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Voluntary Repatriation and Resettlement of Refugees in Kenya

BY

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the Award of a Masters of Arts Degree In International Studies**

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DECLARATION

This research project is my original work and has not been presented for an award of degree in any other University.

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List of Abbreviations

CRA	Commissioner for Refugee Affairs
DRA	Department of Refugee Affairs
NGO	Non Governmental Organization
OAU	Organization of African Union
RAB	Refugee Appeal Board
RAC	Refugee Affairs Committee
SALW	Small Arms and Light Weapons
UNHCR	United Nations High Commissioner for Refugees
UN	United Nations

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Abstract

The global refugee problem requires an analysis of the size of the problem from the various dimensions and linkages that refugee issues exhibit nationally, regionally and internationally. Such an analysis allows understanding of the policy stands that the countries of asylum take. As the refugee burden continue to bite harder on the countries of asylum, a question on the search for solutions to the problem remains of paramount importance.

The research problem mainly focused on investigating the refugee situation in Kenya examining Kenya's structure and strategies in the management of refugee affairs. The study looks deeper into the various linkages that the refugee situation presents in its management nationally and regionally. The study also attempts to inquire into the legal and political dynamics of voluntary repatriation and resettlement of refugees as viable solutions to the refugee problem.

The study claims that the refugee situation in Kenya is protracted and in a crisis due to the ever diminishing support for situations such as these as donors focus on new refugee crisis and cases of mass repatriation. According to the study, the crisis is further complicated by the reduced prospects for refugees to return to their countries of nationality due to prolonged political conflicts delaying conditions safe for voluntary repatriation. Additionally, the study found out that rigid resettlement allocations and restrictive eligibility criteria shrink the chances of lightening the refugee burden bore by the asylum countries. While all this is happening, possibilities of severed bilateral relations among refugees and their host communities continue to pose danger of possible conflicts. The impact of refugees on both state and human security is evident and there is need for sustainable solutions if international peace is to be guaranteed.

Chapter One

Introduction to The Study

1.1. Introduction

The protection of refugees is an international agenda enshrined in the 1951 Convention relating to the Status of Refugees and its 1969 Protocol. There are also regional instruments such as the 1969 OAU Convention governing The Specific Aspects of Refugee Problems in Africa, the Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama and other national refugee laws like the Kenya 2006 Refugee Act. There are also emerging debates on contemporary complementary protection for refugees which McAdam has argued is granted by states on the basis of international protection needs outside the framework of the 1951 Convention framework which could be pegged on the complexity of issues causing refugee movements. The term protection is however not given an express defined in international refugee law but is however predicated on the breakdown of national protection¹, human rights breaches and the collapse of “an existing social order”² due to civil strife, aggression or revolution. The state failure to offer basic guarantees to its citizens force them to seek asylum in other states hence calling for international protection due to the “*de jure*”³ loss of nationality and the protection that comes with it and this is what McAdam says forms the link between the individual and international law.

¹ McAdam, J. Complementary Protection in international Law *Oxford Monographs in International Law* (New York: Oxford university Press, 2007) pp. 19-51 p.20.

² Goodwin-Gill, Guy. *Refugees in International Law* (Oxford: Oxford University Press, 2007) p. 1.

³ McAdam, J. Complementary Protection in international Law op.cit p.20.

International refugee protection is largely practiced on the principle of *non-refoulement*⁴ prohibiting the return of a refugee to the frontier territories where their life and freedom would be in danger. Goodwin-Gill argues that the principle of non-refoulement is grounded in international human rights and refugee law as well as in doctrine and in customary international law as “an inherent aspect of the absolute prohibition of torture, even sharing perhaps in some of the latter’s *jus cogens* character”.⁵ The principle of non-refoulement applies whether at the border, maritime zones and even high seas. It is supposed to protect individuals from states and international actors’ actions that might expose individuals to risks of torture contrary to international law.

The global refugee problem has been noted to be caused by wars, military coups and massive human rights violations.⁶ New displacements of populations throughout the post-war period have continued to be witnessed as old conflicts remain unresolved and new ones arise. As the massive displacement continues to be witnessed, and the challenge of resolving the problems continues to be far from reach, protracted refugee situations creating almost permanent refugee residents in countries of asylum have added to the weight of the refugee burden placed on the countries of asylum. This population problem is not only a pressure due to the numbers, but also due to other dimensions like rural-urban migration, military and social conflicts as well as underdevelopment⁷ pushing the more responses with limited measures by the developed world “at their own front or back door; hence, the concentration on adding locks and bolts, on building higher walls and stronger fences, on palliatives and not remedies”.⁸

⁴ 1951 Geneva Convention Relating to the Status of Refugees Article 33.

⁵ Goodwin-Gill, G ‘The Right to Seek Asylum: Interception at Sea and the Principle of *Non-Refoulement*’ (An Inaugural Lecture given at the Palais des Académies, Bruxelles, 16 February 2011).

⁶ Loescher, G. *Beyond Charity: International Cooperation and the Global Refugee Crisis* (New York: Oxford University Press, 1993) p. 3.

⁷ Goodwin-Gill, Guy. *Refugees in International Law* op. cit p.4.

⁸ Goodwin-Gill, Guy. *Refugees in International Law* op. cit p.4.

The contemporary African society has continued to suffer from continued conflicts that have led to massive displacement of people creating a huge refugee case load to the asylum countries. More peculiar is the overwhelming length that the conflicts take to be resolved creating protracted refugee situations with almost no foreseeable solutions in the near future. Mwangi has noted particularly the depressing pattern of conflicts in the Greater Horn of Africa which cause loss of life and also severe Africa's development, signaling decay in the body politics⁹. From the perspective of the impact of conflicts in Africa, it is important for solutions to refugee problems to be sought for the benefit of the individual refugees and the asylum countries and also for the minimization of the threat to international peace and security.

The search for solutions for the refugee problem is an international agenda as no one single actor can do it alone. The 1951 Convention that is the core of refugee law, in addressing the search for solutions to the refugee problem seems to favor local integration through naturalization¹⁰ a solution that Chimni¹¹ has argued may have been prompted and favored by the geopolitical environment of ideologies and the room for economic expansion of the western European countries at the time when the convention was conceived. Where as there are three solutions as identified by the Executive Committee of the UNHCR (voluntary repatriation, resettlement and Local Integration) resettlement is not documented in the 1951 convention with voluntary repatriation assuming an implied concept through the provisions of Article 1 (C) as well as Article 33 on the principle of non refoulement. Noting the weight of the refugee problem globally, and the continued lack of solutions, the Executive Committee of the United Nations

⁹ Mwangi, M. 'The Greater Horn of Africa Conflict System: Conflict Patterns, Strategies and Management Practices' (paper prepared for the USAID project on Conflict and Conflict Management in the Greater Horn of Africa, April 1997, Revised, September 1997).

¹⁰ 1951 Geneva Convention Relating to the Status of Refugees Article 34.

¹¹ Chimni, B.S. (1998) 'The Geopolitics of Refugee Studies: A View from the South' *Journal of Refugee Studies* 11(4): pp 350-374: 350.

High Commissioner for Refugees mandated the UNHCR to facilitate and promote durable solutions for refugees which encompass resettlement, voluntary repatriation and local integration as indicated in the UNHCR statute.

This study is concerned with the refugee situation in Kenya particularly with the structure and strategy of the government in the management of refugee affairs. The study is also concerned with the access to solutions for the refugees in Kenya through resettlement and voluntary repatriation.

1.2. Statement of the Research Problem

Prolonged, intractable and new conflicts especially in the Great Horn of Africa, deplorable state of affairs and perceived insecurity in the countries of origin have made voluntary repatriation almost impossible. On the other hand, rigid resettlement allocation quotas, strict eligibility requirements and stronger immigration controls¹² only afford a handful of refugees' admission for resettlement. Continued national security concerns and the heavy refugee burden in the countries of asylum with underdeveloped principles of reparations¹³ for losses suffered from receiving refugees challenge the chances of solutions to the problem in the foreseeable future.

This been the case, prolonged stay of refugees in Kenya continue to persist without any foreseeable solution in the near future. This interplay between limited access to voluntary repatriation and the 'challenging'¹⁴ access to resettlement leaves the refugees in Kenya in a state of limbo, trapped not to be able to rebuild their lives. As the political dimensions of voluntary repatriation and resettlement continue to change with state interests taking centre stage, the problem of the refugees is more likely to continue than to end.

¹² Goodwin-Gill, Guy. *Refugees in International Law* op.cit p. 4.

¹³ Ibid p. 2.

¹⁴ <http://www.unhcr.org/4e89a67b9.html> High Commissioner's Opening Statement to the 62nd Session of ExCom p. 4.

As the window for durable solutions continues to narrow, tensions and crisis between the refugees and the host community are inevitable creating room for violent conflicts. The continued competition for minimal natural resources and environmental degradation will continue to spark more conflicts within these groups. More challenging is the acknowledgement that the environment knows no bounds¹⁵ and as its degradation in the refugee camps continues more conflicts are expected not only within the camps but also away as the impact spreads its wings to mount pressure on the larger population. Indeed, Kenyan citizens are likely to continue perceiving the refugees as foreigners taking away what could otherwise benefit them increasing xenophobic tendencies, more tension and crisis. Violent conflicts from this perspective cannot be underestimated especially in a protracted refugee situation that Kenya faces. Moreover, perception of refugees as foreigners attracting special attention and aid from the international community to the disadvantage of the host community are further grounds to create conflicts and the more reason to think about the refugee situation in Kenya, its management and the search for of solutions.

This study aims at investigating the refugee situation and its management in Kenya and the dynamics to contend with in the search for durable solutions through voluntary repatriation and resettlement of refugees. This will be achieved through review of existing secondary data and interviews with actors in refugee affairs as well as the host and the refugee community representatives.

1.3. Objectives

The study will be guided by three objectives;

- a) To investigate the refugee situation in Kenya

¹⁵ Mwagiru, M. 'Towards a Security Architecture in the IGAD Region' in Mwagiru, M. *African Regional Security in the Age of Globalization* (Nairobi: Heinrich Boll Foundation, 2004) pp. 133-145:142.

- b) To critically examine the management of refugee affairs in Kenya
- c) To explore limitations towards sustainable voluntary repatriation and resettlement programmes

1.4. Literature Review

1.4.1. The Refugee Situation and its Management in Kenya

There are over 10.55 million refugees globally,¹⁶ with 8.5 million seeking asylum in third world countries with 2.2 million seeking asylum in sub-Saharan Africa alone following old and new armed conflicts majorly from Somalia, the Democratic Republic of the Congo, and the Sudan.¹⁷ Kenya has been home to more than half a million refugees who have tended to stay longer than envisaged and was rated sixth largest refugee hosting country in the world.¹⁸ Just like the world over, majority of the refugees in Kenya have sought asylum due to political conflicts and violence which have been recorded as the greatest contributor to refugee populations amid environmentally induced refugee (through famine and drought). These conflicts also tend to extend making return to countries of nationality increasingly delayed¹⁹ with global terrorism and national security concerns slowing resettlement processes creating protracted²⁰ refugee situations in the countries of asylum. Additionally, the increased refugee influxes into the country make it difficult for the government to consider the solution of local integration.

¹⁶ UNHCR. *UNHCR Statistical Yearbook 2010: Trends in Displacement, Protection and Solutions* (Geneva: UNHCR, 2011) p.21.

¹⁷ The UN Secretary General's report of 2011 (A/66/321) 'Assistance to Refugees, Returnees and Displaced Persons in Africa' p.3.

¹⁸ UNHCR. *UNHCR Statistical Yearbook 2010* op.cit p.26.

¹⁹ Peterson, S. and Hovil, L. 'A Remaining Hope for Durable Solutions: Local Integration of Refugees and Their Hosts in the Case of Uganda' *Refugee Survey Quarterly Journals* Vol. 22. No.1 (2006) pp. 26-38:26.

²⁰ A protracted refugee situation as defined by the UNHCR as a situation where refugees have stayed in a country of asylum for more than 5 years with no sign of immediate return to countries of origin.

Studies have indicated that most refugees remain in their region of origin rather than seeking asylum elsewhere.²¹ This trend has seen many refugees from the Greater Horn of African conflict system find their way into Kenya with Lidney noting that the number of refugees in Kenya is over half a million²² with Somali refugees being the majority. The analysis of this situation has been seen by scholars as not just a protracted situation but also as a situation in a crisis.²³ This crisis is not just because of the numbers but also by the fact that many refugees come from countries that are still locked in conflicts and violence hence no foreseeable return in the near future.²⁴ Additionally, the situation is even challenging due to the pressure exerted by the population on the national infrastructure and development issues.²⁵ Besides these challenges, international intervention on Kenya's refugee situation has been marked with phases that have shifted from a period of high profile humanitarian emergency, care and maintenance to UNHCR's struggle to maintain minimum standards of living for the refugees due donor fatigue.²⁶ These are clear indications of the worsening situation of the refugee burden that Kenya has to contend with amidst its national developmental agenda.

Kenya having hosted refugees for decades, faces head on the challenges of population pressure not only because of numbers but also due to pressure on the available infrastructure, military and non military sources of threat to humanity²⁷ following competition for scarce natural resources, environmental degradation from the weight of hosting hundreds of thousands of refugees. Conflicts between the host and the refugee community have been evident as the host

²¹ UNHCR. *UNHCR Statistical Yearbook 2010* op.cit p. 24.

²² Lidney, A. 'Between a Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya' *Oxford Journals of Refugees Vol.30. Issue 4* (2011) pp. 14-49:15.

²³ <http://data.unhcr.org/horn-of-africa/regional.php> (last visited on 28th April 28, 2012. 1400hrs).

²⁴ Peterson, S. and Hovil, L. 'A Remaining Hope for Durable Solutions op.cit p26.

²⁵ Goodwin-Gill, Guy. *Refugees in International Law* op.cit p. 4.

²⁶ Lidney, A. 'Between a Protracted and a Crisis Situation' op. cit p. 20.

²⁷ Ofuho, H. 'Security Concerns in the Horn of Africa' in Mwangi, M. *African Regional Security in the Age of Globalization* (Nairobi: Heinrich Boll Foundation, 2004) pp. 7-17 p. 9.

community feel that the refugees gain special attention from UNHCR and other NGO's by receiving food aid, medical and education among other social services which the host community can hardly afford.²⁸ An added resource burden is another aspect of hosting refugees since the government must provide security in the areas where the refugees are hosted. Additionally, the government had to constitute a National Refugee Secretariat to receive and register refugees and as the refugee influx set in the government has had to establish the Department of Refugee Affairs with personnel to administer and manage all refugee affairs in Kenya.

As the burden on the host country continues to increase, solutions to this challenge seem far from being achieved. The resettlement countries which are expected to share the burden through the spirit of international cooperation and burden sharing as envisaged in the preamble to the 1951 convention are increasingly tightening their boarder controls and eligibility criteria and advancing "security conditions, growing unemployment, and preservation of culture as rationale for their stand".²⁹ According to Goodwin-Gill "the response from the more developed world seem frequently limited to measures at their own front or back door; hence concentration on adding locks and bolts, on building higher walls and stronger fences, on palliatives and not remedies."³⁰ While this is the case on access to resettlement, voluntary repatriation remains a big challenge as old conflicts take long to be resolved while new ones erupt in the process. Refugees who continue to express fear of persecution become resistant to returning home and as they stay for long in the country of asylum, some establish social and economic ties which strengthen their resistance to return home where their prospects of re-establishing³¹ themselves seems uncertain.

