Domestic implementation of international refugee law: the Kenyan case

Musakali, Catherine

Abstract:

It is becoming increasingly clear that international refugee protection developed since the beginning of the 20th century is under extreme pressure and unless concerted action is taken, the institution of refugee protection will be totally eroded. It is further clear that although modern international law offers refugees a whole plethora of rights covering all aspects of life, there are practical difficulties in implementing these international standards at the national level. In some circumstances, international law has not been translated into municipal law in spite of the states having ratified the various conventions. This is the case in Kenya albeit having drafted a Refugee Bill way back in 1994. In other circumstances, the question of sovereignty is often a stumbling block. The thesis hence suggests that while international legal instruments form an important basis for refugee protection, these instruments alone cannot guarantee refugee protection. Emphasis should therefore be placed on other ways of ensuring that this state of affairs does not continue. The idea should be to address the circumstances causing refugee outflows. There is therefore need to emphasise what has come to be known as the root causes approach. Promotion of human rights, democracy, eradication of poverty, strengthening peace building operations and ensuring that perpetrators of wars are brought to book are all means to this end. Above all these, promotion of development in underdeveloped countries should be undertaken. In this scenario, prevention is seen as the better option. Countries without a refugee law should also be encouraged to enact one that translates international refugee law in to its municipal law.