylum in the United States and thousands others who had qualified for reintegration.²²¹ These refugees therefore are left with the option of returning back home as it's seen as the best alternative. Nonetheless, only 11 percent of the total Somali refugees in Kenya have returned back home.²²² The process is thus slow implying that many Somali refugees are reluctant on going home. This chapter critically evaluates the repatriation process of Somali refugees from Kenya to Somalia. The first theme discusses the repatriation process as a whole by looking at the implication to the host country, implications to country of origin and main obstacles in prevent the return of refugees. The second theme focuses on the response by the participants on the institutional and normative frameworks and the process of the Somali refugee repatriation.

²²¹ United Nations High Commissioner for Refugees, (2016). *UNHCR statement on the future of Kenya's Dadaab Refugee Camps* [Briefing notes].

²²² PM News (2017). 49,376 Somali Refugees Repatriated. <https://www.pmnewsnigeria.com/2017/02/28/49376-somali-refugees-repatriated/>

Figure 1: Map of Kenya showing Dadaab Camp



4.2 Repatriation Process and Implication to the Host Country

Basically, the Kenyan culture had encountered naughtiness or agony which required the repatriation of Somali refugees.²²³ It is foreseen that once Somali refugees go back to their Country of origin, the instability in the nation will diminish. The Kenya government has additionally kept up that it has been, excessively, carrying the immense weight of the Somali refugees with constrained support from the

²²³ UNHCR (2013) Global Appeal Update

internationally community.²²⁴ One member from the ministry of foreign affairs indicated that the Dadaab camp have resulted to enormous growth of the surrounding areas. He said

The refugee camps triggers the host government to work closely with the international government to ensure that the refugees are well taken care of. Through refugees, amenities such as hospital, schools and social gathering sprout. The local communities do enjoy from such developments.²²⁵

He thus added that repatriating the refugees would deny the community members from enjoying such services which would be withdrawn once the refugees are repatriated.

From the moment of arrival, refugees compete with the local citizens for scarce resources such as land, water, housing, food and medical services. Over time, their presence leads to more substantial demands on natural resources, education and health facilities, energy, transportation, social services and employment.²²⁶ They may cause inflationary pressures on prices and depress wages. In some instances, they can significantly alter the flow of goods and services within the society as a whole and their presence may have implications for the host country's balance of payment and undermine structural adjustment initiatives.²²⁷ One example of market disturbances would be the need to rent accommodation for office and residential purposes, not just for expatriates, but also for locally engaged staff, in response to a refugee situation.

The presence of refugees also contributes to the creation of employment benefiting the local population, directly or indirectly. Over the years the Dadaab camp has

²²⁴ Bradley, M. (2014). Rethinking Refugeehood: Statelessness, Repatriation, and Refugee Agency. *Review of International Studies*, 40(01), 101-123.

²²⁵ Interview to member of ministry of immigration through phone Camp on 3rd August 2017

²²⁶ Amnesty International. (2014a). *No place like home: Returns and relocations of Somalia's displaced*. AFR 52/001/2014. London: UK. Retrieved from <http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf>

²²⁷ Ibid

employed local members in government and NGO related jobs. One member of department of immigration who said:

Sometimes refugees are a blessing in disguise to the local communities especially Garissa which is an arid area. Jobs are created to the youths in addition to boosting the local businesses. As a result we have local community members who see refugees as a bother while others value them and thus do not support repatriation. Repatriating the refugees would therefore mean that the local community members as well as Kenyans working directly or indirectly for the refugees in Dadaab camp would lose their jobs.²²⁸

According to Bradley²²⁹, states of origin may encourage and use repatriation to enhance their perceived, if not actual, legitimacy, in post-conflict situations. States of origin view refugees as “highly politicized symbols” and their return is in essence, a public statement that there is no longer the fear of persecution.²³⁰ Bradley²³¹ argues that often times during the initial stages of a peace process, refugees are pushed to return even though conditions are not yet suitable, because repatriation is considered an important part of peace building.

Many interviewees felt that repatriation would negatively affect the country of origin as they felt that it had not yet stabilized. The social amenities and infrastructure in the country are not enough for the existing citizens. One community aid worker rhetorically replied

²²⁸ Sofia interview to an official in the department of immigration through phone on 3rd August 2017

²²⁹ Bradley, M. (2014). Rethinking refugeehood: Statelessness, repatriation, and refugee agency. *Review of International Studies*, 40(1), 114.

²³⁰ Hammond, L. (2014). ‘Voluntary’ repatriation and reintegration. In Fiddian-Qasmiyah, E., Loescher, G., Long, K., & N. Sigona (Eds.), *The Oxford Handbook of Refugee and Forced Migration Studies* (pp. 499-512). Oxford: Oxford University Press. doi 10.1093/oxfordhb/9780199652433.013.0043

²³¹ Bradley, M. (2014). Rethinking refugeehood: Statelessness, repatriation, and refugee agency. *Review of International Studies*, 40(1), 113.