²⁸ Kirui, P. and Mwaruvie, J. 'The Dilemma of Hosting Refugees: A Focus on Insecurity on North Eastern Kenya' *International Journal of Business and Social Science* Vol. 3 No. 8 (2012) pp. 161-171:164.

²⁹ Gitongah, M. (2007) 'Towards a Durable Solution to Refugee Crisis in Kenya: A Critical Analysis of Refugee Resettlement' *University of Nairobi: IDIS, MA Thesis* (2007) p.32 see also Chimni, B.S. (1998) 'The Geopolitics of Refugee Studies: A View from the South' *Journal of Refugee Studies* 11(4): 350-374:350.

³⁰ Goodwin-Gill, Guy. *Refugees in International Law* op. cit p. 4.

³¹ 1951 Convention op. cit Article 1 (C) 4.

1.4.2. Refugee Rights and Social Contract Theory

The philosophy of the social contract theory is based on the conception of a society where autonomous individuals with self interests come together and form a collectivity guided by rules. The social contract holds the promise of equal protection to the conflicting interests of all³² hence facilitating a cohesive community. The contract allows people to leave the state of nature where everyone has a right to everything and decide to be led by some rules for the guarantee of their security, self-preservation and hence the mutual advantage for all. Hobbes posits that the first fundamental law of nature is seeking peace³³ while Locke's argument for equality and right to property³⁴ as integral components of the social contract.³⁵ All the classical writings on the social contract theory are in agreement that individuals ought to enjoy basic rights and freedoms.

By this contract, every individual is guaranteed the protection of his rights and freedoms and is assured of the preservation of his life as noted earlier in this discussion that the contract holds the promise of equal protection of conflicting interests. Rawls has argued for the basic structure of the society which is crucial as it affects man at the initial stages. It is thus important to set justifiable principle of justice to guarantee equality and access to the common goods. The social contract is hence held together by the basic liberties accorded to all and the arrangement of inequalities reasonably to everyone's advantage and attached to positions and offices open to all³⁶ as Ardrey posits that the coming of private property is the source of inequality and a source of conflicts.³⁷

³² Bueren, G. 'A Social Contract for the Twenty-First Century: Social Economic Rights and Wealthier Democracies' *Foundation for Law, Justice and Society: Lecture Delivered at the Oxford Law Faculty on 14th July (2009)* p.2.

³³ Hobbes, T. *Leviathan Part I and II* (New York: Indianapolis, 1958) pp110-112.

³⁴ Locke, J. "Second Treatise of Government" in Locke, J. *Political Writings* (Penguin Books, 1993) p.7.

³⁵ Mouritz, T. 'Comparing The Social Contracts of Hobbes And Locke' *The Western Australian Jurist Vol. 1* (2010) pp. 123-127:126.

³⁶ Rawls, J. *A Theory of Justice* (Massachusetts: Harvard University Press, 1999) p.53.

³⁷ Ardrey, B. *The Social Contract: A Personal Inquiry into the Evolutionary Sources of Disorder* (London: The Garden City Press, 1970) p. 55.

The demise of the social contract through inequalities that put a section of the associates at an advantage arouses conflicts and displacements causing refugee hood. In this case, the refugees lose their protection under the social contract with their governments and seek asylum in other countries. Their civil rights and basic freedoms are constrained and they are left to think that they are “not or no longer able to influence their own life-plans”³⁸ and they become subjects to international protection due to the loss of national protection. The 1951 convention ratified by state parties signify a social contract at the international level according to Kant³⁹ and it is this contract that accords the refugees their basic protection and seeks for solutions to their plight in asylum.

1.4.3. Voluntary Repatriation and Resettlement of Refugees

The loss of national protection by the refugees puts them in a state of limbo with their basic freedoms and rights suffering constrain. The international community however, has tried to seek solutions to the refugee problem albeit major challenges that are faced to this end. While many refugees would like to repatriate according to the UNHCR than be resettled,⁴⁰ there are limited opportunities for voluntary repatriation due to unresolved old conflicts and the eruption of new conflicts in the countries of origin of the world refugees. It then becomes difficult for the refugees to enjoy the right to return as provided for in the Universal Declaration of Human Rights that everyone has the “right to leave any country, including his own country and to return to his country”.⁴¹ Though human rights law allow the right to seek asylum, Goodwin-Gill and

³⁸ Goodwin-Gill, Guy. *Refugees in International Law* op. cit p. 4.

³⁹ Gregory, M. *Kant: The Metaphysics of Morals* (Cambridge: Cambridge University Press, 1992) P. 151.

⁴⁰ UNHCR 16th ‘Annual Tripartite Consultation on Resettlement’ (2010). p.2.

⁴¹ Universal Declaration of Human Rights of 10th December 1948 Article 13 paragraph 2.

McAdam argues that the states that create the refugees have a duty they owe to other states to re-admit their nationals.⁴²

Voluntary repatriation implies willingness by individual refugees to re-avail themselves of the protection of the country of their nationality thus upholding the fundamental principle of refugee protection of *non-refoulement*. It allows them to be able to enjoy their basic rights and freedoms again “upon the opportunity of individuals and groups to participate in and benefit from the nation and body politics”.⁴³ This benefit is also drawn from a governing authority that derives from the will of the people.

Though the 1951 Convention Relating to the Status of Refugees does not give an express mention of voluntary repatriation, Art1(C) noting that a refugee can “voluntarily re-avail himself of the protection of the country of his nationality”⁴⁴ has been interpreted to imply the voluntary nature of repatriation which is further strengthened by the fundamental principle of *non-refoulement*.⁴⁵ Chetail has argued that due to the silent nature of the international refugee law on voluntary repatriation, the concept is better conceptualized through the complementary nature of the various branches of international law. In particular, he looks at the provision of the international humanitarian law particularly the repatriation of the sick and injured Prisoners of War and Civilians as protected persons which ought to be voluntary in nature according to Art 109 paragraph 3. The question of where to return also forms part of the debate and scholars and the 1951 convention notes that a refugees can return to the country of his nationality⁴⁶ where

⁴² Goodwin-Gill, Guy. *Refugees in International Law* op. cit p. 3.

⁴³ Goodwin-Gill, Guy. *Refugees in International Law* op. cit p. 3.

⁴⁴ 1951 Convention Relating to the Status of Refugees Art 1 (c).

⁴⁵ Ibid. Art 33.

⁴⁶ 1951 Convention op. cit Article 1 (C).

according to the OAU convention Article 1 (2) a country of nationality means “each of the countries of which he is a national.”⁴⁷

While UNHCR maintains that voluntary repatriation is the ‘the ideal solution’⁴⁸ to the refugee problem, it has been described as the most difficult to achieve owing to the long histories of war and violence in the countries of origin, insecurity and economic, political and social instability and the slow pace of reconstruction due to delayed funding from the international community.⁴⁹ Bradley argues that just conditions of voluntary repatriation lies between the conditions of flight and the mending of the severed social contract for returnees to enjoy their basic rights and freedoms. This requires the government of the country of origin taking up its primary responsibility to protect its citizens as required by the contract as the citizens are obliged to keep to the rule of law. Goodwin-Gill notes that the study of refugee law should also take a dimension of not only looking at states obligations in admitting and treating refugees but also “the potential responsibility in international law of the state whose conduct or omissions cause an outflow”.⁵⁰ However, while such a conception may reduce the chances of outflows, and secure possible return, he further highlights the ease of prescribing a principle to this effect and the difficult in offering precise formulation of the underlying rights and duties.

As the efforts towards voluntary repatriation continue to face major challenges, the option of resettlement has not been an easier option. The contemporary refugee problem exhibits dynamics and complexity that not only affect the refugees themselves but also the entire community of nations.⁵¹ The UNHCR does not only perceive resettlement as an element of

⁴⁷ 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa Art 1 (2).

⁴⁸ Bialczyk, A. ‘Voluntary Repatriation and the case of Afghanistan’ op.cit p.9.

⁴⁹ Turton, D. And Marsden, P. ‘Taking Refugees for a Ride? The Politics of Refugee Return to Afghanistan’. *Afghanistan Research and Evaluation Unit (AREU)* (2002) p.5.

⁵⁰ Goodwin-Gill, Guy. *Refugees in International Law* op. cit p. 3.

⁵¹ McNamara, D. ‘Preface’ in United Nations High Commissioner for Refugees *Voluntary Repatriation: International Protection Handbook* (Geneva: United Nations High Commissioner for Refugees, 1996).

comprehensive durable solution but also as a “vital instrument of international protection and a tangible expression of international solidarity and a responsibility sharing”⁵² that entails “the transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them ‘as refugees’ with permanent residence status”.⁵³

Resettlement has been seen to provide refugees with an opportunity to rebuild their lives and live in conditions of improved security allowing them to “forge new bonds of citizenship”⁵⁴ and enjoy their human rights. The continued challenge of voluntary repatriation increases refugees’ prospects of resettlement as being the most attractive solution to an extent that Somali refugees in Kenya have labeled it in the strongest of expressions ‘*buufis*’.⁵⁵ Crisp also notes that the poor quality of life in many of Africa’s asylum countries has also contributed to the perception of resettlement as the only way out of the refugees’ difficult situation.⁵⁶ The debate on resettlement is shelved within the international theory of cooperation and burden sharing which in practice has suffered from national and political interests.

However, looking at the history of resettlement, there are minimal prospects of resettlement resolving the current refugee crisis in Kenya. Resettlement was highly influenced by geopolitics and ideologies in post war period. Chimni notes that the western countries (which have been seen as the major traditional resettlement countries) resettled post war refugees since they had a window of economic expansion. Bialczyk adds to the debate by noting that the resettlement of refugees during the cold war period was valuable for its appeal to the South on

⁵² UNHCR. *Resettlement Handbook* (Geneva: United Nations High Commissioner for Refugees, 2004) pp1-2.

⁵³ Ibid.

⁵⁴ Bradley, M. ‘The Conditions of Just return: State Responsibility and Restitution for Refugees’ *Journal of Refugee Studies Working Paper No.21* (2005) pp. 1-31:5.

⁵⁵ Horst. C. ‘*Buufis* amongst Somalis in Dadaab: The Transnational and Historical Logics behind Resettlement Dreams’ *Journal of Refugee Studies* Vol. 19 Issue 2 (2006) pp.143-157:144.

⁵⁶ Crisp, J. ‘No Solutions in Sight: The Problem of Protracted Refugee Situations in Africa’. *New Issues in Refugee Research* (2003) Working Paper 75 p. 23.

ideologies between the communism and the socialism⁵⁷ states. However, after the cold war, ideologies and geopolitics were no longer assets to the West and hence refugee resettlement shifted from being valuable to being an obstacle to the integrity of national interests and security.⁵⁸ Henceforth, Chimni has described the western policy shifts from neglect of Third World refugees to their use as pawns in the cold war era and to containment at the present⁵⁹ as ideologies and geopolitics continued to lose value and national security concerns take centre stage.

Resettlement has also been labeled as a reserve for a few refugees with special needs; whose life, liberty, health or fundamental human rights are in jeopardy in the country of asylum. This perspective is brought out by the eligibility criteria that the resettlement countries issue to the resettlement agencies for profiling resettlement cases. It is also considered a durable solution for refugees who, “although not in need of immediate protection, have compelling reasons to be removed from their country of asylum and only when there are no other ways to guarantee the legal or physical security of persons concerned”.⁶⁰ From this point of view, majority of the refugees in Kenya are likely to be locked out since many share the same conflict situations as well as asylum environment making it even more difficult to determine whose case is most compelling for resettlement referrals a situation which further prolongs the already long stay and a possible cause of tensions.

⁵⁷ Bialczyk. A Voluntary Repatriation and the Case of Afghanistan: A Critical Examination *Refugee Study Centre Working Paper No.46* (2008) p. 9.

⁵⁸ Ibid p.10.

⁵⁹ Chimni, B.S. (1998) ‘The Geopolitics of Refugee Studies: A View from the South’ *Journal of Refugee Studies* Vol.11, Issue 4. pp 350-374:350.

⁶⁰ UNHCR *Resettlement Handbook* op.cit p. 3.

Resettlement seems to be conducted from a subjective point of view and Jansen argues that resettlement depends on the willingness of third states to accommodate refugees⁶¹ and this means that admission is purely at the discretion of those states where more often than not state interests take center stage in an environment with a legal obligation gap to this effect. Additionally, Goodwin-Gill argues that there is a challenge in the contending balance between legitimate state interests and refugee protection. Bureaucratic, lengthy processing times, rigid quota allocations and restrictive profile requirements⁶² and the preoccupation with domestic interests, resettlement is far from giving a sustainable solution to the global refugee problem and more so the protracted situation in Kenya with old and new conflicts arising within her conflict system leading to more and more refugee influxes.

The aspect of burden sharing is clearly articulated in the preamble to the 1951 Convention relating to the Status of Refugees, which states that: “the grant of asylum may place unduly heavy burdens on certain countries, and ... a satisfactory solution ... cannot therefore be achieved without international cooperation”.⁶³ However, Milner has argued that the lack of convergence of the refugee protection and state security in asylum as well as restrictive asylum space by the countries in the North, places unduly burden on the first countries of asylum. While solutions to the refugee problem can effectively be achieved through burden sharing, there are hardly effective “context of pre-negotiated responsibilities within interest-convergence groups”⁶⁴ posing a big challenge. Additionally, the primary conception of the word ‘burden’ draws states away

⁶¹ Bram, J. ‘Between Vulnerability and Assertiveness: Negotiating Resettlement in Kakuma Refugee Camp’ *African Affairs Journal* Vol. 107, No. 429 (2008) pp. 569-587:571.

⁶² Antonio Guterres High Commissioner, UNHCR Executive Committee meeting held in October 2011, opening speech during the Pg6 <http://www.unhcr.org/pages/4e2693656.html>.

⁶³ 1951 Convention op.cit preamble.

⁶⁴ Milner, J. ‘Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Security’ *Refugee Studies Centre* (2000) pp.1-36 :6-7.

from committing to share the refugee burden as they perceive them as an unnecessary burden. This has been the major challenge facing access to solution for the refugee problem.

1.5. Gaps in the Literature

The interplay between traumatic if at all possible voluntary repatriation and the 'challenging' resettlement programs coupled with the poor living conditions in the countries of asylum leaves the refugees in Kenya in a state of limbo, trapped not to be able to voluntarily return home nor access resettlement to a third county. This presents a dull hope especially to the protracted refugee situation in Kenya as the numbers continue to increase, raising national security concerns with no solutions in the near future as old conflicts continue and new once erupt in the region. This complexity requires a keen study bringing in the different perspectives that allow a better understanding on how the convergence of interests between countries of asylum, resettlement and countries of nationality can be utilized to realize sustainable solutions for the refugee problem. The lack of a legally binding international framework to the burden sharing spirit put the question of solutions in jeopardy. This makes it more important to bring out perspectives that bring a clearer understanding of the linkages between refugees, national security as well as access to solutions. A paradigm shift is thus important in the development of policies that would promote access to voluntary repatriation and resettlement through interest convergence groups for sustainable solutions.

1.6.Theoretical Framework

This study will largely rely on the social contract theory. The social contract holds the promise of equal protection to the conflicting interests of all⁶⁵ hence facilitating a cohesive

⁶⁵ Bueren, G. 'A Social Contract for the Twenty-First Century' op. cit p.2.

community. It offers people an alternative through creation of rules and a government led by the will of the people to guarantee their protection and preservation for mutual advantage. It offers the protection of right to property⁶⁶ and fundamental freedoms which form fundamental elements in the social contract.⁶⁷

It posits for the bridging of inequalities through the provisions of Rawls principles of justice that assign rights and duties and determine the appropriate distribution of civil liberties and social and economic goods as well as the burdens of social life without putting anyone at an advantage or disadvantage due to their circumstances. It is concerned with the basic structure of the society, “the arrangement of major institutions into one scheme of cooperation”.⁶⁸ It is the assignment of basic liberty to all and the arrangement of inequalities reasonably to everyone’s advantage and attached to positions and offices open to all⁶⁹ that drive a healthy social contract.

1.7. Hypotheses

The following hypothesis will be tested in the study;

- a) The refugee problem in Kenya is bigger than is perceived
- b) Voluntary repatriation of refugees is a myth
- c) Resettlement programs will remain overshadowed by state interests

1.8. Research Methodology

In order to develop a conceptual understanding on the aspects of the refugee problem in Kenya, resettlement and voluntary repatriation secondary materials will be examined. The secondary materials will include UNHCR data and publications since it has an upper hand in collating

⁶⁶ Locke, J. “Second Treatise of Government” in Locke, J. *Political Writings* (Penguin Books, 1993) p.7.

⁶⁷ Mouritz, T. *Comparing The Social Contracts Of Hobbes And Locke* op. cit p 126.

⁶⁸ *Ibid* p. 47.

⁶⁹ Rawls, J. *A Theory of Justice* op.cit p.53.

refugee data and analyzing the trends as it is the custodian of the international refugee law. Other scholarly books, journals and articles on refugee issues will be explored to give an in depth understanding of the issues in hosting refugees and searching for solutions through Voluntary repatriation and resettlement. Published documentaries by I (NGOs) working with refugees in the Kenyan context will also be analyzed to understand the issues that refugees in Kenya face and their bilateral relationships with the host community.

Primary data will also be collected in order to investigate in depth the weight of the refugee problem in Kenya, and confirm some of the information that will be highlighted from the secondary sources. This information will be gathered through interviews with individual refugees and host community members especially in Nairobi as well as through focus group discussions. Individual interviews will also be conducted with a section of officers from different national and international non-governmental organizations who are directly engaged in resettlement and repatriation processes. This will be critical in understanding the challenges and problems encountered in pursuing the two forms of durable solutions.

Interviews will also be conducted with the Commissioner of Refugee Affairs and other officers from the Department of Refugee Affairs since this is the government department mandated with administration and management of refugee affairs in Kenya. Their mandate also extends to seeking durable solutions for the refugees as far as it is possible and will thus be important to know the strategies that the Government of Kenya employs towards this end as well as offer a perspective on how the government deals with the refugee problem.

The primary data collected will be analyzed from an analytical point of view in regard to the already existing secondary data as a way of confirming the accuracy of the existing literature and

its suitability to the Kenyan context. This will also be done with the aim of adding into the existing literature on refugee issue.

1.9. Chapter Outline

CHAPTER ONE: Introduction to the Study

CHAPTER TWO: The Management of Refugees in Kenya

CHAPTER THREE: Voluntary Repatriation and Resettlement

CHAPTER FOUR: The Social Contract Theory: Application in Refugee Issues

CHAPTER FIVE: Conclusions

Chapter Two

The Management of Refugee Affairs In Kenya

2.1. The Refugee Situation in Kenya

The refugee situation in Kenya is depicted as not just a protracted situation but also as a situation in a crisis.¹ This crisis goes beyond numbers to the fact that many refugees come from countries that are still locked in old unresolved conflicts complicating any efforts of return in the foreseeable future. The new conflicts that continue to be witnessed have also contributed to the crisis as fresh large-scale refugee influxes continued to be admitted to the Kenyan asylum system. Lidney notes that the refugee assistance regime in Kenya has shifted from a period of high profile humanitarian emergency which attracted sizable donor funding to care and maintenance and to the struggle for maintenance of minimum standards of living for refugees by the UNHCR due donor fatigue.² This transition is an indicator that as the population of refugees continues to grow; assistance is diminishing creating an asymmetrical relationship between the need and the available assistance. This phenomenon is likely to stay on due to the “protracted humanitarian crisis in the neighboring countries”³ where majority of the refugees come from.

Kenya hosts over half a million refugees currently with the majority hosted in the Kakuma and the Dadaab refugee camps and about 45,000 self-settled refugees in urban centers like Nairobi who seek to pursue either further education or alternative economic activities that are not

¹ <http://data.unhcr.org/horn-of-africa/regional.php> (last visited on 28th August 2012. 1400hrs).

² Lidney, A. 'Between a Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya' *Journal of Refugee Studies* Vol.30. Issue 4 (2011) pp. 14-49:20.

³ Sara, P, Samir, E and Sara, P 'Hidden and Exposed: Urban Refugees in Nairobi, Kenya' *Overseas Development Institute: Humanitarian Policy Group Working Paper* p.11.

available in the camp setting⁴. Large number of refugees started streaming in the early 1990s from Somalia, Sudan and Ethiopia following the civil strife that these countries experienced prompting the description of the decade as the peak of the refugee emergency in Kenya.⁵

Kenya was ranked the sixth largest refugee hosting country globally⁶ in 2010 with a protracted refugee situation. This raises issues on how to manage as well as search for solutions to the refugee problem. Scholars like Crisp have analyzed the current international community trends in responding to protracted refugee situations arguing that protracted situations have suffered neglect as donors concentrate on large-scale flow of refugees or mass repatriation reducing aid assistance to refugees trapped in these situations and not because of a corresponding reduction in need. This then “constitutes a significant development challenge for the countries affected”⁷ as the refugees and the host community compete for scarce resources such as water, food, firewood among others increasing demand for services such as health and education creating demand driven tensions in the bilateral relations between the refugees and the host community. It then follows that xenophobic tendencies set in forming ripe grounds for conflicts.

The national security of the host community continues to suffer threat as the host and the refugee communities compete for scarce natural resources. Frequent tensions have been witnessed particularly in Kakuma refugee camp as the Turkana and the refugee communities compete for firewood resources.⁸ These tensions cannot be overlooked since they can build up to violent conflicts. Chweya notes that the increased demand for scarce resources can arise from either increase in population, scarcity of the resource due to environmental degradation as well

⁴ Interview with Mr. Badu Katelo, Ag Commissioner of Refugee Affairs *Nairobi* (12th September 2012).

⁵ Mwaura, P *United Nations And Kenya: Fifty Years Of Partnership* (Nairobi: Office of the United Nations Resident Coordinator in Kenya, 2006) p. 20.

⁶ UNHCR. *UNHCR Statistical Yearbook 2010: Trends in Displacement, Protection and Solutions* (Geneva: UNHCR, 2011) pp. 26-27.

⁷ Gomez, M, Asger, C and Yehdego, A (2010) ‘The Impacts of Refugees on Neighboring Countries : A Development Challenge’. *Background paper to the world development report 2011*. p. 6.

⁸ Interview with a Sudanese refugee *Nairobi* (8th August 2012).

as inequitable distribution.⁹ In this regard, the Kenyan situation seems to suffer from both scarcity due to population increase and environmental degradation. Such non-military security dimensions require solutions before the full stretch of nature bits hard as Mwagiru argues that the ecological conflicts know no bounds¹⁰ and continued environmental degradation would not only affect the host and refugee population but the country at large and even spreads over to neighboring states. If mitigation measures are not taken promptly, tensions between neighboring states could easily arise.

The weight of the refugee crisis has not gone unnoticed. The Government of Kenya constituted the National Refugee Secretariat to register refugees but on realizing the refugee crisis that began in the early 1990s, the capacity of the secretariat was overstretched giving rise to the establishment of the Department of Refugee Affairs (DRA) in 2005.¹¹ The DRA is given a legal structure and strategy under the Refugee Act of 2006 and is mandated to carry out all the administrative and management functions of refugee affairs. The department is headed by a Commissioner with field offices in Kakuma, Dadaab, Mombasa and Sahuri moyo in Nairobi where they directly interact with refugees through registration and management of the refugee camps.¹²

2.2. Refugees and the National Security Agenda

National security for decades after World War II had been defined from the Westphalia perspective of aggression from external forces which implied the engagement of the military arm of the government. The realist perspective of national security regarded states as the most

⁹Chweya, L. 'Emerging Dimensions of Security in the IGAD Region' in Mwagiru, M. *African Regional Security in the Age of Globalization* (Nairobi: Heinrich Boll Foundation, 2004) pp. 31-48:39.

¹⁰Mwagiru, M. 'Towards a Security Architecture in the IGAD Region' in Mwagiru, M. *African Regional Security in the Age of Globalization* (Nairobi: Heinrich Boll Foundation, 2004) pp. 133-145:142.

¹¹ Interview with Mr. Badu Katelo, Ag Commissioner of Refugee Affairs *Nairobi* (12th September 2012).

¹² Interview with Mr. Omar, former DRA Senior Protection Officer *Nairobi* (2th September 2012).

powerful actors in international relations¹³ a perspective that has been contested as being a narrow perspective of national security. There is consensus among scholars in international studies that national security in the twenty first century requires redefining with a shift from state and regime security to human and societal security.¹⁴ Mwangiru has particularly argued that there are special security perspectives of the third world and African states that arise from its different operating environments. Ofuho on the other hand has noted that the wider concept of security entails the non-military sources of threat to humanity¹⁵ a view shared by other scholars where McNamara has argued that there has been almost “ineradicable tendency to think of our security problem as being exclusively a military problem”¹⁶ which is a narrow perspective of a broader security problem. Scholars in security issues have realized that the military perspective of security is lacking since there are more human security issues posing a real threat to humanity than there are military security issues.

This contemporary conceptualization of national security brings in many perspectives from which to analyze the refugee issues in a host country. Loescher has maintained that there is need to look at refugees from a security perspective other than just a matter of international charity organizations and from a political perspective. He notes the possibility of refugees’ presence escalating existing internal conflicts as was the case in the resurgence of the Pathan conquest in Pakistan following the proliferation of arms with the influx of three million Afghan refugees.¹⁷ Refugee migrations are not just a consequence of conflicts but they also have the

¹³ Ofuho, H. ‘Security Concerns in the Horn of Africa’ in Mwangiru, M. *African Regional Security in the Age of Globalization* (Nairobi: Heinrich Boll Foundation, 2004) pp. 7-17:8.

¹⁴ Mwangiru, M. ‘Introduction’ in Mwangiru, M. *African Regional Security in the Age of Globalization* (Nairobi: Heinrich Boll Foundation, 2004) pp. 1-5:1.

¹⁵ Ofuho, H. ‘Security Concerns in the Horn of Africa’ op.cit p. 9.

¹⁶ McNamara, R. *The Essence of Security: Reflections in the Office* (New York: Harper and Row Publishers, 1968) p144.

¹⁷ Loescher, G. *Refugee Movements and International Security, Adelphi Paper 268* (London: Brassey, 1992) p. 6.

potential to cause a spill-over of the conflict that they are fleeing which becomes a direct security burden¹⁸ and threat to the host country.

National security has hence been defined to include environmental degradation, food security, health care, illiteracy, ethnicity, small arms, trade, uncontrolled population growth, drugs terrorism, provision of basic human needs and refugee problems. Indeed, Ofuho states that the individual has become the target rather than the traditional target to the state. Additionally, Aseka has argued that national security policy should also address the social, environmental and economic security factors¹⁹ as these continue to pose challenges for the third world countries than war between states.

Mwagiru posits that the various strands of security are major tools of a grand strategy. He argues that “the refugee problem is so much inextricably a part of the security context of the [IGAD] region that it needs eventually to be seen as a foreign policy and diplomatic issue that needs to be addressed”.²⁰ National Security frameworks should thus have a duo framework²¹ to secure the state and individuals in it. The national security architecture should also have a regional approach since refugee issues are international issues and they not only affect the refugees in asylum but also have a link with the countries of origin and the potential linkages to other countries through potential conflicts. Mwaruvie and Kirui notes that “the presence of refugees in many third world host states is further compounded by armed groups of exiles actively engaged in warfare with political objectives. Refugee warriors invite military retaliation, complicate relations with other states and threaten the host states and the security of their

¹⁸ Milner, J. ‘Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Security’ *Refugee Studies Centre* (2000) pp.1-36:3.

¹⁹ Aseka, E, ‘Globalization Intellectuals and Security in Africa Africa’ in Mwagiru, M. *African Regional Security in the Age of Globalization* (Nairobi: Heinrich Boll Foundation, 2004) pp. 19-29:29.

²⁰ Makumi Mwagiru ‘Towards a Security Architecture in the IGAD Region op.cit p. 142.

²¹ Mwaniki, N. ‘Challenges in the Implementation of IGAD’s Peace and Security Architecture (PSA)’ *Contemporary Security in Africa* (2012) Vol. 1 No. 1 pp. 23-43:25.

citizens. As a result, host countries have often been unwillingly drawn into conflicts with their neighbors.”²² It is from this perspective that the refugee crisis in Kenya forms a critical part of Kenya’s national security strategy.

The influx of refugees often exerts pressure on the natural resources in the areas where they are hosted. This pressure in the long run causes product demand driven conflicts over local resources²³ and furthers the depletion of natural resources and environment degradation in the long run. This means that the right measures have to be put in place to avoid environmental degradation that may degenerate to refugee producing situation through drought and famine. The host communities living in the refugee hosting areas also require to be protected against food insecurity which can be caused by overexploitation of natural resources. The host government bears the financial and the structural²⁴ burden for early response mechanisms to avoid possible causes of adverse human insecurity.

The proliferation of small arms and light weapons in the horn of Africa region has been documented as a major source of threat to national security not only in individual states but also between states. Ofuho has argued that influx of refugees and the uncontrolled movement of people from one country to another offers an easy way of trafficking illegal arms increasing security vulnerability within and between communities. Kirui and Mwaruvie²⁵ argue that Kenya has witnessed persistent robberies and vehicle thefts on highways forcing relief workers to plan for travel with police protection ‘escorts’ between refugee camps. They attribute this to lethal weapons smuggled into Kenya from Somalia and other conflict zones into the hands of Kenyan and other nationalities bandit gangs who use them to perpetuate crime. There has been a trail of

²² Kirui, P. and Mwaruvie, J. ‘The Dilemma of Hosting Refugees: A Focus on Insecurity on North Eastern Kenya’ *International Journal of Business and Social Science* Vol. 3 No. 8 (2012) pp. 161-171:162.

²³ Chweya, L. ‘Emerging Dimensions of Security in the IGAD Region’ op. cit p. 39.

²⁴ Milner, J. ‘Sharing the Security Burden’ op. cit p. 5.

²⁵ Kirui, P. and Mwaruvie, J. ‘The Dilemma of Hosting Refugees’ op. cit p. 165.

kidnappings in the Northeastern region in the Dadaab refugee camp which have been attributed to availability of small arms and light weapons in the region²⁶ that the bandits use to accost vehicles and individuals.

The Kenya National Policy on Small Arms and Light Weapons portends that the presence of small arms and light weapons escalates the risk of injury and death among others heightening the sense of fear and insecurity.²⁷ The policy recognizes the central role that refugees can play in the proliferation of small arms and light weapons (SALW) as these arms mainly come from the conflict zones in the neighboring countries where some of the refugees may be actively involved. This claim is also shared by Kirui and Mwaruvie arguing that militia groups from the conflict zones pose as refugees in the asylum system posing a security threat to the society. The policy recommends the review of the refugee policy and national law to link its objectives to the Policy on SALW, through the establishment of an interagency co-ordination committee in the ministry of Immigration to enhance information sharing. This would aim at enhancing the government's responses to small arms and light weapons related issues in the refugee management and administration as well as develop and implement an arms reduction programme to address armed violence. Further, the recognition of the SALW as a regional security agenda has also led to the signing of the Nairobi Protocol by Kenya and other countries from the Great Lakes and Horn of Africa regions. This in totality demonstrates the weight of the national and regional security challenge posed by the presence of refugees.