Currently there is drought that has affected many Somalis in Somalia. Why would the government ask refugees to return to a country that is already drought stricken?²³²

. The severe drought, which has brought Somalia to the brink of famine, comes alongside the UN's own warnings that the country is in the grip of a cholera and measles outbreak. After the failure of this year's rains, the number of Somali people forced to leave their villages and land has reached more than 1.7 million.²³³

Repatriation would affect the economy of the country of origin (Somalia) negatively. The respondents indicated that the number of refugees returning would increase the burden to the Somalia government which was presently overloaded. One refugee who was against repatriation said

You know what, those who are in Somalia (our relatives) are complaining that the life is hard there. Why should we be allowed to go back to Somalia if the government is not able to take care of those who are there how will it take care of us?²³⁴

The repatriation process was also seen to likely destabilize the state of the country of origin (Somali) further. The repatriation process would increase the number of desperate, hungry and unemployed people in the country of origin. These people who are new to the country are likely to be lured to terrorist activities as compared to those who are permanently in that country. This point was supported by the respondents especially the NGO activists. One UNHCR worker said:

We are not helping the refugees neither is we protecting this country by repatriating the refugees. The terrorist groups are hungry to recruit and what's better than recruiting angry refugees who think that they have been forced to

²³² Sofia one on one interview to an community aid worker on 1st August 2017

²³³ International Organization of Migration (2017). *Joint return intention survey report 2017*. Nairobi, Kenya.

²³⁴ Sofia one on one Interview to a refugee in Dadaab on 1st August 2017

go back to a country they don't want to be a part of. I think we should allow these refugees to return to their country willingly.²³⁵

4.2.1 Main obstacles that prevent the return of refugees

Insecurity in Somalia was the primary factor for refugees not intending to return.²³⁶

Of those who did plan on returning within six months of the survey, 687 households were motivated primarily by the opportunity to restart their lives in Somalia and potential work opportunities, whereas 604 households were motivated by the unstable security in Dadaab camps and the pressure to leave.²³⁷ Therefore, based on the data, many of the returns would be considered premature and not fully voluntary, as it is push factors within the host state that primarily influenced the decision to return. Several refugees interviewed also mentioned that they feared having their children recruited by extremists if they returned, the very thing that led some of them flee to Kenya originally. Their greatest fear remains that their children would join the ranks of the insurgency in Somalia, in the absence of social services or security. One mother with over ten children said

As a result of the announcement by the Government of Kenya there was a spike in the number of people who returned unassisted, and they were worried because their children, especially their sons, did not have strong connections in Somalia since they were born in Kenya, and therefore they were fearful that their sons could be recruited by the militants.²³⁸

A young mum of three girls said

I fear the Bandits between Dadaab and Somalia. With my young girls i have all the reasons to worry since i have seen and heard about rape cases. I have young girls so I am scared my girls to be raped or sexually assaulted.²³⁹

²³⁵ Sofia one on one Interview to a local community aid worker on 1st August 2017

²³⁶ International Organization of Migration & United Nations High Commissioner for Refugees. (2014). *Joint return intention survey report 2014*. Nairobi, Kenya.

²³⁷ Ibid

²³⁸ Sofia one on one interview with Maimuna, a refugee in Dadaab on 1st August 2017

²³⁹ Sofia one on one interview with Amina, a refugee in Dadaab on 1st August 2017

Puntland and Somaliland have enjoyed enormous development characterized by improved security and political landscapes. For instance, the election of a new parliament and president by the Transitional Government has effected radical changes of containing the radical terror groups and their allies. The UNHCR contend that these developments present prospective possibilities for the refugees to voluntary repatriate back home.²⁴⁰

Appropriate infrastructure is vital in the parts of Somalia to where refugees are returning for the repatriation procedure to be practical. Somalis who have lived in the refugee camp for no less than five years have turned out to be acclimated to social administrations, for example, education and health services yet by far there are no such services for most of existing Somali occupants.²⁴¹ One refugee pointed to a lack of basic infrastructure on return. She said that,

Everyone wants to go back to a stable Somalia, but now is not the right time. There is no health or education yet. And we need a stable government before we return.²⁴²

Many refugees had the opinion that the basic amenities they enjoyed in Dadaab was not in Somalia.

I am informed that there are no enough public services like hospitals, water, schools, hence my reason not to return now. The country also falls behind on public services.²⁴³

²⁴⁰ United Nations High Commissioner for Refugees, (2015). *UNHCR statement on the future of Kenya's Dadaab Refugee Camps* [Briefing notes].

²⁴¹ UNHCR, 'Operations Strategy for the Voluntary Repatriation of Somali Refugees from Kenya to Somalia' (29/07/2015) at 5.

²⁴² Sofia one on one interview with Maimuna, a refugee in Dadaab on 1st August 2017

²⁴³ Sofia one on one interview to refugee number 5 in Dadaab on 1st August 2017

4.3 Institutional and normative framework that support repatriation

4.3.1 Voluntary repatriation programme

International human rights instruments recognize the right of individuals to return to their country of origin. The Universal Declaration of Human Rights (UDHR) provides for the right of return under Article 13 (2) as follows, ‘everyone has the right to leave any country, including his own, and to return to his country’.²⁴⁴ The Organization of Africa Union Convention governing the specific aspects of refugee problems in Africa, the African Charter on People and Human Rights are the regional legal instruments covering the refugees while the 1984 Cartagena Declaration on Refugees is a soft law instruments protecting refugees on voluntary repatriation.²⁴⁵

The returns programme under the Tripartite Agreement was largely successful. It provided that refugees would be assisted to return to Somalia in safety and dignity. The decision to return was only to be made voluntarily, in line with the principles of non-refoulement, and upon the provision of counselling and up-to date information on return areas. The current repatriation programme does not meet international standards for voluntary refugee return.

A Somali refugee who sought to remain anonymous said,

I don’t think I’ll take the voluntary return package to Somalia. My safety isn’t guaranteed there.²⁴⁶

Another Somali refugee stated:

I don’t want to return to Somalia yet. The country is not stable.²⁴⁷

²⁴⁴United Nations High Commissioner for Refugees. (2014, January 29). *Kenya: Somali refugees*. Retrieved from data.unhcr.org/horn-of-africa/download.php?id=1295

²⁴⁵ Hammond, L. (2014). ‘Voluntary’ repatriation and reintegration. In Fiddian-Qasmiyah, E., Loescher, G., Long, K., & N. Sigona (Eds.), *The Oxford Handbook of Refugee and Forced Migration Studies* (pp. 499-512). Oxford: Oxford University Press.