The perceived security threat in Kenya calls for a burden sharing strategy to minimize the threat in terms of the resources required to effectively address these threats. However, Milner has argued that though there have been debates on burden sharing in the international refugee

²⁶ Interview with Mr. Badu Katelo *Nairobi* (12th September 2012) and the UNHCR Protection Officer *Nairobi* (11th September 2012).

²⁷ National Policy on Small Arms and Light Weapons p.11.

protection arena, this has not fully addressed the host countries security implications of hosting refugees.²⁸ Further, Goodwin-Gill also maintains that there are underdeveloped reparation principles for losses suffered by host states.²⁹ From this point of view, the national security challenge that the host country bears becomes key when the governments formulate their policies towards refugees. It further indicates the continued challenge of the burden that hardly receives assistance to address the financial and structural burden that it comes with.

From a realist point of view, a national security agenda would be constructed upon the military power of any given government. However, this kind of a conception does not allow actors to holistically address the refugee issues that manifest in many dimensions. As Kenya and the other regional countries conceptualize security frameworks, a pluralistic approach allows the national security issues to be addressed from both a state and human security perspectives. The integration of these perspectives allows for a balanced security agenda that guarantees individuals their basic survival as well as state security. In this regard, to effectively respond to the refugee crisis, the national security policy must address the different security dimensions that the refugees present. Furthermore, regional security debates geared towards possible repatriation are important in order to pursue conditions of just return, integration, reconstruction, disarmament and rehabilitation programs that would promise the elimination of small arms and light weapons that pose security challenges to the region and guarantee sustainable solutions.

²⁸ Milner, J. 'Sharing the Security Burden' op.cit p. 6.

²⁹ Goodwin-Gill, Guy. *Refugees in International Law* (Oxford: Oxford University Press, 2007) p. 2.

2.3. Kenya's Structure and Strategy in the Management of Refugee Affairs

2.3.1. Structure and Strategy Prior to the Refugee Act of 2006

Kenya has a long history of hosting refugees from a handful of refugees to more than half a million refugees in the recent years compounded with the host of security challenges that the presence of refugees pose to Kenya's national security. The refugee affairs in the 1970s were administered and managed by the National Refugee Secretariat under the Ministry of Home Affairs and National Heritage until 2005 when the mandate was moved to the Ministry of Immigration and Registration of persons. The National Refugee Secretariat was mandated with receiving and vetting asylum seekers to ascertain their admissibility as refugees. The secretariat had a lean personnel structure and operated from Nairobi and at the Thika reception centre.³⁰ Following the large influx of refugees in the early 1990, the secretariat was overwhelmed since refugees were arriving through various boarder points and there were no field offices and officers then. This called for a strategic change for effective management of the refugee affairs.

During this time the government administered refugee issues with the guidance of the 1951 Convention relating to the Status of Refugees³¹ and its 1969 Protocol relating to the Status of Refugees³² as well as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa³³ that was conceived through summit diplomacy in September 1969 acknowledging the specific challenges that the refugees in Africa had and were not addressed by the 1951 Convention and its protocol. The refugee management regime faced great challenges in the early 1990s and the decades there after due to the mass influx of asylum seekers following the fall of Said Barre in Somalia and the North-South crisis in Sudan.

³⁰ Interview with Mr. Omar, former DRA Senior Protection Officer *Nairobi* (2th September 2012).

³¹ Kenya became a state party to this convention on 16th May 1966.

³² Kenya became a state party to this convention on 13th November 1981.

³³ Kenya signed the OAU Convention Governing the Specific Aspects of Refugee Problems in African on 10 September 1969.

Noting the magnitude of the numbers, and the possible new challenges that the country was likely to face, the secretariat could not have effectively managed the refugee affairs following the spontaneous refugee settlements along the entry border points and the secretariat did not have field officers enough to man the many settlements. The government engaged the UNHCR through cooperation and the spirit of burden sharing to take up an active role in the 1990's taking over the refugee camps and officially started official documentation, refugee status determination and protection of refugees. The government further consolidated the many camps into Dadaab and Kakuma in order to have a well controlled and coordinated refugee system to ease the administration and management. This move also aimed at making it easy for the humanitarian aid workers to concentrate their efforts in specific locations³⁴ as well as allow the government to offer a better coordinated security services.

In 2003, a refugee bill was drafted and it envisioned an effective way of managing the refugee affairs in Kenya, by domesticating the international instruments of refugee protection in order to strengthen their application into the country specific situation. The bill did not pass at this point until 2006 when the bill was passed into the 2006 Refugee Act. The Refugee Act has been seen as a great milestone in the management of refugee affairs in Kenya.

2.3.2. Kenya's Treaty Practice and the Refugee Act

Mwagiru maintains that it is important that a country be clear on its treaty practice to avoid to confusion as to whether a treaty is domestically applicable and in diplomatic practice, a lack of a clear treaty practice runs a country the risk of "not being trusted internationally".³⁵ Treaty practice generally defines how individual states relate with international law as well as

³⁴ Interview with Mr. Badu Katelo, Ag Commissioner of Refugee Affairs *Nairobi* (12th September 2012) also Interview with Mr. Omar, former DRA Senior Protection Officer *Nairobi* (2th September 2012).

³⁵ Mwagiru, M. *Diplomacy: Documents, Methods and Practice* (Nairobi: Institute of Diplomacy and International Studies, 2004) p. 111.

how it relates with the specific treaties that a state has ratified.³⁶ Mwangiri has further argued that “treaty practice also establishes the political philosophy which governs the relationship between international and domestic law. Treaty practice also signifies the legal philosophy (i.e. the jurisprudence) governs the relationship between international law and municipal law. It also specifies the relationship among the different branches of government, at least to the extent of the country’s relationship with treaties.”³⁷

A state can directly incorporate a treaty into its domestic law or it can transform the treaty first and then apply it. Kenya’s treaty practice prior to August 2012 promulgation of the new constitution followed the dualist approach where “treaties can only be incorporated into national law by domestic statute” in order to be applied in Kenya’s municipal law.³⁸ However, Mwangiri argues that this practice has suffered inconsistency by subjecting treaties to “vicissitudes of municipal politics”³⁹ where international laws suffer political manipulation with sector interests taking centre stage. It is during this dispensation that the international refugee law was domesticated into Kenya’s municipal law by transforming it into the Refugee Act of 2006. However, recently, the Kenyan treaty practice has undergone a paradigm shift as argued for by Mwangiri.

In his discussions, Mwangiri has documented the Kuhnian paradigm shift in Kenya’s treaty practice through the promulgation of the 2010 constitution which provides for the direct incorporation of treaties into domestic law. This paradigm shift gives way for treaty incorporation into municipal law without undergoing transformation hence the shift from

³⁶ Mwangiri, M. ‘From Dualism to Monism: The Structure of Revolution in Kenya’s Constitutional Treaty Practice’ *Journal of Language, Technology & Entrepreneurship in Africa Vol. 3 No. 1*(2011) pp.144-155:145.

³⁷ Ibid.

³⁸ Marian, B. ‘The Dualist Monist Theories: International Law’s Comprehension of These Theories’ *JEL classification* issue 33 (2009) pp14-23:15 see also Odhiambo, O. ‘The Domestication of International Law Standards on The Rights of the Child with Specific Reference to Juvenile Justice in the African Context’ (*Faculty of Law: University of Western Cape, 2005*) Degree of Doctor of Law Thesis. p.73.

³⁹ Mwangiri, M. ‘From Dualism to Monism op. cit. p.149.

dualism to monism⁴⁰ (transformation to incorporation). Albeit criticism that the monist approach takes away the parliament's role in making law, Mwangi has argued that the parliament still has the primary role of scrutinizing the treaties before allowing the executive to ratify them an argument.⁴¹ More importantly, this shift saves the international law from the wrath of domestic political perspectives that may water down its universality.⁴²

2.3.3. The Refugee Act of 2006: A Milestone

Prior to the domestication of the international refugee law in Kenya, the management of refugee affairs lacked proper coordination mechanisms.⁴³ The Refugee Act of 2006 provides a guide in the management of refugee affairs as it creates a coordinated structure and offers a strategy to this effect creating harmony within various stakeholders engaged in refugee affairs.⁴⁴ The Act establishes the Department of Refugee Affairs (DRA) that is mandated to administer and manage all refugee affairs within the Kenyan territory. Part 6 (2) of the act expressly states that the DRA will co-ordinate activities and programmes relating to refugees.⁴⁵ This is an important move as a strategy is as good as its structure and coordination brings harmony within the structure for optimum gain from the strategy. The legal nature of the current refugee policy strengthens the government's response and obligation to accord refugees maximum protection as well as strengthen the enforcement of the refugee law.

The DRA is headed by a Commissioner of Refugee Affairs (CRA) who co-ordinates all measures necessary for promoting the welfare of refugees and advising the Minister thereon. The

⁴⁰ Odhiambo, O. 'The Domestication of International Law' op. cit p. 73 see also Mwangi, M. 'From Dualism to Monism' op. cit. p.144.

⁴¹ Ibid p. 152.

⁴² Ibid.

⁴³ Interview with Mr. Waithaka Chege, Assistant Director, Department of Immigration *Nairobi* (12th September 2012).

⁴⁴ Interview with Mr. Waithaka Chege, also Interview with the Legal and Policy Officer Refugee Consortium of Kenya *Nairobi* (14th September 2012).

⁴⁵ Part 6(2), The Refugee Act of 2006.

functions of the CRA are extensive including liaising with the United Nations agencies and other institutions to ensure provision of facilities to refugees, promoting durable solutions, formulating refugee policies in line with international standards and implementing decisions made in regard with refugee issues.⁴⁶ The CRA is assisted by the Refugee Affairs Committee (RAC) which has a representation of more than six different government ministries. Though the RAC was created to assist the CRA in determining the refugee status of asylum seekers, it has increasingly taken an active role of holding consultative discussions with the CRA on various matters affecting the Kenya's national security⁴⁷ in regard to hosting refugees.

It is important to look further into the composition of the RAC since it reflects the complexity of the refugee problem in Kenya and the wider perspective of the effects that refugees have in any given state. It reflects the interrelationship between the various government departments for effective management of refugee affairs. The committee has representatives from the ministries of, Finance and Planning, Provincial Administration and Internal Security, Foreign Affairs, National Security and Intelligence Service, Local Government, Attorney General, Health and Immigration. The inclusion of the various government departments allow the analysis of various refugee issues from different perspectives since they are sensitive and present many dynamics which require concerted efforts for effective management.⁴⁸

A case in point is the engagement of the ministry of health at the reception and entry point to screen asylum seekers of any communicable diseases that may pose health challenges to the wider community where they are hosted. At the same time, the presence of representatives from the ministry of Provincial Administration and Internal Security would help in security

⁴⁶ Ibid Part 7 (1,2).

⁴⁷ Interview with Mr. Badu Katelo, Ag Commissioner of Refugee Affairs *Nairobi* (12th September 2012).

⁴⁸ Interview with Mr. Badu Katelo, Ag Commissioner of Refugee Affairs *Nairobi* (12th September 2012).

screening at the boarder entry point⁴⁹ an important step towards curbing entry of small and light arms which has been noted to pose a security threat through banditry attacks. However, this does not seem to actively take place currently but it would add to the mitigation of negative consequences of having open borders. The co-ordination of the CRA with the various ministries is important in order to negotiate an informed operation that would minimize national security threats in its different perspectives. It is through such co-ordination that the formulators of Kenya's Grand Strategy can tap from in order to bring on board as many state and human security challenges that would come with hosting refugees.

The refugee act allows the refugees to enjoy their rights which are a major refugee protection tool. These are the rights to seek asylum in Kenya and the principle of *non refoulement* among others. It also stipulates the obligations of the refugees such as obeying the rule of law in Kenya.⁵⁰ This further strengthens the responsibility of the government in protecting refugees through registration and issuance of documentation that are important towards for the refugees to pursue their rights. The Act provided for the recognition of certain groups of refugees on *prima facie*⁵¹ a key aspect in Kenya's strategy and will to embrace the spirit of the 1969 OAU convention in Article 1 (2) that implies chances of mass displacement. This has offered an allowance for recognition of asylum seekers during mass influxes where individual refugee status determination would otherwise jeopardize the protection of asylum seekers as it is a lengthy process with both the government and the UNHCR having limited human resource to conduct the refugee status determination.

The establishment of the camp officer position in every camp is significant towards a coordinated scheme of providing overall security, protection and assistance to refugees in the

⁴⁹ Interview with Mr. Omar, former DRA Senior Protection Officer *Nairobi* (2th September 2012).

⁵⁰ The Refugee Act of 2006, Part 16 and 18.

⁵¹ *ibid* Part 2 and 3.

camp, and managing the camps in an environmentally and health sound manner. Previously, we noted that there is need to look at national security from its various angles in order to mitigate possible conflicts that may arise from such imbalances. Hence the importance of the camp officer position that act as the government representative in coordinating the state and human security concerns within the camp, protecting and assisting vulnerable groups like women and children as well as making sure that the asylum space in the camp in compliant with the national laws.⁵²

The establishment of the Refugee Appeal Board⁵³ has been welcomed as a critical element in the protection of refugees in Kenya. This gives asylum seekers a chance to appeal the commissioner's decision not to accord refugee status if they are dissatisfied. The board is further strengthened by allowing it function independently in reviewing and giving decisions on refugee status determination appeals. The asylum seekers also have a window for further appeal if dissatisfied by the board's decision through the High court. This has been received by many humanitarian organizations as a milestone in refugee protection since the engagement of the court minimizes chances of arbitrary decisions to deny recognition of refugees.⁵⁴

The existence of this structure and strategy has given the government more impetus and capacity to increasingly take up an active role in the management and administration of refugee affairs. The coordination belt of the DRA plays a significant role in the delivery of humanitarian assistance. It allows the government to monitor the practice in distribution of aid by the humanitarian agencies to avoid situation of causing more harm than good.⁵⁵ This is important in mitigating possible conflicts that can be caused by imbalances that relief aid can bring on board

⁵² Refugee Act Part 17.

⁵³ Ibid Part 10.

⁵⁴ Analysis of questionnaires given to UNHCR protection Unit, Refugee Consortium of Kenya's Legal and Advocacy Department and the Refuge Point's Resettlement Department.

⁵⁵ Interview with Mr. Badu Katelo, Ag Commissioner of Refugee Affairs *Nairobi* (12th September 2012).

through inaccessibility of aid to both refugees and host community. The DRA is in the front line to promote the countries interests on issues of environment and employment by championing an integrated refugee programs to avoid exclusion of the host community. The accessibility of resources to both refugees and the host community is important towards mitigating possible asymmetrical relations which may fuel conflicts.

From a regional perspective, Kenya is actively involved in information sharing through various regional institutions like the East African Interstate Council on Security.⁵⁶ The fact that there are refugees in Kenya is already a regional issue as much as it is an international issue. It is thus important for regional security interventions to secure regional security of states that may be affected by refugee movements. The government is also engaged in both bilateral and multilateral negotiations with different states towards peace agreements towards promoting durable solutions for the refugees in Kenya. The fact that Kenya is signatory to the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa also clearly indicates Kenya's understanding of the regional dynamics in regard to refugee issues and its commitment to regional cooperation.