²⁴⁶ Sofia one on one interview to refugee number 7 in Dadaab on 1st August 2017

The impossible deadline to close the Dadaab camps in November 2016 and the disbandment of the Department of Refugee Affairs which is the the key government agency charged with overseeing the process under the Tripartite Agreement has led to fear, panic and chaos among the refugees. Refugees have voiced that they feel trapped, forced to choose between receiving assistance to return to areas they may not be ready to go back to, or waiting and facing the uncertain consequences of staying put. One refugee from Dadaab said;

The voluntary returns programme has brought a lot of worries to us. I personally don't want to go. If Al Shabaab sees you, and you are coming from Kenya, they will shoot you.²⁴⁸

4.3.2 Actors advocating for refugee repatriation

4.3.2.1 Kenyan Government

One of the organizations advocating for refugee repatriation is the Kenyan government. The Government has been the driving force behind pressuring for the repatriation of Somali refugees. The Kenyan government has propagated the idea of Somali refugees as a 'burden' and a 'security threat' in order to justify their actions in the name of national security. However, this has not occurred in a vacuum, as there are historical factors, which have also played a role in Kenya's increasingly restrictive refugee policies leading up to, and following, the signing of *Tripartite Agreement*. Kenya's refugee policies have changed considerably, from a relatively laissez-faire approach, to that of increasing restrictions and containment.²⁴⁹

The Government of Kenya took a more restrictive approach to refugee management than UNHCR had, by implementing a relocation directive in December 2012, which

²⁴⁷ Sofia one on one interview to refugee number 5 in Dadaab on 1st August 2017

²⁴⁸ Sofia interview one on one with a Somali refugee at Dadaab Camp on 1st August 2017

²⁴⁹ Government of Kenya. (2006). *The Refugees Act*. Kenya Gazette Supplement No. 97 (Acts No. 13). Nairobi, Kenya.

ended all urban refugee operations and ordered refugees to relocate to the designated camps.²⁵⁰ Kenya is the most significant proponent of the return of Somali refugees and therefore, greater attention is paid to Kenya's motives for its recent and aggressive pursuit of the repatriation of Somali refugees. This is best understood through outlining the factors behind the increasingly restrictive refugee regime, particularly since the 1990s. These factors include: the burden as host to a significant number of refugees, national security concerns, and relations between the Kenyan government and Somalis in North Eastern Province

The Government of Kenya announced that Dadaab Refugee Camp would be closed within three months, after an attack by Al-Shabaab at Garissa University in April 2015.²⁵¹ According to the government, failure to do so would result in the government relocating refugees themselves.²⁵² However, this was not the first time that Kenyan government officials have called for Dadaab Refugee Camp to be closed and for Somali refugees to repatriate. It did so in 1996 and again in 2012. Although they were not implemented, it led to UNHCR closing two refugee camps including Utange Refugee Camp, located near the coastal city of Mombasa, in 1996.²⁵³ These 'threats' are evidently used as leverage by the Kenyan government to further negotiate the containment and return of Somali refugees, thus furthering its political agenda.

According to the human rights watch it is inappropriate for Kenya to use the Aliens Act in regulating the Somali refugees in the country. Enacted to regulate the

²⁵⁰ United Nations High Commissioner for Refugees. (2014, January 29). *Kenya: Somali refugees*. Retrieved from data.unhcr.org/horn-of-africa/download.php?id=1295

²⁵¹ UNHCR. (2015). Global Trends 2014. <http://www.unhcr.org/figures-at-a-glance.html>

²⁵² Allison, S. (2015). World's largest refugee camp scapegoated in wake of Garissa attack. *The Guardian*. Retrieved from <http://www.theguardian.com/world/2015/apr/14/kenya-garissa-dadaab-scapegoatal-shabaab>

²⁵³ Kirui, P., & Mwaruvie, J. (2012). The dilemma of hosting refugees: A focus on the insecurity in north-eastern Kenya. *International Journal of Business and Social Science*, 3(8), 161-171.

movement of aliens within the state, the act denies the refugees the rights and privileges enumerated by the international conventions.²⁵⁴

4.3.2.2 United Nation High Commissioner for Refugees (UNHCR)

UNHCR's preconditions for a repatriation movement to occur have not yet been met in the case of Somali refugees.²⁵⁵ Despite this fact, UNHCR signed the *Tripartite Agreement* during a particularly challenging year for the organization. In the aftermath of signing the Tripartite Agreement on 10 November 2013, between the Somali government, the Kenyan state, and the UNHCR about the voluntary repatriation of refugees from Kenya, a pioneer project was initiated in December 2014. The intention was geared towards refugees who wished to return to the districts of Luuq, Kismayo, and Baidoa.²⁵⁶

The Tripartite Commission has endorsed the UNHCR to expand its operations presence into additional six areas in the central and southern Somalia including Mogadishu. Additionally, the UNHCR is expected to activate programs in Puntland and Somaliland so that more refugees may be accorded a chance to access livelihoods upon their return. Therefore, the total number of locations set for the returning refugees has been increased into twelve in the central region. The concerned bodies have promised to be present in the areas to assure a smooth integration of the refugees in line with the conditions set by the UNHCR.²⁵⁷ Nonetheless, while recognizing these positive developments, the UNHCR acknowledges the need for the Kenyan nation which has been a host to these individuals, and which has depicted enough

²⁵⁴ Human Rights Watch, *Hidden in plain View: Refugees living without protection in Nairobi and Kampala* (USA, Human Rights Watch, 2002)

²⁵⁵ UNHCR *Convention and Protocol Relating to the Status of Refugee* (UNHCR Geneva 1996).

²⁵⁶ Ibid

²⁵⁷ UNHCR. (2016). Africa. <http://www.unhcr.org/africa.html>

generosity to continue according to the Somali exiles refuge as per the international conventions.

The UNHCR insists that it is imperative refugees get amicable solutions through enhanced support for education, livelihood opportunities, effective programs at the borders to ensure smooth reintegration, and support for the hosting nation.²⁵⁸ Furthermore, the UNHCR aims at fostering rehabilitation process in Somalia where the refugees will receive packages as a way of anchoring a sustainable solution to avoid further displacement. However, the process as enumerated by UNHCR should be systematic with time variation. Unfortunately, the Kenyan government feel that the Somali refugees have overstayed their welcome, and the process should be accelerated to repatriate all the refugees within a given timeframe.

The international conventions argue against refoulment and rendition of refugees to situations where they may be vulnerable; the same protocols fail in offering directives on what should be done when the immigrants pose a national threat to the host nation, and their status are revoked. Therefore, the actual test of repatriation is the commitment of the concerned parties mainly the UNHCR,²⁵⁹ the home country, and other Non-Governmental Organizations to ensure that the returnees are well accommodated and reintegrated in the society. For instance, the repatriation of Mozambique refugees in the spring of 1994 when the country was recovering from internal disaster saw the program take two years in setting up of economic support which took over two years. Nonetheless, the process of repatriation is much more complicated since it demands the social transformation of the welcoming community as well as the refugees.

²⁵⁸ UNHCR. (2015). Global Trends 201. <http://www.unhcr.org/figures-at-a-glance.html>

²⁵⁹ UNHCR. (2016). Africa. <http://www.unhcr.org/africa.html>

4.4 Repatriation of Somali refugees from Kenya

4.4.1 Reasons for repatriation

Repatriation process has been used as a tool of stabilizing communities after conflicts such as the Somalia. According to Basso, the sense of belonging to a particular place regardless of the situation plays a vital role in creating the driving force for refugees to return home. The interweaving of practices, identity, and place which create a suitable place for habitation in a given landscape are necessary ingredients of creating survival tactics in the foreign land while the land of origin remains the inextricably linked. Globally, the international human rights promote repatriation of refugees as the most appropriate long lasting solution. Specifically, it states that all persons have rights of returning home.

The refugees living in Dadaab were required to indicate the reasons why they would want to be repatriated. Among the major reasons for willingness to return was the deteriorating condition at the camps and the requirement by the Kenyan government to repatriate. Hassan who had two wives said that;

Living conditions for Somali refugees in Kenya have worsened, which has a consequential impact on refugees' decision to return. The camp's conditions are poor and overcrowded, housing four times more refugees than what they were originally designed for.²⁶⁰

The government's directive in December 2012 to relocate all Somali refugees to the already over-populated Dadaab Refugee Camp, in effect, can influence refugees' decision to repatriate and could have served as a push-factor for Somali refugees who have already returned to Somalia.²⁶¹

²⁶⁰ Interview to refugees in dadaab on 3rd august

²⁶¹ Amnesty International. (2014a). *No place like home: Returns and relocations of Somalia's displaced*. AFR 52/001/2014. London: UK. Retrieved from <http://www.amnesty.ca/sites/default/files/no-place-like-home-2014.pdf>

Since the Kenyan government together with UNHCR and the Somali government have signed the Tripartite Agreement, I think I have no otherwise but to return to Somalia.²⁶²

Many local aid workers through the interview indicated that repatriation process was not a new phenomenon as refugees had been going home over the last decade years. It was however notable that repatriation process had increased greatly over the last few years. Abdikadir Mohamed who had worked in all the Dadaab camps in the last fifteen years said

We have seen enormous increase in the number of refugees going back to Somalia. Of course you can tell that some go home not because they want to but rather due to the orders from the Kenyan government.²⁶³

Salim who had been working with a local NGO to support the refugees in Dadaab said

Since the Garissa University attack, things have not been the same in Dadaab. The refugees get harassed by from time to time hence many have resorted to going back to their country.²⁶⁴

Mahmud, a business person in Dadaab argues that criminals exist in every society and that the Somali community in Dadaab is no exception. Being in Kenya since 1995, he contends that forceful removal made many criminals to take advantage to cross into Kenya with the refugees. Since the border is poorly controlled, these individuals have been allowed a window to smuggle weapons into Kenya. While commending the Kenyan community for the opportunity which has been accorded to him and his family in Nairobi, Mahmud argues that the generalization of all Somali refugees in Kenya, as security threat is wrong. He further submits that he is not ready to go back to Somalia since he has already invested a lot in Kenya and since the current situation in Somalia cannot accord him the same opportunity. According to him, the best

²⁶² Sofia interview to Saied through phone conversation on 3rd August 2017

²⁶³ Sofia interview to Abdikadir Mohamed through phone conversation on 3rd August 2017

²⁶⁴ Sofia interview to Salim working with a local NGO through phone conversation on 3rd August 2017

solution for Kenya would be to tighten its security at the border and search for the Al-Shabaab financiers in the country.

Article 33 of the 1951 Convention, states that refugees should not be exposed in any way to persecution of any kind. Moreover, the restriction towards refoulement depends on subjective sentiments of the refugees. From the above principles, two conclusions can be deduced that guide the parameters of repatriation. First the refugees should not be subjected to fear of persecution. Secondly, they should not be refouled to a location where they may be in any danger or harm. However, in the case of revocation of refugee status by the host nation, the objectives of security ultimately prevail.