The Refugee Act of 2006 has brought with it the legal structure and strategy that the government utilizes on admission, registration, recognition of refugees as well as the co-ordination of refugee affairs for effective management of the refugee problem in Kenya. The existence of a structure for the delivery of the strategy and its co-ordination is a milestone towards the achievement of international protection of refugees in Kenya as well as an effective management of the refugee crisis with a view of promoting durable solutions through bilateral and multilateral negotiations. It is not enough for the government to retain the initial duties of receiving, registration and recognition of refugees as it were with the National Refugee

⁵⁶ Ibid.

Secretariat. The engagement of different perspectives of the management of the refugee crisis through the structure and strategy outlined in the Refugee Act clearly demonstrated the need for a concerted effort towards managing the refugee problem.

Ultimately, the Refugee Act of 2006 provides the whole refugee program in Kenya with a strategy to feed from and a coordinating belt necessary for the harmonization of refugee programmes for their diversity and sensitivity. Kenya's spirit of *pacta sunt servanda*⁵⁷ in providing international protection to refugees is clear through the domestication of the international refugee law that also signifies Kenya's respect of its international obligation to safeguard the fundamental principles of refugee protection among them non-discrimination and non-refoulement. It gives guiding principles for all stakeholders engaged in refugee affairs to operate from. It also emphasis Kenya's positive police approaches towards refugees ultimately allowing an effective management and administration of refugee affairs.

⁵⁷ Mwangi, M. *Diplomacy: Documents, Methods and Practice* (Nairobi: Institute of Diplomacy and International Studies, 2004) p. 110.

Chapter Three

Voluntary Repatriation and Resettlement

3.1. Introduction to the Concept of Voluntary Repatriation and Resettlement

The Refugee Act of 2006 has brought with it the legal structure and strategy that the government utilizes on admission, registration, recognition of refugees as well as the co-ordination of refugee affairs for effective management of the refugee problem in Kenya. The existence of a structure for the delivery of the strategy and its co-ordination is a milestone towards the achievement of international protection of refugees in Kenya as well of promoting durable solutions through bilateral and multilateral diplomatic negotiations.

The contemporary refugee problem has been seen as not a problem of refugees alone, but that of the entire community of nations given its dimension and complexity.¹ This has called for a comprehensive approach within a framework of increased state responsibility and international cooperation, solidarity and burden-sharing in addressing the problem. McNamara argues that “the purpose of international protection is not, however, that a refugee remains a refugee forever, but to ensure the individual's renewed membership of a community and the restoration of national protection, either in the homeland or through integration elsewhere.”² The renewed membership of a community can be accorded through three different durable solutions which include resettlement to a third country, voluntary repatriation to the country of nationality or local integration in the country of asylum through nationalization.³

¹ McNamara, D in United Nations High Commissioner for Refugees (1996) *Voluntary Repatriation: International Protection Handbook* Geneva p. 1.

² Ibid.

³ 1951 Convention Relating to the Status of Refugees, Article 34.

Resettlement and voluntary repatriation as forms of durable solutions to refugee problems offer the refugees a chance to rebuild their lives, restore lost citizenship and enjoyment of rights which were severely affected upon flight. However, there are a host of challenges that limit access to these vital forms of solutions to the refugee problems in Africa and Kenya in particular. Efforts to promote and facilitate access have yielded results but only a few refugees in Kenya have managed to benefit as an asymmetrical relationship exists between the need and the available possibilities.

Resettlement has been perceived not only as an element of comprehensive durable solution but also as a “vital instrument”⁴ for international protection and a tangible expression of international solidarity and a responsibility sharing involving the transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them ‘as refugees’ with permanent residence status”.⁵ This option of a durable solution has been seen to be dependent on the resettling countries will to admit refugees and therefore reserve the right to and autonomy to set eligibility criteria.

Voluntary repatriation on the other hand is usually viewed as the most desirable long-term solution by the refugees themselves as well as by the international community and Chetail argued that the other forms of durable solutions “would be mere palliatives to the refugee’s abnormal state of affairs”⁶ since they are very restricted. The concept of voluntary repatriation has also been endorsed by the United Nations General Assembly as the “ideal solution to refugee

⁴ UNHCR. *Resettlement Handbook* (Geneva: United Nations High Commissioner for Refugees, 2004) pp1-2.

⁵ Ibid.

⁶ Chetail, V. ‘Voluntary Repatriation in Public International Law: Concepts and Content’ *Refugee Survey Quarterly* vol. 23, No.3 (2004) pp.1-32:1.

problems”.⁷ Voluntary repatriation entails a refugee’s willingness to re-avail himself to his country of nationality without any form of coercion.

Traditionally, voluntary repatriation has been viewed as return to the country of origin⁸ where the refugees or returnees are allowed to rebuild their lives and accorded the protection of the state of origin. The 1951 convention as well as the 1969 OAU convention refers to repatriation to a country of nationality. This view is seen as to expand the choices of repatriation not only to a country of origin by birth, but also to any other country where one is a national by birth or naturalization.

The success of finding durable solutions is predicated in the spirit of burden sharing and international cooperation as noted in the preamble to the 1951 convention Relating to the Status of Refugees. This follows the realization of the nature of the refugee burden on the asylum countries. Shuck has argued that the refugee flows to the first country of asylum in most cases occur suddenly and with a magnitude that causes a strain in the countries resources⁹ and to this effect, international cooperation is evident as these flows almost occur like natural disasters. However, the cooperation tends to diminish as more robust solutions are sort to resolve the problem.

3.2. Voluntary Repatriation in its Legal Perspective

The Universal Declaration of Human Rights provides everyone with the “right to leave any country, including his own country and to return to his country”.¹⁰ The right to return forms

⁷ UN Doc. A/Res/38/121 (1983) see also Zieck Marjoleine (2004) ‘Voluntary Repatriation: Paradigm, Pitfalls, progress’ in Gowlland, V. *The Problem of Refugee in the Contemporary International Law Issues* (Geneva: Martinus Nijhoff Publishers, 1994) pp 33-54:34.

⁸ Chetail, V. ‘Voluntary Repatriation in Public International Law’ op. cit p.1.

⁹ Schuck, P. ‘Refugee Burden-Sharing: A Modest Proposal’. *Faculty Scholarship Series*. Paper 1694 (1997) pp. 243-279:270.

¹⁰ Universal Declaration of Human Rights of 10th December 1948 Article 13 paragraph 2.

the basic principle underlying voluntary repatriation¹¹ allowing refugees to exercise their human right to return and be able to enjoy their basic rights and freedoms. The concept of voluntary repatriation implies willingness by individual refugees to re-avail themselves of the protection of the country of their nationality thus upholding the fundamental principle of non-refoulement. Schuck has argued that the paramount goal of repatriation would be to restore the normalcy of refugees' lives by returning them to their homes and families through a human rights strategy.¹²

Zieck has argued that the inclusion of voluntary repatriation in the UNHCR statute "has its roots in the practice of forced repatriations in the wake of World War II"¹³ particularly when Eastern Europe states tended to resolve mass influxes through forced repatriations. This prompted questions of human rights violations through return to frontiers where people were at the risk of torture. It is for the very reason of avoiding the violation of fundamental human rights that voluntary repatriation is embraced allowing refugees be the judges of when and if they feel free to return home. The principle of non-refoulement (Art 33) strengthens the voluntary nature of repatriation and is further strengthened by the inclusion of the non-refoulement principle in the category of articles that states cannot make reservations on in the 1951 convention.

Bialczyk maintains that the concept of voluntary repatriation "draws on a number of provisions in international law and has developed into principles within the institutional framework of UNHCR"¹⁴, since there is no specific law that governs it. Chetail has also argued that this concept is a "generic concept enshrined in various branches of international law"¹⁵ and can best be understood through the provision of the various branches of international law due to

¹¹ Chetail, V. 'Voluntary Repatriation in Public International Law: Concepts and Content' *Refugee Survey Quarterly* vol. 23, No.3, (2004) pp. 1-32:25.

¹² Schuck, P. 'Refugee Burden-Sharing' op. cit p. 263.

¹³ Zieck, M. 'Voluntary Repatriation: Paradigms, Pitfalls and Progress' in Gowlland, V. *The Problem of Refugees in the Contemporary International Law Issues* (Geneva, Martinus Nijhoff Publishers, 1994) pp33-54.

¹⁴ Bialczyk, A. 'Voluntary Repatriation and the Case of Afghanistan: A Critical Examination' *Refugee Studies Centre Working Paper No. 46* (2008) pp 1-33:3.

¹⁵ Chetail, V. 'Voluntary Repatriation in Public International Law' op.cit p.2.

the complementary nature of the various branches of international law. The 1951 convention Relating to the Status of the Refugees and its 1969 protocol do not expressly bring out the concept of voluntary repatriation other than the implied nexus in Article 1 (C) which allows refugees to re-avail themselves to the countries of nationality when conditions of return allow. The 1969 OAU convention on the other hand, has a direct reference to voluntary repatriation in Article V noting that “the essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will”.¹⁶

Though the 1951 Convention does not have a direct reference to voluntary repatriation, it has concepts that contextualize its legal element. Bialczyk¹⁷ notes the principle of non-refoulement that prohibits any actions of forceful return of refugees to frontiers where they may face persecution. Goodwin-Gill¹⁸ has also argued that the principle of non refoulement forms the backbone of international refugee protection giving them the right to determine to return only when the fear of persecution is no more. Article 33 (1) states that “No contracting state shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership to a particular social group or political opinion” or where they can face torture which negates the human rights law. This gives the principle of non- refoulement the legal element of binding states against involuntary return.

Zieck has argued that the relationship between non-refoulement, the definition of refugee status and the cessation clauses, creates a legal space within which voluntary repatriation takes place. He specifically points out that “the solution of voluntary repatriation is predicated on the

¹⁶ 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

¹⁷ Bialczyk, A. ‘Voluntary Repatriation and the Case of Afghanistan’ op.cit p. 5.

¹⁸ Goodwin-Gill, G. *The Refugee In International Law*. (Oxford: Clarendon Press, 1996).

quality of refugee status and is acted out between inclusion and cessation”¹⁹ on the one hand, the principle of non-refoulement on the other hand. In this case, refugees are by definition ‘unrepatriable’ as long as they remain refugees and they cannot be forcibly returned. As a result, voluntariness emerges as a legal requirement for repatriation as “only the refugee can lift the quality of unrepatriability”.²⁰ It is argued that the application of cessation of refugee status by either the country of asylum or origin would cause forced repatriation and in Zieck analysis, this forms a grey area in the legal provision of voluntary repatriation. Refugees from Sudan, specifically maintain that cessation does not allow for voluntary repatriation since majority of the major assistance to refugees are withdrawn leaving refugees without a choice than to repatriate in search for basic needs.²¹ However, it is only the addendum to Art 1 (C) that allows refugees to apply for recognition as refugees only if they can invoke compelling reasons for fear of persecution after the application of cessation. This is a challenge in guaranteeing the voluntary nature of repatriation especially where the state parties to the cessation apply high politics to demanding the return of the refugees.²²

Since the 1951 does not provide a satisfactory legal basis for voluntary repatriation, Chetail has argued that the concept gains more legal grounds if analyzed from the provisions of other human rights laws. He specifically reviews the concept from the humanitarian law perspective which was codified by the Fourth Geneva Conventions of 12th August 1949. Voluntary repatriation is specifically provided for the Prisoners of War and Civilians as categories of protected persons.²³ The convention allows for repatriation of the sick and injured

¹⁹ Zieck, M. ‘Voluntary Repatriation of refugees’ op.cit p. 36.

²⁰ Zieck, M. *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis*. (The Hague, Boston, London: Martinus Nijhoff Publishers, 1997) p. 430.

²¹ Focus Group Discussion with 20 refugees (Sudanese, Somalis and Congolese) *Nairobi* (13th September 2012).

²² Interview with a Protection Officer, UNHCR *Nairobi* (11th September 2012).

²³ Chetail, V. ‘Voluntary Repatriation in Public International Law’ op.cit Ibid p.6.

Prisoners of War during hostilities and after the cessation of hostilities. Paragraph 3 of article 109 specifically addressing the voluntary nature of repatriation since none should be repatriated against his will. The Geneva Convention Relative to the Protection of Civilian Persons in Time of War codified during the Fourth Geneva Convention on 12th August 1949 allows for lawful voluntary transfer of civilians from occupied territory.²⁴ All protected persons who desire to leave the territory either at the onset of, or during a conflict are entitled to do so, unless if their departure is contrary to the national interests of the state according to Article 35 paragraph 1 of this convention. It is the wording of the paragraph (persons who desire to leave) that Chetail argues gives room for voluntary repatriation and that the aliens' departure will take place on a voluntary basis.²⁵

Bialczyk also notes the provisions of the Universal Declaration of Human Rights (Article 13 [2]) that spells out the right to return in that 'everyone has the right to leave any country, including his own, and to return to his country'. The International Covenant on Civil and Political Rights (Article 12[4]) states that 'no one shall be arbitrarily deprived of the right to enter his own country'. The Convention on the Elimination of All Forms of Discrimination contains a provision on the right to return (Article 5). Other regional instruments further reinforces the right to return by most instruments relating to human rights, such as the European Convention on Human Rights (Article 3[2]), American Convention on Human Rights (Article 22[5]) and African Charter on Human and People's Rights (Article 12[2]).²⁶ This broader perspective of utilizing the complementary nature of international law fills the gap that the refugee law leaves on voluntary repatriation.

²⁴ Ibid p.6.

²⁵ Ibid p.7.

²⁶ Bialczyk, A. 'Voluntary Repatriation and the case of Afghanistan op. cit p. 6.

3.2.1. Political Dynamics of Voluntary Repatriation

After the World War II, voluntary repatriation particularly became an important principle of the international refugee protection. As earlier discussed in Chapter Two, more often than not, state national security interests and refugee protection seems incompatible to some extent. The identification of voluntary repatriation as the most 'ideal solution' to the refugee problem Bialczyk notes did not develop without the pressure of the powerful states with geopolitical developments shaping the global refugee policy.²⁷ The political dynamics of voluntary repatriation frameworks have their implications for the refugees and they also define their role in the process.

Chimni describes the policy shifts of the Western States particularly to refugees from Third World Countries since the post 1945 era. He notes that their policies have moved from neglect of Third World refugees to the use as pawns in the cold war era and to containment at the present.²⁸ He argues that post 1945 era was dealing with post war refugees and the West was undergoing economic expansion and hence more room for resettlement. As geopolitics and ideologies continued to lose their value²⁹ the admission of refugees to the Western states started facing challenges with national security and cultural preservation took centre stage. This move can be seen as fueling the perception of voluntary repatriation as the most ideal solution to the refugee problem.

Increasingly, host governments find themselves under pressure due to the continued influx of large numbers of refugees. This arouses the need to repatriate the refugees to ease the burden. Chetail argues that the hosting of large numbers of refugees is perceived as putting a

²⁷ Ibid p. 9.

²⁸ Chimni, B.S. (1998) 'The Geopolitics of Refugee Studies: A View from the South' *Journal of Refugee Studies* Vol.11, Issue 4. pp 350-374:350.

²⁹ Bialczyk, A Voluntary Repatriation and the Case of Afghanistan' op. cit p.9.

huge strain on the welfare services of states “exceeding their fragile absorption capacities”³⁰ with especially the Western states finding the refugees from the global South differing ethnically and culturally hence their being perceived as challenging the social cohesion of the states.³¹ These perceptions have been used to push for repatriation of refugees which has sometimes compromised their protection.