4.4.2 Willingness of the Somali refugees to return

The voluntary nature of repatriation makes it an option. On the contrary, compulsory return of refugees is similar to forced migration which created the refugees at the first place. According to international customs and Refugee Conventions, expulsion of refugee is a breach of the international laws. No refugees or dislodged people who have at long last and certainly, in total flexibility, and in the wake of getting full learning of the actualities, including satisfactory data from the administrations of their nations of birth, should be constrained to come back to their nation of birth.

However, the convention fails to enumerate conditions, which should be met when the refugees become untenable to their host nations necessitating their return home. Moreover, willing repatriation is a desirable solution, UNHCR, and the individual countries have minimum control over it. Apparently, there is no clear demarcation when the facilitation of repatriation encouraged by UNHCR should stop. All decisions to close down a refugee camp walks on a thin line between refoulement and repatriation; this is because the failure of gentle inducement of refugees to return

home creates a dilemma for the host nation. Unfortunately, Kenya government finds itself in this situation as many Somali refugees in Dadaab are not willing to go back home. Most of the refugees in Dadaab argue that even though they would be happy to return home, the timing is wrong for the situation in Somalia is not yet conducive and that they have already established themselves economically.

Fatma Mohamud, a business lady in Dadaab, contends that;

Despite the decision by the Kenyan government to force us to leave, I am not ready to go back to Somalia. While a lot has been done by the AU forces and other international bodies to liberate my country from the threats posed by warlords and Al-Shabaab, I strongly feel a lot needs to be done.²⁶⁵

Habiba Hassan, a Somali refugee with a clothing business in Dadaab further argues that, despite the protracted situation at the refugee camps especially Dadaab where she has spent over 11 years ,it is not the time to go back to Somalia. Returning to a war-torn country will only make the situation dangerous for us, there is a need to nurture the relative peace that is experienced in Somalia first before forcing us to leave.²⁶⁶

Moreover, Somali nationals own most of the flourishing business ventures in Dadaab. Ismail Ali who runs several cloth shops in the area notes that he has established business links with the United Arab Emirates and Dubai where he imports his goods from. On the other hand, he openly portrays his skepticism about the plans by the Kenyan government to repatriate him back to Somalia which will derail his hard earned success which he terms as a setback.²⁶⁷ Additionally, the Human Rights Watch Report of 2014 notes that the Kenyan government has continuously violated the rights of the refugees through its security forces. Torture, stealing of properties, and abuse of

²⁶⁵ Sofia one on one interview to Fatma Mohamud on 1st August 2017

²⁶⁶ Sofia one on one interview to Habib Hassan on 1st August 2017

²⁶⁷ UNHCR *Protecting Refugees and the Role of the UNHCR* (UNHCR Geneva 2008).

persons has been identified the primary tools used by the forces to intimidate Somali refugees in Dadaab who have all been allegedly identified as Al-Shabaab terrorist.²⁶⁸

The Somali government on the other hand argues that the home country is ready to receive its citizens, claims that are highly refuted by the subjects and international bodies such as the UNHCR. The UNHCR regards the decision by the Kenyan government as untimely and insensitive paying no attention to the plight of the exiles.²⁶⁹ Regardless of the relations between refugees and the Al-Shabaab terrorist, the Kenyan government continuously claims that the international bodies have neglected its duties in aiding the state financially to support the refugees.²⁷⁰ Thus, Kenya which is a third world country continues to struggle to sustain the refugees despite its struggling economy. As a result, the decision to repatriate the refugees is the last resort by the host country which has refused to concede on its mission.²⁷¹

4.4.3 Return to Somalia

The respondents were asked to indicate whether they had ever returned to Somalia since they came to Kenya. All the respondents interviewed said they had never been to Somalia. The UNHCR introduced a go and see strategy in 1980 that was aimed at giving them confidence before they could finally relocate to their country of origin. The Executive Committee recognised that individual refugees should be able to visit their COO to ‘inform’ themselves of the situation in the areas of return.²⁷² The visit is supposed to enable a refugee make a decision on whether or not to return based on

²⁶⁸ UNHCR *Voluntary Repatriation: International Protection* Geneva (UNHCR Geneva 1996).

²⁶⁹ Ibid

²⁷⁰ UNHCR *Refugee Protection: A guide to International Refugee Law* (UNHCR Geneva 2001).

²⁷¹ UNHCR, ‘Operations Strategy for the Voluntary Repatriation of Somali Refugees from Kenya to Somalia’ 29/07/2015) at 5.

²⁷² UNHCR, EXCOM Conclusion No.18 (XXXI)- 1980.

what they see. Accordingly, go and see visits increase refugees' ability to evaluate the positive and negative factors in the COA with those in the COO.²⁷³

After the visit, refugees and IDPs are 'expected to share their impressions with the other refugees or displaced people'.²⁷⁴ The information will inform their decision on whether or not to repatriate. Information shared is on general issues such as, 'security situation, infrastructure and livelihoods opportunities'.²⁷⁵ The UNHCR has organized many go and see visits in Africa. For instance, in 2005, South Sudanese refugees from Kakuma camp went to visit their areas of origin.²⁷⁶ In each case, refugees met with the local authorities and were given a tour of their towns. Upon return from the visit, the refugees shared with the other refugees of their findings in the areas of return.

According to the IOM and UNHCR's joint return intention survey conducted in 2014 within Dadaab Refugee Camp, only 2.6% of refugees living in Dadaab intended to return to Somalia within two years following the survey and 97.4 % of refugees did not plan to return.²⁷⁷

²⁷³ Supra note 95.