Long also notes that the state interests of the countries of origin also affect the theory and practice of return which is more often than not as demonstrated by the Guatemalan state interest in return of the displaced as a means of legitimizing continued rule particularly in relation to international perceptions of states right to power³² and political sovereignty. This follows when a government insists that the conditions back home are safe and that it requires its population back. Such political dynamics occur watering down the voluntary nature of repatriation.

Voluntary repatriation can be said to take place from the country of asylum to the country of nationality but it is also possible for refugees who have acquired resettlement in third countries to repatriate and participate in the reconstruction of their countries. In this regard, a country of nationality can be either one through birth or nationality acquired through naturalization. This offers more than one option to refugees who wish to repatriate. In other cases, countries of origin may allow dual citizenship and hence refugees with dual citizenship can choose to re-avail themselves to any of the countries where they are citizens. Refugees can also voluntarily repatriate to countries where they have permanent resident status on the territory of state parties.

³⁰ Chetail, V. ‘Voluntary Repatriation in Public International Law’ op. cit p. 10.
Chimni, B.S. (1998) ‘The Geopolitics of Refugee Studies’ op.cit p. 350.

³² Long, K. ‘State, Nation, Citizen: Rethinking Repatriation’ *Refugee Study Centre Working Paper Series* No. 48 (2008) p. 18.

3.2.2 Challenges Facing Voluntary Repatriation

Bascom argues that “the optimum solution to any refugee dilemma is the voluntary repatriation of refugees”.³³ However, while voluntary repatriation would offer hope for protracted refugee situations, prolonged conflicts, uncertain security, fears of renewed persecution, mistrust, unforeseen economic recovery, lack of the adequate support from the international community among others make it difficult for refugees in asylum to voluntarily re-avail themselves to the protection of their countries of origin/nationality. Bradley also argues that for millions of worlds’ refugees, voluntary repatriation is no longer an option but an imperative looking at the minimal chances of resettlement and local integration. However, he continues to inquire as to what refugees expect from return and whether they are entitled to anything more than a haphazard journey back home.

While many refugees want to repatriate according to the UNHCR than be resettled,³⁴ UNHCR also notes that there are limited opportunities for voluntary repatriation. Loescher thus extends the call to give lasting solutions to the refugee problem by addressing the bad political, economic and security conditions that make citizens feel compelled to leave and not return home³⁵. Goodwin-Gill also adds to the debate on voluntary repatriation by arguing that while it may be preferred; the question is, whether the inherent personal and political factors can be substantially influenced or structured to offer safe and sustainable repatriation that can promise reconstruction and rehabilitation.³⁶

³³ Bascom .J *Losing Place: Refugee Populations and Rural Transformations in East Africa* (Oxford;Berghahn Books, 1998) p. 48.

³⁴ UNHCR 16th Annual Tripartite Consultation on Resettlement (2010). p. 2.

³⁵ Ibid p.181.

³⁶ Long, K. ‘State, Nation, Citizen: Rethinking Repatriation’ op.cit p. 144.

Voluntary repatriation as ‘the ideal solution’³⁷ has been described as a traumatic venture owing to the long histories of war and violence in the countries of origin, insecurity, as well as economic, political and social instability and the slow pace of reconstruction due to delayed funding from the International Community.³⁸ Considerable change in the political, economic and social landscape of any given society is important for there to be a case for voluntary repatriation.³⁹ However, it has been argued that in several countries, the return of refugees has been an essential part to peace other than a result of it posing the challenge of the sustainability of this kind of return.⁴⁰ The UNHCR in its argument for the challenges of protection notes that repatriation often take place in the midst of a resolutions other than follow it and hence the conditions of flight still exist as refugees return home. Return to places where the political environment is still uncertain with occasional disputes simmering, fragile cease fires breakdown, arrangements and agreements are broken and trust is minimal rendering the return unsustainable.⁴¹

Successful repatriation programs also call for the refugees to have correct and as much information about situations at home as possible. This information allows the refugees to make decisions on whether it is time to go home. Unfortunately, many NGOs and the international community’s main focus is on security from the wider perspective throughout the nation but Cuny and Stein argues that refugees are concerned with the micro information of what is happening at the heart of their villages, houses, shops farms that they previously occupied. This gives them clues as to what to expect upon return. When comprehensive information is not

³⁷ Bialczyk, A. ‘Voluntary Repatriation and the Case of Afghanistan’ op. cit p. 9.

³⁸ Turton, D and Marsden, P *Taking Refugees for a Ride? The Politics of Refugee Return to Afghanistan* (Kabul: Afghanistan Research and Evaluation Unit, 2002) p. 5.

³⁹ Focus Group Discussion with 20 refugees (Sudanese, Somalis and Congolese) *Nairobi* (13thSeptember 2012) .

⁴⁰ Monsutti, A. ‘Afghan Migratory Strategies And The Three Solutions To The Refugee Problem’ *Refugee Survey Quarterly*, Vol. 27, No.1 (2010) pp 58-73: 61.

⁴¹ UNHCR. *The Challenge of Protection* (USA: Penguin Publishers, 1993) p.4.

availed refugees may sign to return and on realizing that the conditions are not suitable they may go back to the countries of asylum.

While as there are a lot of concerted efforts by the government and the UNHCR and other NGO's to facilitate and promote voluntary repatriation, Maynard has argued that it is the most difficult durable solution to pursue. Maynard argues that it attracts very little long term attention from the international community other than the transport back home and material assistance upon arrival. Long term engagements through reconstruction, reintegration, economic and political recovery among others are usually left out rendering the whole process less durable. This lack of long term commitment by the international community can be attributed to what Bialczyk argues as a diminishing significance of African refugees as ideological and geopolitical⁴² assets but also to the increasing pressure exerted on the balance between state welfare and contributions towards burden sharing to resolve the refugee problem.⁴³

Zieck notes that the legal norms that govern the solution of voluntary repatriation are fairly simple and if not well examined may conceal its complexity.⁴⁴ Zieck specifically notes the need to consider voluntary repatriation as a durable solution in the spirit of Article 1 (C) part 4 where the refugee would not just return but can actually re-establish himself in the country of nationality. This is more so since voluntary repatriation takes place to states that have suffered conflict for years and thus the "possibility of actual re-establishment is remote and cannot be left to chance".⁴⁵ To a greater extent, the ability for the returnees to re-establish themselves would determine the durability of the solution.

⁴² Bialczyk, A. 'Voluntary Repatriation and the Case of Afghanistan' op. cit pp. 9-10.

⁴³ Noll, G. 'Risky Game? A Theoretical Approach to Burden Sharing in the Asylum Field' *Journal of Refugee Studies* Vol. 16, No. 3 (2003) pp.236-252:241.

⁴⁴ Zieck, M. 'Voluntary Repatriation Paradigms and Concepts' op. cit p. 33.

⁴⁵ Ibid p. 46.

Voluntary repatriation offers refugee an opportunity to rebuild their lives and to enjoy the protection of their state of nationality. For this to happen there is need for the conditions that caused the flight to undergo fundamental change to the extent that the refugees feel safe to return home. This calls for a reestablishment of the social contract that requires that the state offers protection to its citizens and for the citizens to keep to the rule of law as they enjoy fundamental rights and freedoms. The ability of the state to allow rights to property and address inequalities through the principles of justice is important to allow a sustainable voluntary repatriation.

3.3. Resettlement

Lippert has argued that refugees are entities whose power of choice is denied and that they find themselves in conditions of abnormality fleeing illiberal governments.⁴⁶ Though arguing from a point of view of resettlement of refugees in Canada, his arguments are still applicable to the general debate on resettlement. He continues to argue that resettlement mediates over a period between “citizenry and migrating, marginalized refugee”⁴⁷ providing refugees with an opportunity to rebuild their lives and live in conditions of improved security. He also argues that it aims at nurturing, promoting and shaping the “active capacities”⁴⁸ of refugees towards the realization of self support. His argument looks at resettlement in two folds; from a point of view of a refugee entering Canada from the country of origin (during conflict) and a refugee from a refugee camp⁴⁹ who is resettled through a resettlement agency. He maintains that resettlement programs imagine a metamorphosis where the refugees are given an opportunity to freely exercise choice as liberal subjects re-establishing the social contract albeit with a new country.

⁴⁶ Lippert, R. ‘Rationalities and Refugee Resettlement: Economy and Society’ *Routledge Journal* (1998) pp.380-406, p.326.

⁴⁷ Zieck, M. ‘Voluntary Repatriation: Paradigms, Pitfalls and Progress’ op. cit. p 34.

⁴⁸ Lippert, R. ‘Rationalities and Refugee Resettlement: Economy and Society’ op. cit. p.327.

⁴⁹ Ibid.

Resettlement has been defined as the transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them 'as refugees' with permanent residence status.⁵⁰ This perspective is tied to the general perception that it is not only an element of comprehensive durable solution but also as a vital instrument of international protection and a tangible expression of international solidarity and a responsibility sharing. Whereas such is the definition by the UNHCR, there are still spontaneous refugee resettlements like the ones described by Lippert. Resettlement has also been perceived as the most attractive solution to the refugee problem due to the ever diminishing hope for voluntary repatriation. Crisp also notes that the poor quality of life in many of Africa's asylum countries where the conditions of life and policies of host governments are always seen as unfavorable contribute to refugees perceiving resettlement as the only way out of their situation⁵¹ coupled with a torn social fabric in the countries of origin. However, Chimni's opinion of diminishing resettlement opportunities for African refugees with the end of the cold war creates a gap between perception and the reality of access to resettlement.

Resettlement was highly influenced by geopolitics and ideologies during the inter war era. Chimni argues that post 1945 era was dealing with post war refugees and the West was undergoing economic expansion allowing room for resettlement⁵² especially for the refugees within the Western countries near abroad. This also followed the fact that the two major powers (the West and the Soviet) were fighting a battle of ideologies and geopolitics and resettling refugees from the Soviet Union was an added advantage to the West towards fighting back their ideological enemy. Bialczyk adds to the debate noting that the resettlement of refugees during

⁵⁰ Lippert, R. 'Rationalities and Refugee Resettlement: Economy and Society' op. cit. p.326.

⁵¹ Crisp, J. 'No Solutions in Sight: The Problem of Protracted Refugee Situations in Africa'. *New Issues in Refugee Research* (2003) Working Paper 75 p.23. see also Bram, J (2008) 'Between Vulnerability and Assertiveness' pp 569-587.

⁵² Chimni, B.S. (1998) 'The Geopolitics of Refugee Studies' op. cit p.350.

the cold war was still valuable to appeal to the South to be receptive of the Western ideologies of communism to hit back on their socialist enemy.⁵³ However, after the cold war, ideologies and geopolitics were no longer assets to the West and hence refugees resettlement shifted from being an asset to national security interests obstacles.⁵⁴ Chimni also notes the policy shifts of the Western States particularly to refugees from Third World Countries since the post 1945 era. These policies shifted from neglect of Third World refugees to being used as pawns in the cold war era and to containment at the present.⁵⁵

While resettlement is a well intended strategy to not only improve the protection of refugees who continue to feel insecure in their countries of asylum, Jansen argues that resettlement depends on the willingness of third states to accommodate refugees⁵⁶ giving the resettlement countries full liberty to determine eligibility criteria and admission quotas. The contending balance between state national security interests and refugee protection debates has always overshadowed states decisions to offer resettlement to refugees.

The resettlement process has been described as bureaucratic with lengthy processing times,⁵⁷ rigid quota allocations and restrictive profile requirements⁵⁸ that more often than not fall short of the global resettlement need.⁵⁹ In 2010, the global resettlement quota allocation was about 80,000, a ration of ten is to one⁶⁰ with the UNHCR's resettlement needs being 805,500

⁵³ Ibid.

⁵⁴ Ibid p. 10.

⁵⁵ Chimni, B. 'The Geopolitics of Refugee Studies' op. cit p 350.

⁵⁶ Bram, J. 'Between Vulnerability and Assertiveness: Negotiating Resettlement in Kakuma Refugee Camp' *African Affairs Journal* Vol. 107, No. 429 (2008) pp. 569-587:571.

⁵⁷ Focus group discussions with refugees from the Congo, Somalia and Ethiopia *Nairobi* (14th September 2012).

⁵⁸ Antonio Guterres High Commissioner, UNHCR Executive Committee meeting held in October 2011, opening speech during the 2011 P. 6 <http://www.unhcr.org/pages/4e2693656.html>.

⁵⁹ Ibid.

⁶⁰ Ibid.

globally, against the backdrop of approximately over 10.55⁶¹ million refugees and 2.2 million in sub-Saharan Africa with over half a million in Kenya.⁶² While the UNHCR actively identifies individual cases that would benefit from resettlement, a case could also take up to three year to be finalized and a decision to be taken on whether or not to admit.⁶³ The UNHCR office in Kenya refers about 10,000 resettlement case every year out of whom, only about 5,000 cases are selected and accorded resettlement places.⁶⁴

Resettlement is strategically utilized to not only present refugees with chances to rebuild their lives but it also lessens the burden of hosting large numbers of refugees. Other than the benefits gained by the individuals, the Executive Committee also noted the complementary benefits⁶⁵ that resettlement can have to the host countries through changes in attitude and practice with regard to asylum policy when they realize that the international community is concerned with the burden. As refugees leave for resettlement, countries of asylum feel relieved of some of the pressure of hosting refugees. It also enhances asylum prospects for the remaining refugee population within those countries by building their hope of rebuilding their lives should they get the chance as well. However, the number that benefits from resettlement is almost negligible compared to the number of refugees in the asylum countries.

3.3.1 Challenges facing Resettlement Programmes

Heightened security concerns by the Western countries have increased restricted eligibility criteria for admission. The September 11 attack in the U.S. especially has sometimes

⁶¹ UNHCR. *UNHCR Statistical Yearbook 2010: Trends in Displacement, Protection and Solutions* (Geneva: UNHCR, 2011) p. 24.

⁶² *ibid* pp. 24-25.

⁶³ Interview with a Protection Officer at the UNHCR, *Nairobi* 11th September 2012 also, the analysis of questionnaires from humanitarian organization in Nairobi.

⁶⁴ Interview with a Protection Officer at the UNHCR, *Nairobi* 11th September 2012.

⁶⁵ UN Executive Committee *Strengthening and Expanding Resettlement today: Dilemmas, Challenges and Opportunities*, Global Consultations on International Protection, 4th mtg., U.N. Doc. EC/GC/02/7.

overshadowed the legitimate interests of individual⁶⁶ protection. Some countries of resettlement reduce the number of refugees that they admit annually further constraining the rigid quotas while at the same time increasing the security checks for admissible cases which lengthen the processing time.⁶⁷ While the refugees have to contend with the exhaustive eligibility profiling, they also have to brave themselves with the long wait before they are granted entry to the resettlement countries. These restrictive migration legislations have characterized the resettlement system in the recent past.