²⁷⁴ UNHCR, 'UNHCR organizes go-and-see visits for displaced Kenyans', available at <http://www.unhcr.org/4821daa24.html> accessed on 08/04/2017.

²⁷⁵ Ibid.

²⁷⁶ AllAfrica, 'Refugee Go and See Visits, Dinkas on the Move', available at <http://allafrica.com/stories/200511291434.html> accessed on 03/04/2017.

²⁷⁷ IOM & UNHCR, 2014, p. 9

Chapter Five

Summary, Conclusions and Recommendations

5.1 Introduction

The study aimed at assessing repatriation in the post cold war period particularly looking at the repatriation of Somali refugees in Dadaab Kenya. The history of refugees who settled in Dadaab dates back about three decades ago when violence erupted in the country forcing mass exodus of refugees to East African countries. However due to the Kenya Somali porous border, majority of these refugees settled in Northern Kenya and a camp known as Dadaab camp was created. The camp itself is subdivided into four subsections which has over time being home for thousands of refugees. The number of refugees in the camp kept increasing and by the year 2016 it had over 800,000 refugees.

International institutions such as the UNHCR which oversees the protection of refugees all over the world has been working with the Kenyan government to ensure the rights of refugees are protected. Previously options such as resettlement and reintegration of refugees with the local community took place. These options came to a halt following the *Tripartite* Agreement which advocated for voluntary repatriation of the refugees to their country of origin. The agreement involved three parties that is Kenyan government, UNHCR and the Somalia government. The process of repatriating the refugees was to be on voluntary basis and refugees were allowed to do a pre-visit before making a decision of whether to return or not. Refugees were not included in the basic leadership handle. UNHCR declared that the repatriation

would occur from Kenya to Somalia over a time of four and half years, from July 2015 to December 2019.²⁷⁸

The *Tripartite* Agreement was nonetheless ignored following several terror attacks around the country more so in North Eastern parts of Kenya. One major attack which made the government to insist and persist on repatriation was the Garissa University attack which claimed lives of over 60 students. The refugees found themselves in a fix as it was considered as the place which hosted the terrorists. This study thus assessed the repatriation process of Somali refugees by examining the repatriation process in general, the institutional and normative framework supporting repatriation and repatriation of Somali refugees from Kenya to Somalia.

5.2 summary

5.2.1 Repatriation around the World

From the reviewed literature, it's clear that the refugee crises have affected many countries across the globe. The highly affected countries and those discussed in this chapter are the Middle East and African countries. In the Middle East countries such as Afghanistan had its citizens flee to Pakistan with the largest exodus experienced in 1983 and 1991. It is after the fall of the Soviet-backed government in 1992 that the refugees returned to Afghanistan. Refugees that did return home at that time were often not provided with a truly free choice of remaining in exile. In Africa repatriation started in Ethiopian where refugees were repatriated in Djibouti in 1983 and repatriation of the Namibians in 1989 while Mozambique refugees were repatriated in 1994. In Mozambique, many of the security concerns about RENAMO never came to pass. In 2008 the Liberian refugees in Ghana were returned home after being hosted

²⁷⁸ UNHCR, 'Operations Strategy for the Voluntary Repatriation of Somali Refugees from Kenya to Somalia' (29/07/2015) at 5.

for two decades.²⁷⁹ As the peace strategy was held in Southern Sudan, around 294,500 refugees and 1.7 million IDPs returned to their country of origin.

Mozambican refugees were given a free choice to remain in exile, but there are some questions as to whether all refugees were aware of their ability to make this choice independently. In addition, while the refugees, particularly those in Malawi, were provided with levels of assistance that were generous considering the poverty of their hosts, the drought that afflicted Southern Africa had a detrimental effect on the provision of relief supplies, that forced some refugees to return home earlier than they would have liked. In the EAC community there was the repatriation of Somali refugees in Kenya between 1993 and 1994. However, throughout 1992 and 1993, most Somali refugees decided that remaining in Kenya, despite the appalling conditions there, was a better option than returning home. Studies show that African nations have strengthened calls for repatriation particularly because of the cost ramifications of facilitating and incorporating refugees.²⁸⁰

5.2.2 Normative and Institutional Frameworks on Repatriation

The study concludes that global normative and institutional frameworks are used to represent all the refugees across the world. The international and regional normative frameworks on repatriation are the Universal Declaration of Human Rights, the 1951 UN Convention and the 1969 OAU Refugee Convention, the General Assembly and the Security Council. The United Nations High Commissioner for refugees is the only international institution that is concerned with refugee repatriation. Regional normative frameworks on refugee repatriation are. These conventions cater for the

²⁷⁹ Tanle, A. (2013). Refugees' reflections on their stay in the Buduburam camp in Ghana. *GeoJournal*, 78(5), 867–883.

²⁸⁰ PM News (2017). 49,376 Somali Refugees Repatriated.

<https://www.pmnewsnigeria.com/2017/02/28/49376-somali-refugees-repatriated/>

right of refugee on repatriation within African countries. In Kenya the right of refugees particularly on repatriation is mentioned under the Kenya Refugee Act, the Kenyan Constitution and the Tripartite Agreement. For repatriation of Somali refugees to be enforced in Kenya, all the normative and institutional frameworks on repatriation must be taken into consideration.

International human rights instruments recognize the right of individuals to return to their country of origin. The Universal Declaration of Human Rights (UDHR) provides for the right of return under Article 13 (2) as follows, ‘everyone has the right to leave any country, including his own, and to return to his country’.²⁸¹ The Organization of Africa Union Convention governing the specific aspects of refugee problems in Africa, the African Charter on People and Human Rights are the regional legal instruments covering the refugees while the 1984 Cartagena Declaration on Refugees is a soft law instruments protecting refugees on voluntary repatriation.²⁸²

The study established that returns programme under the Tripartite Agreement was largely successful. It provided that refugees would be assisted to return to Somalia in safety and dignity. The decision to return was only to be made voluntarily, in line with the principles of non-refoulement, and upon the provision of counselling and up-to date information on return areas.