Zanchettin points out that the impact of 9/11 cannot be overlooked in refugee protection debates. He notes that its impact has had far reaching effects which has also triggered a change of attitude on refugee issues.⁶⁸ Zanchettin argues on the effect of 9/11 from the point of its impact to attitudes in a multitude of domains. While many scholars have argued on its impact from a restricted migration rules point of view, Zanchettin argues from the implementation of new laws and judgments passed regarding asylum issues. The argument particularly explores the change in attitude towards non-refoulement and deportation of refugees to torture through the *Suresh* judgment in Canada by the Canadian Supreme Court in *Suresh v. Canada* (Minister of Citizenship and Immigration).⁶⁹ In this case, the judges came to a conclusion that “generally to deport a refugee, where there are grounds to believe that this would subject the refugee to a substantial risk of torture would unconstitutionally violate the charter’s⁷⁰ s.7 guarantee of life,

⁶⁶ Erika, F. Volker, T. *Refugee Protection in International Law UNHCR’s Global Consultations on International Protection*. (United Kingdom: Cambridge University Press, 2003) p. 5.

⁶⁷ UNHCR. *Resettlement Handbook* op. cit p. 17.

⁶⁸ Zanchettin, M ‘Asylum and Refugee Protection After September 11: Towards Increasing Restrictionism’ in Bolesta, A. *Refugee Crisis and International Responses: Towards Permanent Solutions?* (Poland: Wydawnictwo i Drukarnia PPHU, 2005) pp.141-180:142.

⁶⁹ Ibid p. 143.

⁷⁰ The Canadian Charter of Rights and Freedoms.

liberty and security. This said, we leave it open the possibility that in an exceptional case such deportation might be justified either in the balancing approach under ss.7 or 1 of the charter”.⁷¹

Manikavasagam was the appellant in this case and was a Sri Lankan from the Tamil descent. He was accorded refugee status in 1991.⁷² He further applied for the landed immigrant status the same year but the process was faulted along the way as the Solicitor General and the Minister for Immigration started deportation proceedings against him on the ground that he was engaged with terrorist activities through fundraising for the Tamil Tiger group. A ruling was issued in August 1997 on deportation. The appellant on notification wrote an appeal claiming that he did not pose a security threat to Canada and that he faced danger of torture and death if deported. However, he was denied appeal and he was deported on 6th January 1998.⁷³

While this argument may be seen to incline more towards the norm of non-refoulement, it is also of important interest to the debate on refoulement after a refugee is resettled due to changing national security dynamics and interests. This interest is taken from the point of view that refugees are received by third countries for resettlement as refugees but with a permanent residence status which is applied for after stipulated periods of time. In this case, it has been argued that for the judges to take such a conclusion, it is seen as a signal of the judges’ support of the government’s commitment to prioritize the national security agenda.⁷⁴ The author also argues that the adoption on national security grounds has opened a way that has increasingly restricted interpretation of the rights of refugee claimants.

⁷¹ Zanchettin, M ‘Asylum and Refugee Protection After September 11’ op. cit p. 143.

⁷² Beaulac, S. ‘The Suresh Case and Unimplemented Treaty Norms’ *Revue Québécoise de droit international* 15/1 (2002) pp. 221-240 :224.

⁷³ Ibid.

⁷⁴ Zanchettin, M ‘Asylum and Refugee Protection After September 11’ op. cit p. 143 see also Beaulac, S. ‘The Suresh Case and Unimplemented Treaty Norms’ p.234.

Pendleton and Crush in their study on citizens' attitudes to immigration and refugee policies in South Africa, noted that intolerance and broadening xenophobia has intensified violence against foreign citizens and African refugees.⁷⁵ The main cause of the intolerance was noted to constitute citizens believe that the foreign citizens and refugees create unhealthy competition for meager job opportunities which create a big scare to the citizens. This has been seen as to straining the welfare services of their countries according to Gibney⁷⁶ especially by the Western countries. Chimni also argues that the refugees seeking resettlement in the West from the global South raises issues of mixed ethnic and cultural backgrounds which are seen as a challenge to the social cohesion of the West.⁷⁷

Largely, resettlement as a form of durable solution to the refugee problem faces major challenges. The lack of a legal backing leaves it to charity that is constrained by the national security agenda and political vicissitudes and can hardly be relied on to resolve the current refugee crisis. At the same time, the existence of the burden sharing spirit in theory lacking in commitment weakens the prospects of resettlement as countries as countries fail to recognize the weight of hosting refugees especially when they do not directly bear the burden.

⁷⁵ Pendleton. W and Crush. J *Regionalizing Xenophobia? Citizen Attitudes to Immigration and Refugee Policy in South Africa* (South African: Idasa and Queens University Press , 2008) pp4-13.

⁷⁶ Gibney, M. *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*. (Cambridge: Cambridge University Press, 2004) p. 3.

⁷⁷ Chimni, B.S. 'The Geopolitics of Refugee Studies' op. cit p 350.

Chapter Four

Social Contract Theory: Application in Refugee Issues

4.1. Introduction

As noted in Chapter Three, Zieck notes that the legal norms that govern the solution of voluntary repatriation are fairly simple and if not well examined may conceal its complexity.¹ Zieck specifically notes the need to consider voluntary repatriation as a durable solution in the spirit of Article 1 (C) part 4 that brings in the complexity of return when possibilities of re-establishing oneself are brought to the agenda. This is more so since voluntary repatriation takes place to states that have suffered conflict for years and thus the “possibility of actual re-establishment is remote and cannot be left to chance”.² The search for increased resettlement quotas continue to pose a challenge towards affording refugees a renewed social contract with a government that can offer protection and allow for enjoyment of fundamental rights and freedoms. This chapter looks at the key provisions of the social contract theory and their application in refugee issues.

The social contract theory offers the view that persons’ moral and political obligations are dependent upon a contract or agreement among them to form the society in which they live. The philosophy of the social contract theory is based on the perspective of a society where autonomous individuals with self interests come together and form a collectivity guided by rules. The social contract holds the promise of equal protection to the conflicting interests of all³ hence

¹ Zieck, M. ‘Voluntary Repatriation: Paradigms, Pitfalls and Progress’ in Gowlland, V. *The Problem of Refugees in the Contemporary International Law Issues* (Geneva, Geneva, Martinus Nijhoff Publishers, 1994) pp33-54:33.

² Ibid p.46.

³ Bueren, G. ‘A Social Contract for the Twenty-First Century: Social Economic Rights and Wealthier Democracies’ *Foundation for Law, Justice and Society: lecture delivered at the Oxford Law Faculty on 14th July 2009* p.2.

facilitating a cohesive community guided by the fundamental principles of justice.⁴ The UN system has a broad social contract dimension where states agreed to co-operate, and afford each other the same treatment that they would expect for themselves, in order to prevent the state of war that had “decimated most of the world”⁵ during the world war era. As Kathrani has argued, the new world order that followed after the world war clearly signify a new collectivity guided by norms that Amongst some of the norms contained in the preamble to the UN charter signify a moral order that “reaffirm[s] faith in fundamental human rights, in the dignity and worth of the human person’ and [the] ‘practice [of] tolerance and live together in peace”.⁶

The social contract theory is adopted in refugee issues due to certain universal human tendencies that cause them not to be able to respect the rights of others. Kathrani notes to this effect that there is need for a strong system of directives to facilitate people’s relations. The social contract perspectives are applied to the international sphere where a stronger system of enforcement is required as well.⁷ This is however not without challenges because of sovereignty.

4.2. Social Contract: Application in Refugee Issues

4.2.1. The Refugee Problem

Loescher notes that the refugee problem exists and cannot be denied and that the existence of refugees is as a result of wars, military coups and massive human rights violations⁸. From the basic perspective of social contracts, refugees as individuals possess rights some that are inalienable and cannot be traded for any common good. Rousseau noted that a society only

⁴ Locke, J. “Second Treatise of Government” in Locke, J. *Political Writings* (Penguin Books, 1993) p.7. also see Mouritz, T. Comparing The Social Contracts of Hobbes And Locke op. cit p .126.

⁵ Kathrani, P. ‘Social Contract Theory and the International Normative Order: A New Global Ethic?’ *Jurisprudence Vol. II Issue. 119* (2010) pp.97–109:100.

⁶ Ibid.

⁷ Ibid p. 106.

⁸ Loescher, G. *Beyond Charity: International Cooperation and the Global Refugee Crisis* (New York: Oxford University Press, 1993) p.3.

exists due to the agreement on the common good or common interest and it is on this basis that a society is to be governed.⁹ In the contemporary world, liberal democracies exist and thus governments. These governments can make rules for the general will and the individuals ought to be free to oppose if individual will from the government overtakes the general will. There are a number of perspectives that the refugees can be said to fall-out from the social contract as discussed below.

Shaknove has particularly argued that the very subject of the definition of a refugee in the 1951 convention is predicated on the assumption that a contract between the citizen and the state exists and that in the case of a refugee, the contract seems void since the bond of trust, loyalty, protection and assistance does not seem to operate leading to migration.¹⁰ The failure of the state to honor its obligation to protect its citizens negates its core obligation and hence creates conditions of dissatisfaction and fear of persecution. The causes of conflict in a society of rational equal individuals where a contract exists, is just a manifestation of what Rousseau notes as a revert from the civil liberty obtained from the contract to the state of nature where each pursues their own interests. Shaknove further argues that “in exchange for their allegiance, citizens can minimally expect that their government will guarantee physical security, vital assistance, and liberty of political participation and physical movement and that no reasonable person would be satisfied with less where beneath this threshold the social compact has no meaning”.¹¹

⁹ Rousseau, J. *The Social Contract and the Discourses* (London: David Campbell Publishers, 1993) p. 199.

¹⁰ Shacknove, A. ‘Who Is a Refugee?’, *Ethics* 95 (2) (1985): pp. 274-282:275.

¹¹ *Ibid* p. 281.

The existence of refugees from the face value of social contract is a clear indicator of physical social exclusion¹² from the society in which the refugees ought to enjoy the common goods and exercise their fundamental freedoms and basic rights. White's operational¹³ point of the concept in reference to refugees and asylum seekers (although applying it to refugees in Australia and the UK) points out that the breakdown of the contract affects refugees in many ways. They become excluded from the consumption of social security, housing and health, production through employment, training, job skills and education, political engagement and social interaction through family reunion, cultural and language barriers, harassment and victimization and limited travel. This view is also shared by Lippert as discussed in Chapter Four through his view of resettlement providing an avenue for the refugees to rebuild and activate their productive capacities.¹⁴

Refugees feel underutilized, unable to fully contribute to the common good in the economy of their host countries.¹⁵ Kenya's encampment policy, while it is a viable strategy to make the refugee problem visible to the international community, limits the refugees' movement which directly affects the chances of the majority to engage in economic activities that cannot be supported by the camp environment.¹⁶ The lack of the state of nationality's protection contributes to such a state of affairs creating these exclusions.

Kamudhayi, looking at the Somali Peace Process has argued that the Said Barre's government remained nonresponsive to the general wills the people of Somalia turning itself to

¹² Taylor, J. 'Refugees and Social Exclusion: What the Literature Says' *Migration Action*, vol. XXVI, no.2 (2004) pp.16–31:20.

¹³ White, M. 'Asylum Policy in the UK and Australia: A Pathway to Social Exclusion?' *Migration Action*, vol. XXIV, no.1 (2004) pp 4–14.

¹⁴ Lippert, R. 'Rationalities and Refugee Resettlement: Economy and Society' *Routledge Journal* (1998) pp.380-406:326.

¹⁵ Focus Group Discussion with refugees from Sudan, Somalia and Congo *Nairobi* (13th September 2012)

¹⁶ Interview with refugees visiting Nairobi from the camps *Nairobi* (13th September 2012)

an “autocratic, authoritarian regime”.¹⁷ The inequalities created in the allocation of power and resources degenerated into a conflict between the government and the citizenry and we can attribute the current refugee crisis to this degeneration of the contract. In Rawls view, the Difference Principle¹⁸ is not observed. The political and economic inequalities created are not for public good and neither are they accessible to all. This inequalities and forbidden activities culminated to “clan animosity and competition, massive destruction of property and internal and external displacements”¹⁹ a factor that has seen the refugee caseload in Kenya dominated by refugees from Somalia²⁰ as noted in Chapter Two. It is for the avoidance of the violent competition that the social contract exists to harmonize individual interests toward a common good. However, the assigning of rights and duties and the distribution of the common good creates inequalities that are inaccessible to all propagating the particular will other than the general will, then the contract degenerates and if the legislature is not functional to make progressive laws it leads to the death of the body politic²¹ and refugee movements.

The asylum countries have had to contend with the increasing national security concerns emanating from hosting refugees. Kenya particularly has witnessed security scares where some have been attributed to the presence of refugees and specifically due to the presence of small and light arms. While the presence of small arms may not be fully attributed to the refugees’ presence, the increased security challenges are evident. To this end, Kenya has had to incur financial costs to establish a refugee department to administer and manage all refugee affairs.²² While as the resources to run this institution would be invested in other national developmental

¹⁷ Kamudhayi, O. ‘The Somali Peace Process’. In Mwagiru, M. *African Regional Security in the Age of Globalization* (Nairobi: Heinrich Boll Foundation, 2004) pp. 107-123:107.

¹⁸ Rawls, J. *A Theory of Justice* (Massachusetts: Harvard University Press, 1999) p. 53.

¹⁹ Kamudhayi, O. ‘The Somali Peace Process’ op.cit p. 108.

²⁰ Lidney, A. ‘Between a Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya’ *Journal of Refugees Studies* Vol.30. Issue 4 (2011) pp. 14-49:20.

²¹ Rousseau, J. *The Social Contract and the Discourses* (London: David Campbell Publishers, 1993) pp. 254-258.

²² Interview with Mr. Badu Katelo, AG Commissioner of Refugee Affairs *Nairobi* (12th September 2012)

programmes, the institution is of importance to avoid further conflicts. As more and more resources are allocated to refugee programmes, possible reduction of assistance to the citizens may result into conflicts.

In the majority of the African conflict systems, the conflicts have always taken regional dimensions. Mwangi maintains that “the notion of conflict systems champion the belief that every conflict has intimate relationships regionally and what might at first appear as individualised conflicts in fact are parts of wider pattern of conflict regionally”.²³ More severe are the environmental conflicts “whose ecology knows no territorial boundaries”.²⁴ It is for these reasons that Kenya has not escaped the challenges of hosting refugees from the near abroad and it is for similar reasons that African states have formed regional institutions that provide platforms to seek for solutions to the refugee problem as well as mitigate possible refugee flows where a member state experiences constrained social order. The existence of the 1969 OAU convention governing the specific aspects of the problems facing the African refugees clearly indicates the joint cooperation contracts to address the challenge facing the region as a whole. Article II (4) clearly upholds the spirit of African Solidarity by allowing an asylum state party to request for assistance from the other member states in order to lighten the weight of the burden.

Severed social contracts deny the refugees not only the chance to freely enjoy their basic rights and fundamental freedoms, but also the chance to own property and enjoy from participating and exercising their political rights. By extension, they are left to feel unable to influence their own life-plans.²⁵ A search for solutions to the refugee problem is therefore of paramount importance in order to restore the lost connection and rebuild chances of enjoyment

²³ Mwangi, M. ‘The Greater Horn of Africa Conflict System: Conflict Patterns, Strategies and Management Practices’ (paper prepared for the USAID project on Conflict and Conflict Management in the Greater Horn of Africa, April 1997, Revised, September 1997) p. 3.

²⁴ Ibid p. 4.

²⁵ Goodwin-Gill, Guy. *Refugees in International Law* (Oxford: Oxford University Press, 2007) p. 4.

of rights and protection from the state of origin as its principle obligation to its citizens under the social contract.

4.2.2. Solutions to Refugee Problems

The continued search for the common good by the refugees continue to place them in situations where they look for possibilities to return back home in pursuance of these common good. Bradley maintains that when the state has violated its duty to its citizens by creating refugees, it then must repair the broken bond for it to regain legal and moral legitimacy. He further notes that it is the responsibility of the country of origin to care for its own citizens by establishing just conditions for return as a principle way in which the state of origin makes good on its obligations towards its refugees, thereby beginning the reconciliation process.²⁶ Goodwin-Gill also maintains that the fact that persons have a right to seek asylum the countries of nationality should take up the role of readmitting their citizens.

Chapter Three examined voluntary repatriation of refugees as the most generally agreed ideal solution to the refugee problem the world over. Due to the continued shrinking of the resettlement opportunities for the growing number of refugees in Africa and the remote local integration due to the huge numbers, it would be important to think about the possibility of mending the severed bond of the social contract between the countries of origin and the refugees in order to resolve the growing problem.

Bradley notes that the International law does not particularly offers an account of what just return entails. Nonetheless, he argues that conditions of just return may be developed by looking at the codified international law and 'soft law' such as General Assembly Resolutions with moral

²⁶ Bradley, M. 'The Conditions of Just Return: State Responsibility and Restitution for Refugees' *Refugee Study Centre, Working Paper No.21* (January 2005) PP. 1-31:6.

arguments on rights and state responsibility. To Bradley, the minimum conditions of just return for refugees can be equated to the “citizen’s minimum entitlements under the social contract”²⁷ including security, the restoration of property and protection of and accountability for human rights. Returnees should be given choice in the process, and be empowered to negotiate fair terms of return that reflect their particular circumstances. Yet a logical examination of the conditions of just return must first address the refugee’s right to return and an assurance of the promise of state protection.

Bradley has also argued that just return is an indicator of a legitimate state’s provision of its citizens by providing equal, effective protection for their security and basic human rights including accountability for violations of those rights.²⁸ The restoration of a normal relationship of rights and duties between the state and citizens is normally seen as fulfilling the conditions of just return and rebuilding the social contract. According to Rawls, the primary subject of justice is the arrangement of the basic structure in the society in which social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. Some of these major institutions are political constitution, principle economy and social arrangements.²⁹ These basic structures directly affect men’s initial chances in life and thus the importance to have a just social scheme. Though Rawls basic structure starts when rational individuals start from a veil of ignorance in choosing the principles of justice, it is still important to consider having a just structure as refugees return by engaging them in negotiations for the tripartite agreements so that they do not face the same issues they faced that translated to migration for asylum.

The engagement of refugees during the development of the Special agreements (the tripartite agreements) between the country of origin, the country of asylum and the UNHCR that allow the refugees space to communicate what they consider as desirable for a just social contract for their

²⁷ Ibid

²⁸ Bradley, M ‘Back to the Basics: The Conditions of Just Returns’ *Journal of Refugee Studies* Vol. 21, No. 3 (2008) pp. 287-304.

²⁹ Rawls, J. *A Theory of Justice* (Massachusetts: Harvard University Press, 1999) p. 6.

return is vital to achieving sustainable voluntary repatriation. It is these agreements that set the pace for return and the government of the country of origin is obliged to guarantee protection for the refugees upon return. Without a well negotiated pact, the question of sustainability of the return remains a challenge.

In the contemporary world, the causes of refugeehood have entered the international arena of international relations. Though the social contract's reference was particularly between the state and its citizens, the impact of the severed contracts to other states within the international body is evident through the financial and structural burdens others have to shoulder. It is from this perspective that actors in the international arena such as states, regional and international institutions are engaged in seeking amicable solutions to re-establish the social contract between the parties in the conflicts. As Kathrani³⁰ has argued, the codification of international norms to guide relations between and among states as well as signify cooperation is a clear indicator of international contracts to govern the behavior of states in matters affecting them.

4.3. Study Objectives and the Hypotheses

The current study was guided by three objectives namely;

- a) To investigate the refugee situation in Kenya
- b) To critically examine the refugee management regime in Kenya
- c) To explore limitations towards sustainable voluntary repatriation and resettlement programmes

And three hypothesis namely;

- a) The refugee problem in Kenya is bigger than is perceived
- b) Voluntary repatriation of refugees is a myth

³⁰ Kathrani, P. 'Social Contract Theory and the International Normative Order: A New Global Ethic?' *Jurisprudence Vol.1Issue.119* (2010) pp.97-109:100.

c) Resettlement programs will remain overshadowed by state interests

The first objective was investigating the refugee situation in Kenya. It is evident that the refugee situation in Kenya is in a protracted state as discussed in Chapter Two and faces a crisis from many fronts. The refugees are accorded asylum in the hope that they would repatriate home soon, refugee camps are created for temporary shelter. The refugees tend to stay longer than expected making the refugee camp assume a default permanency phenomenon while in essence they were put up for temporary accommodation. The presence of refugees has intensified Kenya's national security agenda owing to the state and human security challenges that refugees pose to the country. This ranges from environmental degradation, food insecurity, demand driven competition for limited natural resources as well as xenophobic tendencies which fuel violent conflicts.

The added financial burden to run the refugee affairs through recruitment of officials, production and issuance of documentation all feed into the complexity of the refugee system in Kenya. As predicted by the first hypothesis in to the study, the refugee situation in Kenya can be describes as a big problem that only a critical analysis of the various dimensions and linkages that it takes can allow the conceptualization of the size of the problem. Kenya has gone a step further to domesticate the international refugee law through the refugee act of 2006. It has created the Department of Refugee Affairs headed by a commissioner for effective management of the huge refugee crisis in Kenya.

The second objective aimed at examining the refugee management regime in Kenya. First and foremost, the refugee management in Kenya has portrayed positive³¹ refugee policies indicated in the willingness to receive and admit refugees into the asylum system even at the

³¹ Jacobsen, K. 'Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes' *International Migration Review*, Vol. 30, No. 3 (Autumn, 1996), pp. 655-678:658.

height of mass influxes. The management of refugee affairs has moved from simple activities of reception, registration and documentation during the time of the National Refugee Secretariat to a more complex management system with the establishment of the Department of Refugee Affairs and the Refugee Act of 2006. Currently, the management of refugee affairs is not only focused on the mandate of the National Refugee Secretariat but also coordination of the various aspects related to the national security agenda. As noted in Chapter Two, the DRA is concerned with the physical security of refugees in the camps through the office of the camp officers, coordination of all refugee programs to ensure possible conflicts due to asymmetrical relationships between refugee and the host communities are mitigated.

The incorporation of the international refugee law through the Refugee Act of 2012 has been a big step forward to enforce refugee protection in Kenya. The Act offers all the actors in refugee affairs strategic guidance in their operations. It also creates a visible coordination belt through the office of the CRA through whom, all issues related to refugee affairs that require the government can be channeled through. It also allows refugees legal security to pursue their rights and obligations as refugees in Kenya.

The third objective sought to explore limitations towards sustainable voluntary repatriation and resettlement programmes. Sustainable voluntary repatriation and resettlement programs seem to offer refugees the relief of uncertainties in life, allow them to re-establish themselves economically, socially and politically. While there are all indications of concerted efforts towards making access to the two solutions available, major challenges are encountered along the way especially those that threaten the sustainability of these programmes. As noted in Chapter Three, the sustainability of voluntary repatriation is limited to the extent that the conflicts in the countries of origin last and new ones erupt and to the extent of the existence of

just conditions of return. It is also constrained by repatriation programmes in the midst of peace processes other than following peace processes. This makes the returnees experience challenges and finally returns to the former countries of asylum.

The lack of confidence by the refugees to re-establish themselves due to uncertain reintegration and reconstruction processes constrain the possibilities of sustainable repatriation. The limitation of lack of the international community long term attention to repatriation programmes beyond transport assistance is also a glaring challenge. It raises the question of the complexity of re-establishment as envisaged in Article 1 (C) of the 1951 convention which Zieck argues is not in the foreseeable future.

Resettlement is on the other hand is surrounded by political challenges with states' national security perspectives taking centre stage. This has increasingly created restrictive boarder and migration policies, rigid quota allocations and restrictive eligibility criteria. This has continued to create asymmetrical relations between the resettlement needs and the available resettlement quotas. The lack of a legal directive to offer resettlement has left the resettlement countries at liberty to come up with resettlement guidelines that are more inclined to their own state interests at the expense of genuine individual protection needs. State practice in providing resettlement allows the conclusion that resettlement as a solution will remain bound by state interests and political vicissitudes.

The refugee problem has been demonstrated as being bigger (as predicted by the first hypothesis) than one may notice from a narrow perspective of just seeing refugees in the camp rather than looking at the various dynamics and linkages that refugees bring to the society as demonstrated above. Increased presence of small arms and light weapons which have been attributed to increase in crimes continue to pose a challenge to the state welfare. Continued

conflicts between the local and host communities and the increased financial and structural burden to Kenya are all indicators of the size of the refugee problem.

Voluntary repatriation is not a myth from the point of view of impossibility. It is instead a possible solution that requires a keen strategy to ensure the objectives of reintegration and reconstruction are achieved to allow refugees re-establish themselves. Its sustainability is however limited to the extent of the presence of favorable conditions of return and the extent to which the fear of persecution diminishes.

On the other hand, resettlement programmes will continue to ride on state interests since there is no legal directive to offer resettlement and individual states decide unilaterally when and how many refugees to admit for resettlement and from where. As refugees continue to be perceived as burdens, the resettlement windows will continue to remain narrow as they are perceived to endanger the cultural and social cohesion of the resettlement countries for the reasons of coming from a different cultural orientation. As citizens continue to perceive refugees as competitors for limited job opportunities, then access to resettlement will continue to be limited.

Chapter Five

Conclusions

This study surveyed the issues in voluntary repatriation and resettlement of refugees and examined the refugee situation in Kenya. It has examined the government's response to the refugee issue through its actions, structure and strategies employed in managing the issue. It has also analyzed the global issues surrounding the whole refugee system in the quest to seek solutions to the ever increasing refugee challenge especially in Africa. The study argues that the refugee problem continue to persist as long as sustainable solutions are not found maintaining that sustainable solutions especially through voluntary repatriation will continue to be difficult to find as long as old conflicts persist and new ones erupt with the basic social structures continuing to suffer inequalities and disrespect for basic rights.

It is assumed that the government being autonomous from external forces is capable of making decisions in regard to refugees which could either be positive or negative. The Government of Kenya's policy as Jacobsen maintains, has indicated positive¹ responses to refugees for allowing entry into the country, registration and confirmation of refugee status, issuance of refugee documents and hosting. Of paramount importance to note is Kenya's domestication of the international refugee law through the Refugee Act of 2006. This has been a milestone in the management of refugee affairs since it ushered in a new era of guided management with a structure and strategy with a legal backing.

The refugee management strategy in Kenya however has a gap in its implementation especially in regard to boarder monitoring. As noted in Chapter Two, effective refugees management begins at the boarder points. In the current management strategy, there no structure

¹ Jacobsen, K. 'Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes' *International Migration Review*, Vol. 30, No. 3 (Autumn, 1996), pp. 655-678:658.

from the DRA responsible to man the entry points through reception centers where security and health screenings can take place. This compromises the fight against smuggling of small arms and light weapons into the country and the danger it exposes the entire nation to. It also leaves to fate possible transfer of communicable diseases in the society when the refugees finally arrive into the camps.

While us the strategy embraces the complexity of the refugee problem by constituting a Refugee Affairs Committee that has representatives from various ministries of the government, there mandate is not clear since they currently work as advisers to the Commissioner instead of assisting the commissioner in refugee status determination as indicated in the Refugee Act. Looking at the composition of the RAC, they would be helpful in coming up with strategies on how to fill in the gap that seems to exist at the entry points.

The 1951 international refugee law does not adequately address the refugee problem. It does not address the obligations of the refugee producing countries. It concentrates on state obligations to allow asylum and uphold the highest protection of refugees in the countries of asylum. While us the countries of asylum are burdened with hosting the refugees unless they voluntarily re-avail themselves to the protection of their countries of origin by upholding the principle of non-refoulement, the law does not offer any strategies on how the conditions back home can be managed in order to fasten possibilities of repatriation to lighten the burden on the asylum countries. At the same time, the law remains silent on the issue of resettlement yet it is one of the ways through which the refugee burden can be shared.

While the primary agency mandated to promote and facilitate voluntary repatriation is the office of the United Nations High Commissioner for Refugees, it lack in the structure to deliver on this mandate. The UNHCR is a peace keeping rather than a peace making agency and a non

political agency. In this regard, the UNHCR cannot participate in direct peace and conflict resolution processes which are vital processes towards creating conditions safe for return. This then means, unless 'others' cause conditions for return to exist, the UNHCR can not undertake this crucial mandate to either promote or facilitate voluntary repatriation. From this angle, this mandate can only be described as a null hypothesis.

While the 1951 convention Relating to the Status of Refugees remains silence on the concept of voluntary repatriation, it is clear that the application of the cessation clauses puts the individual refugees at the risk of refoulement. While us the addendum to Article 1 (C) allows refugees who can invoke compelling reasons to re-apply for recognition according to Article 1, this is not a guarantee. When the cessation is undertaken by the government of the country of nationality, there is likelihood for refugee assistance being withdrawn as the government mounts pressure on both the country of asylum and the UNHCR to allow their population to repatriate.

The spirit of burden sharing as envisaged in the 1951 convention, continue to present as a mere theory than a practice in responding to the refugee issues². The traditional resettlement countries continue to restrict their migration rules as they continuously review their resettlement eligibility criteria and offer resettlement quotas that are asymmetrical to the identified needs. National security concerns continue to fill the debates in regard to resettlement of refugees with concerns arising over where to draw the line between genuine national security concerns and refugee protection demands. While this is happening, majority of the asylum countries continue to face the huge challenges of hosting large numbers of refugees, facing protracted refugee situations and deteriorating social security structures. This leaves the question of what next for

² Milner, J. 'Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Security' *Refugee Studies Centre* (2000) pp.1-36:6.

the problem? Is burden sharing only workable through provision for emergency assistance and not through the search for durable solutions?

The national security debates seem to take place in parallel meetings as the resettlement countries perceive allowing refugees to seek sustainable asylum as a security threat to the nation and as the countries of asylum battle with increased state and human security challenges. As Milner noted, there is need for a convergence of interest groups for amicable solutions to be arrived at since each group continues to only come up with policies that favor their preferred end. An understanding of each faction's national security concerns creates a better understanding of their asylum policies and would allow for dialogue on the best way forward towards durable solutions.

However, all is not lost and solutions to the refugee problem would continually be sought from what Milner calls the "context of pre-negotiated responsibilities within interest-convergence groups". This would mean that the spirit of burden sharing be upheld by all through negotiations to ease the burden that the host countries have to contend with. A negotiated approach to share the risk of the burden should be sought for when this does not happen, the burden remains on the shoulders of the asylum countries. Efforts to resolve the conflicts that contribute to refugee flows should be pursued by all the actors in refugee issues to allow the visibility of repatriation. More importantly, proactive measures should be taken to resolve possible conflicts that when left to fate leads to refugee influx. While this is easier said than done, the question of sovereignty continues to pose a challenge since states hold it dear not to allow 'interference' from external actors.

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Conventions and other Instruments

1. The 1951 Convention Relating to the Status of Refugees and its 1969 Protocol Relating to the Status of Refugees
2. The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa
3. The Canadian Charter of Rights and Freedoms
4. The Refugee Act of Kenya 2006
5. Geneva Convention Relative to the Protection of Civilian Persons in Time of War
6. African Charter on Human and People's Rights
7. The Convention on the Elimination of All Forms of Discrimination
8. The European Convention on Human Rights
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Interviews Structure

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