5.2.3 Repatriation of Somali Refugees from Kenya

Repatriation process has a significant effect on the host country. Repatriation process would negatively affect the country of origin as it has no enough social amenities and infrastructures for its citizens. The country which has severely been hit by the drought is yet to regain its previous state as the existing population is also migrating to other

²⁸¹United Nations High Commissioner for Refugees. (2014, January 29). *Kenya: Somali refugees*.

²⁸² Hammond, L. (2014). ‘Voluntary’ repatriation and reintegration.

countries such as Ethiopia in search for better life. The study further established that the economy of the country of origin is likely to be affected as the number of dependants is increased. repatriation is likely to affect the security status of the country since the people repatriating have no jobs or means of income thus desperate and may thus end up joining terrorist groups in the country. The refugees indicated that obstacles preventing them from repatriating to Somali as insecurity and inadequate basic amenities in the country of origin. Refugees particularly fear their children more so their sons from being recruited by terrorist groups.

5.3 Conclusion

The study concludes that repatriation process have a significant effect on the host country. The Garissa community was found to be highly dependent on the refugees in Dadaab camp. The economy of the community has been harnessed by the presence of refugees who have high level of disposable income. According to the UNHCR, since the refugees in the camp have no formal employment they get food stuff to help them in their daily lives. The refugees have limited right of movement and therefore only the outsiders are in a position to import products into the camps. Closing the Dadaab camp through repatriation of refugees was seen to deny the community members this privilege thus affecting their economy.

The study concludes that the repatriation process would negatively affect the country of origin as it has no enough social amenities and infrastructures for its citizens. The country which has severely been hit by the drought is yet to regain its previous state as the existing population is also migrating to other countries such as Ethiopia in search for better life. The study further established that the economy of the country of origin is likely to be affected as the number of dependants is increased. The study also established that repatriation is likely to affect the security status of the country since

the people repatriating have no jobs or means of income thus desperate and may thus end up joining terrorist groups in the country.

The outline of the 1951 Refugee Convention was that, refugee status stop to exist once a refugee restores themselves in the Country of origin.²⁸³ Correspondingly, the encircling of the 1969 OAU Convention was that, 'deliberate repatriation ought to be a definitive answer for African refugees'²⁸⁴ before the contention finished. The presumption was that African refugees would probably need to backpedal to their nations taking after national autonomy.²⁸⁵ Article 33 (1) of the 1951 Refugee Convention recommends that refugees have a decision of repatriating when they choose to do as such.²⁸⁶ This is on account of; the article shields refugees from coming back to zones where their life or opportunity would be at hazard. No reservations are allowed on the non-refoulement guideline.

The study concludes that obstacles preventing refugees from repatriating to Somalia as insecurity and inadequate basic amenities in the country of origin. The study concludes that refugees particularly fear their children more so their sons from being recruited by terrorist groups. They further feared sexual abuse especially on the young girls by the same groups. The UNHCR depicts essential preconditions, which are being met while advancing refugees. These elements incorporate the readiness to return, enhanced conditions guaranteeing the pride and wellbeing of the returnees, formal understanding between the concerned on-screen characters, security

²⁸³ Article 1(C) (4) of the 1951 Refugee Convention.

²⁸⁴ Supra note 93 at 24. See, article 5 of the 1969 OAU Convention.

²⁸⁵ Ibid

²⁸⁶ Ibid

affirmation by the nation of starting point, lastly contact of UNHCR to the returnees.²⁸⁷

In voluntary repatriation, refugees have the chance to settle on their own choices in regards to when and how they will return home.²⁸⁸ Regardless of the possibility that they choose to return home amid an all the more entirely controlled authority repatriation work out, the refugees should be able exercise some control over specific parts of their arrival relocation, for example, the planning of their arrival and their goal in home zones.²⁸⁹ The choice to repatriate is a perplexing method for refugees and includes the correlation of the impression of the fascination of returning home, with a few different choices, incorporating staying in a state of banishment as refugees. The repatriation basic leadership handle obliges refugees to make some sort of money saving advantage investigation, in view of the data accessible to them, in the matter of whether proceeded with outcast is a superior alternative then returning home.²⁹⁰ The choice must include a substantial number of variables, from both the home range and the settlement region.

The study established that the repatriation process was not voluntary. The refugees were hoaxed into returning to Somalia by being lured by money, promised better life in Somalia or threatened if they fail to return. The Kenyan government was one of the actors advocating for repatriation of the refugees. The UNHCR through signing the *Tripartite Agreement* was also seen as a party advocating for repatriation of refugees.

²⁸⁷ UN High Commissioner for Refugees (November 2000). *Evaluation of UNHCR's Policy on Refugees in Urban Areas: A Case Study Review Of New Delhi*. Evaluation and Policy Analysis Unit.

²⁸⁸ UNHCR, 'Operations Strategy for the Voluntary Repatriation of Somali Refugees from Kenya to Somalia'

²⁸⁹ Crammer, Christopher, *Civil War is Not a Stupid Thing: Accounting for Violence in Developing Countries*, (Hurst & Co., 2006)

²⁹⁰ Op cit 235

The UNHCR was also against repatriation as it required the refugee repatriation to be voluntary.

The UNHCR has a duty internationally to ascertain protection of displaced people while contemplating durable elucidations for their plight. Hence, UNHCR outlined three solutions to the problem as follows: Resettlement, Development through community incorporation, and the four R's: reintegration, repatriation, reconstruction, and rehabilitation.²⁹¹ Nonetheless, Scalettaris claims that the refugee management outlined by UNHCR had its preference shifted from resettlement to repatriation after the Cold War.²⁹² Conversely, the UNHCR delineated indispensable preconditions, which are being met while facilitating repatriation of refugees. These factors include the willingness to return, improved conditions assuring the dignity and safety of the returnees, formal agreement between the concerned actors, security assurance by the country of origin, and finally contact of UNHCR to the returnees.²⁹³

5.4 Recommendations

From the above conclusions, this study makes the following recommendations;

5.3.1 Government of Kenya

The Kenyan government should reconsider the repatriation process of the Somali refugees in Dadaab and deal with the insecurity situation in the country independently. The Kenyan government cited security as one of the main factors why it came up with the conclusive decision to repatriate the refugees. Working on the

²⁹¹ UN High Commissioner for Refugees (November 2000). *Evaluation of UNHCR's Policy on Refugees in Urban Areas:*

A Case Study Review Of New Delhi. Evaluation and Policy Analysis Unit. 17

²⁹² Ibid

²⁹³ Op cit 17

Kenyan Somali porous border would help deal with the terrorist group instead of punishing the entire refugee group.

The Kenyan government should extend the repatriation period till Somalia stabilizes instead of giving a fixed date when all the refugees should be gone. This way the government would help create a conducive economy for the Garissa people who wholly or partially depend on the presence of refugees in the country.

5.3.2 International Bodies

The UNHCR should work closely with the Kenyan government to ensure that the refugees are sensitized on the importance of security and keeping the camp safe. Since the Kenyan government indicated that the terrorist who carried major attacks in Kenya conducted their plans from the camp, this shows that some parties have failed in securing the camp. If the international organization works with the government such issues would not arise as security personnel would be placed strategically in the camp.

The international governments such as the UK and the USA should help the Kenyan government and the UNHCR in repatriating the Somali refugees. It's a lot of work for one government to ensure that the refugees return home and settle in their country of origin. Support from international countries would also help the Somali government in creating better infrastructure and social amenities which the refugees claim they require for them to consider returning to Somali.

5.3.3 Government of Somalia

The government of Somali should work on its economy by creating better infrastructure such as houses and roads; social amenities such as schools, hospitals.

The refugees are worried of going to a deteriorated kind of life and would prefer to at least have basic facilities within reach.

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APPENDICES

Appendix 1: Interview Guide

Interview Guide for Local Community Representatives' Aid Workers

Repatriation process

- i. Describe the implication to the host country of refugee repatriation?
- ii. What are the implications to the country of origin on refugee repatriation?
- iii. What are the main obstacles in that prevent the return of refugees? Explain

Institutional and normative framework support repatriation

- iv. Describe what is entailed in the status of the voluntary repatriation programme?
- v. Which are the organizations advocating for refugee repatriation and why?
- vi. Which organizations are against refugee repatriation and why?
- vii. What is the stand of the organization you work with on refugee repatriation?

Repatriation process of Somali refugees from Kenya to Somalia

- viii. What are the reasons behind the recent repatriation process of Somali refugees in Dadaab?
- ix. Do you support the exercise? Give your reasons
- x. Are the refugees willing to return to Somali? Explain
- xi. What explanations do the refugees give for their slow return to Somalia?

Interview Guide for Representatives from Ministry Of Foreign Affairs

Repatriation process

- i. Describe the implication to the host country of refugee repatriation?
- ii. What are the implications to the country of origin on refugee repatriation?
- iii. What are the main obstacles in that prevent the return of refugees? Explain

Institutional and normative framework support repatriation

- iv. Describe what is entailed in the status of the voluntary repatriation programme?
- v. Which are the organizations advocating for refugee repatriation and why?
- vi. Which organizations are against refugee repatriation and why?
- vii. What is the stand of the organization you work with on refugee repatriation?

Repatriation process of Somali refugees from Kenya to Somalia

- viii. What are the reasons behind the recent repatriation process of Somali refugees in Dadaab?
- ix. Do you support the exercise? Give your reasons
- x. Are the refugees willing to return to Somali? Explain
- xi. What explanations do the refugees give for their slow return to Somalia?

Interview Guide for Representatives from Department Of Immigration

Repatriation process

- i. Describe the implication to the host country of refugee repatriation?
- ii. What are the implications to the country of origin on refugee repatriation?
- iii. What are the main obstacles in that prevent the return of refugees? Explain

Institutional and normative framework support repatriation

- iv. Describe what is entailed in the status of the voluntary repatriation programme?
- v. Which are the organizations advocating for refugee repatriation and why?
- vi. Which organizations are against refugee repatriation and why?
- vii. What is the stand of the organization you work with on refugee repatriation?

Repatriation process of Somali refugees from Kenya to Somalia

- viii. What are the reasons behind the recent repatriation process of Somali refugees in Dadaab?
- ix. Do you support the exercise? Give your reasons
- x. Are the refugees willing to return to Somali? Explain
- xi. What explanations do the refugees give for their slow return to Somalia?

Interview Guide for Refugees in Dadaab

- i. What do you think of the recent refugee repatriation? Do you think it's voluntary or are people coerced?
- ii. Have you travelled back to Somalia since you arrived in Kenya?
- iii. Has anyone forced you to return? If not why do you want to return to Somalia?
- iv. If you are not intending to return now, what is preventing you from returning?
- v. Do you communicate with your relatives in Somalia?
- vi. If you return, would some of your family members remain behind? If Yes, why?
- vii. If you decide to return, what are the challenges?